EQUAL EMPLOYMENT OPPORTUNITY PROGRAM DEVELOPMENT MANUAL

U.S. DEPARTMENT OF JUSTICE
Law Enforcement Assistance Administration
Office of Civil Rights Compliance

EQUAL EMPLOYMENT OPPORTUNITY

PROGRAM DEVELOPMENT MANUAL

Prepared by
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This manual has been prepared for the Law Enforcement Assistance Administration for use by criminal justice planning and operational units in the preparation and implementation of equal employment opportunity programs pursuant to the provisions of 28 CFR 42.301 et seq., Subpart E.

July, 1974

U.S. DEPARTMENT OF JUSTICE
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TABLE OF CONTENTS

CHARTS

EXHIBITS

APPENDICES

PREFACE

This manual has been prepared by the Law Enforcement Assistance Administration for the purpose of assisting criminal justice agencies covered by its Equal Employment Opportunity Guidelines in their preparation, implementation and maintenance of equal employment opportunity programs. The information and material contained in the manual is presented in a manner designed to increase understanding of the legal and technical requirements involved but, more importantly, to provide agencies with recommended techniques and procedures for complying with the requirements and for doing so in a manner that increases the likelihood of the resulting program being effective in carrying out the intended purpose of providing fair and equal employment opportunities in criminal justice agencies.

The manual consists of three parts:

PART I presents basic information as to (1) the purpose of the Guidelines, (2) which agencies must prepare equal employment opportunity programs, (3) what an equal employment opportunity program is and what it should contain, (4) program certificate filing requirements, and (5) review and enforcement procedures.

PART II presents (1) the Equal Employment Opportunity Guidelines (28 CFR 42.301 et seq. Subpart E), and (2) a brief and simple set of references to laws and regulations directly relevant to equal employment opportunity.

PART III discusses the required content of equal employment opportunity programs and recommends procedures, forms and techniques for the development and maintenance of effective programs. It also includes some examples of program work by other agencies.

The APPENDIX presents (1) a set of suggested forms for collecting information for future use in preparing or reviewing an equal employment opportunity program, and (2) a variety of documents and portions of documents selected for their potential for assisting in the development of programs of high quality and for providing more complete presentation of documents referred to in the body of the manual.

The manual is not intended to answer all possible questions that might develop during the course of preparation and review of thousands of equal employment opportunity programs around the country, nor is it expected that all of the elements contained in the manual will apply to every agency that attempts to use it. Such variables as the type of agency, its size, location, employable population and its resources will clearly affect the manner in which each agency establishes its own program and the extent to which it can use the manual's recommended techniques and procedures. It must also be recognized that neither the Guidelines themselves nor the content of this manual is as important to the development and operation of an effective equal employment opportunity program as is the criminal justice agency's own attitudes toward and commitment to the philosophy and objectives of equal employment opportunity.

Full credit and appreciation is extended to the many agencies and individuals whose own developmental efforts and constructive questioning have contributed importantly to the content of the manual.

PART I

BASIC PROVISIONS OF THE EQUAL EMPLOYMENT OPPORTUNITY GUIDELINES

The full text of the Guidelines themselves can be found in pages 9–14. The following is a selective summarization of their principal provisions.

A. Purpose of the Guidelines

The purpose of the Equal Employment Opportunity Guidelines is set forth in Section 42.301 of the Guidelines. It provides recognition of the fact that "full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component of the Safe Streets Act's program to reduce crime and delinquency in the United States" by requiring that certain recipients of LEAA funding (see definitions in next section) make a careful evaluation of their employment practices as these affect minority persons and women and then develop a comprehensive equal employment opportunity program.

B. Who Must Prepare an Equal Employment Opportunity Program

Any criminal justice recipient of LEAA funds may be required to formulate, implement and maintain an equal employment opportunity program as it relates to minority persons and women, or women. A recipient criminal justice agency must develop and implement a program if either of the following sets of criteria are fully met:

1. For minority persons and women.
   a. Has fifty or more employees.
   b. Has received grants or subgrants of $25,000 or more.
   c. Has a service population with a minority representation of *more* than three percent.
2. For women only.
   a. Has fifty or more employees.
   b. Has received grants or subgrants of $25,000 or more.
   c. Has a service population with a minority representation of *less* than three percent. 28 CFR 42.302(d).

Comments: (1) When determining the number of employees in an agency, *all* employees are to be counted, including clerical, custodial, etc. (2) The "recipient" agency is defined in terms of the implementing agency. For example, if a grant is made through a municipality to the police department for conducting a program or purchasing some equipment, the recipient is considered to be the police department. (3) The criterion of $25,000 in grant money is cumulative for the recipient (may be the sum of several small grants) and does not require a single grant of $25,000 or more.

A service population is defined as:

1. The adult and juvenile inmate or client population for correctional institutions, facilities and programs (including probation and parole) during the preceding fiscal year. 28 CFR 42.302(f) (1). A fiscal year is twelve months beginning July 1 and ending June 30 of the following calendar year and is designated by the calendar year in which it ends. 28 CFR 42.302(g).

2. The state population for all other state criminal justice agencies.

3. The county population for all other county criminal justice agencies.

4. The municipal population for all other municipal criminal justice agencies. 28 CFR 42.302(f) (2).

Comment: The effect of these provisions is to indicate to the recipient agency that it should consider the population it serves as the base for determining how well it is doing in its equal employment opportunity efforts.

A "recipient" means:

1. Any state, political subdivision of a state, combination of such states or subdivisions, or any department, agency or instrumentality receiving Federal financial assistance through LEAA, directly or through another recipient, or with respect to

whom an assurance of civil rights compliance given as a condition of the earlier receipt of assistance is still in effect. 28 CFR 42.302(a).

2. This includes state and local police agencies, correctional agencies, criminal court systems, probation and parole agencies and similar agencies responsible for the reduction and control of crime and delinquency. 28 CFR 42.302(b).

3. However, educational institutions, general hospital or medical facilities, and nonprofit organizations are not required to prepare equal employment opportunity programs. They must adhere to the Department of Health, Education and Welfare Equal Employment Opportunity Guidelines. HEW has the responsibility of monitoring this class of subgrantee. 28 CFR 42.302(c).

C. What an Equal Employment Opportunity Program Is, and How It Is Prepared

An equal employment opportunity program is a comprehensive action plan for assuring equal employment opportunity and employment conditions for minority persons and women in a criminal justice agency. It is based on a detailed review and analysis of the agency's present employment policies, practices and procedures, with particular regard to the effect of these on the employment and utilization of minorities and women. On the basis of the findings of the review and analysis a written document is prepared setting forth the findings, the nature of any problem areas (inequities), and the specific steps to be taken to correct problem areas.

The content and procedures for the review and analysis of present employment policies, practices and procedures is set forth basically in Section 42.303 of the Guidelines, and the required content of the written equal employment opportunity program, including provisions for program dissemination and for assigning responsibility for program implementation and maintenance, is set forth in Section 42.304.

PART III of the manual discusses in further detail the content and procedures for performing the review and preparing the written plan, and for recognizing and incorporating any relevant work already carried out as part of a jurisdictionn-wide equal employment opportunity or affirmative action program.

D. Certificate Filing and Program Implementation and Maintenance

Prior to the authorization to fund new or continuing programs involving LEAA financial assistance, the recipient must file a certificate with its State Planning Agency if

block grant funds are involved, or with the LEAA regional office if discretionary funds are being requested, stating that the equal employment opportunity program is on file with the recipient. 28 CFR 42.305. The certificate must be in the following form:

> I, ... (person filing the application), certify that the . . . . . (criminal justice agency) has formulated an equal employment opportunity program in accordance with 28 CFR 42.301. et seq., Subpart E, and that it is on file in the office of. . . . . (Name), ...(Address), ... (Title), for review or audit by officials of the cognizant state planning agency or the Law Enforcement Assistance Administration as required by relevant laws and regulations. 28 CFR 42.305.

A criminal justice recipient who is not subject to coverage of this subpart must file a statement that in conformity with the terms and conditions of the regulation no equal employment opportunity program is required to be filed by the jurisdiction. 28 CFR 42.305. See Exhibit 1 for an illustration of how a state planning agency can combine both types of certification in one form.

As a condition for receiving block grant funds, a state planning agency must certify that its subgrantees have executed equal employment opportunity programs in accordance with this regulation or that the subgrantee is not required to have such a program under the regulation. 28 CFR 42.305.

A plan must be developed which specifies how the recipient will disseminate information about its equal employment opportunity program to all personnel, applicants and the general public. 28 CFR 42.304(h). An individual must be designated to implement and maintain adherence to the program with a description of his responsibilities. 28 CFR 42.304(i).

A subgrantee must maintain an equal employment opportunity program for the period of time it receives LEAA assistance or for so long as the state files a comprehensive law enforcement plan with LEAA and it is in effect within the state. A different period of time is possible if it is agreed to in writing by LEAA. 28 CFR 42.307.

Covered recipient agencies are expected to maintain a continuous program of self-evaluation. The purpose is to determine whether their recruitment, employee selection or promotional policies directly or indirectly have the effect of denying equal employment opportunity to minority individuals or women. 28 CFR 42.306(a).

EXHIBIT 1

CERTIFICATE OF
EQUAL EMPLOYMENT OPPORTUNITY
GUIDELINE COMPLIANCE

Subgrantee	Subgrant Amount	Control Number
	Project Name	

All recipients of federal funds under Title 1 of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, 82 Stat. 197, as amended, are required to certify compliance with Title 28, Chapter 1, Subpart E of Part 42 of the Code of Federal Regulations as it applies to the implementing criminal justice agency.

STATUS OF COMPLIANCE

1. I _____ (Authorizing Official) certify that the _____ (Criminal Justice Agency) has formulated an equal employment opportunity program in accordance with 28 CFR 42.301, et seq., Subpart E, and that it is on file in the office of _____ (Name) _____ (Address) _____ (Title), for review or audit by officials of the cognizant state planning agency or the Law Enforcement Assistance Administration as required by relevant laws and regulations. 28 CFR 42.305.

2. I _____ (Authorizing Official) certify that the _____ (Criminal Justice Agency) in conformity with the terms and conditions of 28 CFR 42.301 is not required to file an equal opportunity program.

E. Review and Enforcement Procedures

Each recipient covered by the Guidelines must keep its equal employment opportunity program and all records used in its preparation on file. These records are subject to audit or review by personnel of the State Planning Agency or LEAA. 28 CFR 42.305.

Post award compliance reviews will be scheduled by LEAA. They will give priority to recipients who have a significant disparity between the percentage of minority employees in the agency. 28 CFR 42.306(b).

Such a disparity will be deemed significant if the percentage of a minority group in the employment of the agency is not at least (70) percent of the percentage of that minority in the service population. 28 CFR 42.306(c).

Equal employment program modification may be suggested by LEAA whenever identifiable referral or selection procedures and policies indicate the appropriateness of such action. 28 CFR 42.306(b).

Failure to implement and maintain an equal employment opportunity program as set out in the guidelines will subject the recipient to appropriate sanctions. 28 CFR 42.308.

When the Administration of LEAA determines, on the basis of information and recommendations from the Office of Civil Rights Compliance and the Office of the General Counsel, that voluntary compliance cannot be achieved, it must then resort to the appropriate enforcement mechanism.

If the area in which non-compliance has been found falls within Section 518(c) of the Crime Control Act of 1973, the chief executive of the State in which the non-compliance exists is notified and requested to intervene and secure compliance. If within a reasonable period of time after notification the chief executive is unable or unwilling to resolve the situation to LEAA's satisfaction, administrative proceedings must be instituted. If the Administration, after reasonable notice and opportunity for a hearing, finds that there has been a failure to comply with Section 518(c), it may suspend all funding to the recipient, or, in its discretion, may limit suspension of funding to those areas or activities where the finding of non-compliance was made. A recipient may request a rehearing, and further provision is made for judicial review of the Administration's decision.

Concurrent with administrative proceedings, LEAA may pursue appropriate judicial actions as provided by law, if it so chooses.

Judicial and administrative sanctions are also provided for under Title VI of the Civil Rights Act of 1964, and the LEAA Equal Employment Opportunity Regulations.

Similar procedures also provide for the enforcement of the Executive Orders covering Federally-assisted construction contracts. If a hearing supports a finding of non-compliance, existing contracts are terminated and the contractor is barred from future Federal contract awards until compliance is achieved.

PART II

RELEVANT LAWS AND REGULATIONS

A. LEAA Equal Employment Opportunity Guidelines

Title 28—Judicial Administration
CHAPTER 1—DEPARTMENT OF JUSTICE
PART 42—NONDISCRIMINATION: EQUAL OPPORTUNITY: POLICIES AND PROCEDURES

Subpart E—Equal Employment Opportunity Guidelines

On March 9, 1973, the Law Enforcement Assistance Administration of the Department of Justice (LEAA), promulgated equal employment opportunity guidelines (28 CFR 42.301, et seq., Subpart E). The second paragraph of those guidelines reads as follows:

In accordance with the spirit of the public policy set forth in 5 U.S.C. 553, interested persons may submit written comments, suggestions, data or arguments to the Administrator, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C. 20530, Attention: Office of Civil Rights Compliance, within 45 days of the publication of the guidelines contained in this part. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. Until such time as further changes are made, however, Part 42, Subpart E as set forth herein shall remain in effect, thus permitting the public business to proceed more expeditiously.

In accordance with the preceding paragraph, written comments, suggestions, data or arguments, have been received by the Administrator of the Law Enforcement Assistance Administration. Material submitted has been evaluated and changes deemed by LEAA to be appropriate have been incorporated into revised equal employment opportunity guidelines, the text of which follows.

By virtue of the authority vested in it by 5 U.S.C. 301, and section 501 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, 82 Stat. 197, as amended, the Law Enforcement Assistance Administration hereby issues Title 28, Chapter I, Subpart E of Part 42 of the Code of Federal Regulations. In that the material contained herein is a matter relating to the grant program of the Law Enforcement Assistance Administration, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable.

Subpart E—Equal Employment Opportunity Guidelines

Sec.

AUTHORITY: 5 U.S.C., sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197, as amended.

Subpart E—Equal Employment Opportunity Guidelines

§ 42.301 Purpose.

(a) The experience of the Law Enforcement Assistance Administration in implementing its responsibilities under the Omnibus Crime Control and Safe Streets Act of

1968, as amended, (Pub.L. 90–351, 82 Stat. 197; Pub. L. 91–644, 84 Stat. 1881) has demonstrated that the full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component to the Safe Streets Act's program to reduce crime and delinquency in the United States.

(b) Pursuant to the authority of the Safe Streets Act and the equal employment opportunity regulations of the LEAA relating to LEAA assisted programs and activities (28 CFR 42.201, et seq., Subpart D), the following Equal Employment Opportunity Guidelines are established.

§ 42.302 Application.

(a) As used in these guidelines "Recipient" means any state, political subdivision of any state, combination of such states or subdivision, or any department, agency or instrumentality of any of the foregoing receiving Federal financial assistance from LEAA, directly or through another recipient, or with respect to whom an assurance of civil rights compliance given as a condition of the earlier receipt of assistance is still in effect.

(b) The obligation of a recipient to formulate, implement, and maintain an equal employment opportunity program, in accordance with this Subpart, extends to state and local police agencies, correctional agencies, criminal court systems, probation and parole agencies, and similar agencies responsible for the reduction and control of crime and delinquency.

(c) Assignments of compliance responsibility for Title VI of the Civil Rights Act of 1964 have been made by the Department of Justice to the Department of Health, Education, and Welfare, covering educational institutions and general hospital or medical facilities. Similarly, the Department of Labor, in pursuance of its authority under Executive Orders 11246 and 11375, has assigned responsibility for monitoring equal employment opportunity under government contracts with medical and educational institutions, and non-profit organizations, to the Department of Health, Education, and Welfare. Accordingly, monitoring responsibility in compliance matters in agencies of the kind mentioned in this paragraph rests with the Department of Health, Education, and Welfare, and agencies of this kind are exempt from the provisions of this subpart, and are not responsible for the development of equal employment opportunity programs in accordance herewith.

(d) Each recipient of LEAA assistance within the criminal justice system which has 50 or more employees and which has received grants or subgrants of $25,000 or more pursuant to and since the enactment of the Safe Streets Act of 1968, as amended, and which has a service population with a minority representation of 3 percent or more, is required to formulate, implement and maintain an Equal Employment Opportunity Program relating to employment practices affecting minority persons and women within 120 days after either the promulgation of these amended guidelines, or the initial application for assistance is approved, whichever is sooner. Where a recipient has 50 or more employees, and has received grants or subgrants of $25,000 or more, and has a service population with a minority representation of less than 3 percent, such recipient is required to formulate, implement, and maintain an equal employment opportunity program relating to employment practices affecting women. For a definition of "employment practices" within the meaning of this paragraph, see § 42.202(b).

(e) "Minority persons" shall include persons who are Negro, Oriental, American–Indian, or Spanish–surnamed Americans. "Spanish–surnamed Americans" means those of Latin American, Cuban, Mexican, Puerto Rican or Spanish origin. In Alaska, Eskimos and Aleuts should be included as "American Indians."

(f) For the purpose of these guidelines, the relevant "service population" shall be determined as follows:

(1) For adult and juvenile correctional institutions, facilities and programs (including

probation and parole programs), the "service population" shall be the inmate or client population served by the institution, facility, or program during the preceding fiscal year.

(2) For all other recipient agencies (e.g., police and courts), the "service population" shall be the State population for state agencies, the county population for county agencies, and the municipal population for municipal agencies.

(g) "Fiscal year" means the twelve calendar months beginning July 1, end ending June 30, of the following calendar year. A fiscal year is designated by the calendar year in which it ends.

§ 42.303 Evaluation of Employment Opportunities.

(a) A necessary prerequisite to the development and implementation of a satisfactory Equal Employment Opportunity Program is the identification and analysis of any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, and promotion) and the evaluation of employment opportunities for minorities and women.

(b) In many cases an effective Equal Employment Opportunity Program may only be accomplished where the program is coordinated by the recipient agency with the cognizant Civil Service Commission or or similar agency responsible by law, in whole or in part, for the recruitment and selection of entrance candidates and selection of candidates for promotion.

(c) In making the evaluation of employment opportunities, the recipient shall conduct such analysis separately for minorities and women. However, all racial and ethnic data collected to perform an evaluation pursuant to the requirements of this section should be cross classified by sex to ascertain the extent to which minority women or minority men may be underutilized. The evaluation should include but not necessarily be limited to, the following factors:

(1) An analysis of present representation of women and minority persons in all job categories;

(2) An analysis of all recruitment and employment selection procedures for the preceding fiscal year, including such things as position descriptions, application forms, recruitment methods and sources, interview procedures, test administration and test validity, educational prerequisites, referral procedures and final selection methods, to insure that equal employment opportunity is being afforded in all job categories;

(3) An analysis of seniority practices and provisions, upgrading and promotion procedures, transfer procedures (lateral or vertical), and formal and informal training programs during the preceding fiscal year, in order to insure that equal employment opportunity is being afforded;

(4) A reasonable assessment to determine whether minority employment is inhibited by external factors such as the lack of access to suitable housing in the geographical area served by a certain facility or the lack of suitable transportation (public or private) to the workplace.

§ 42.304 Written Equal Employment Opportunity Program.

Each recipient's Equal Employment Opportunity Program shall be in writing and shall include:

(a) A job classification table or chart which clearly indicates for each job classification or assignment the number of employees within each respective job category classified by race, sex and national origin (include for example Spanish–surnamed, Oriental, and American Indian). Also, principal duties and rates of pay should be clearly indicated for each job classification. Where auxiliary duties are assigned or more than one rate of pay applies because of length of time in the job or other factors, a special notation should be made. Where the recipient operates more than one shift or assigns employees within each shift to varying locations, as in law enforcement agencies, the number by race, sex and national origin on each shift and in each location should be identified. When relevant, the recipient should indicate the racial/ethnic mix of the geographic area of

assignments by the inclusion of minority population and percentage statistics.

(b) The number of disciplinary actions taken against employees by race, sex, and national origin within the preceding fiscal year, the number and types of sanctions imposed (suspension indefinitely, suspension for a term, loss of pay, written reprimand, oral reprimand, other) against individuals by race, sex, and national origin.

(c) The number of individuals by race, sex and national origin (if available) applying for employment within the preceding fiscal year and the number by race, sex and national origin (if available) of those applicants who were offered employment and those who were actually hired. If such data is unavailable, the recipient should institute a system for the collection of such data.

(d) The number of employees in each job category by race, sex, and national origin who made application for promotion or transfer within the preceding fiscal year and the number in each job category by race, sex, and national origin who were promoted or transferred.

(e) The number of employees by race, sex, and national origin who were terminated within the preceding fiscal year, identifying by race, sex, and national origin which were voluntary and involuntary terminations.

(f) Available community and area labor characteristics within the relevant geographical area including total population, workforce and existing unemployment by race, sex, and national origin. Such data may be obtained from the Bureau of Labor Statistics, Washington, D.C., state and local employment services, or other reliable sources. Recipients should identify the sources of the data used.

(g) A detailed narrative statement setting forth the recipient's existing employment policies and practices as defined in § 42.202(b). Thus, for example, where testing is used in the employment selection process, it is not sufficient for the recipient to simply note the fact. The recipient should identify the test, describe the procedures followed in administering and scoring the test, state what weight is given to test scores, how a cut-off score is established and whether the test has been validated to predict or measure job performance and, if so, a detailed description of the validation study. Similarly detailed responses are required with respect to other employment policies, procedures, and practices used by the applicant.

(1) The statement should include the recipient's detailed analysis of existing employment policies, procedures, and practices as they relate to employment of minorities and women, (see § 42.303) and, where improvements are necessary, the statement should set forth in detail the specific steps the recipient will take for the achievement of full and equal employment opportunity. For example, The Equal Employment Opportunity Commission, in carrying out its responsibilities in ensuring compliance with Title VII has published Guidelines on Employee Selection Procedures (29 CFR Part 1607) which, among other things, proscribes the use of employee selection practices, procedures and devices (such as tests, minimum educational levels, oral interviews and the like) which have not been shown by the user thereof to be related to job performance and where the use of such an unvalidated selection device tends to disqualify a disproportionate number of minority individuals or women for employment. The EEOC Guidelines set out appropriate procedures to assist in establishing and maintaining equal employment opportunities. Recipients of LEAA assistance using selection procedures which are not in conformity with the EEOC Guidelines shall set forth the specific areas of nonconformity, the reasons which may explain any such nonconformity, and, if necessary, the steps the recipient agency will take to correct any existing deficiency.

(2) The recipient should also set forth a program for recruitment of minority persons based on an informed judgment of what is necessary to attract minority applications including, but not necessarily limited to, dissemination of posters, use of advertising media patronized by minorities, minority group

contacts and community relations programs. As appropriate, recipients may wish to refer to recruitment techniques suggested in Revised Order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60–2.24(e).

(h) Plan for dissemination of the applicant's Equal Employment Opportunity Program, to all personnel, applicants and the general public. As appropriate, recipients may wish to refer to the recommendations for dissemination of policy suggested in Revised Order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60–2.21.

(i) Designation of specified personnel to implement and maintain adherence to the Equal Employment Opportunity Program and a description of their specific responsibilities suggested in Revised Order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60–2.22.

§ 42.305 Record Keeping and Certification.

The Equal Employment Opportunity Program and all records used in its preparation shall be kept on file and retained by each recipient covered by these guidelines for subsequent audit or review by responsible personnel of the cognizant state planning agency or the LEAA. Prior to the authorization to fund new or continuing programs under the Omnibus Crime Control and Safe Streets Act of 1968, the recipient shall file a certificate with the cognizant state planning agency or LEAA regional office stating that the equal employment opportunity program is on file with the recipient. The form of the certification shall be as follows:

I, _____(person filing the application) certify that the _____ (criminal justice agency) has formulated an equal employment opportunity program in accordance with 28 CFR 42.301, et seq., Subpart E, and that it is on file in the Office of _____ (name), _____(address), _____ (title), for review or audit by officials of the cognizant state planning agency or the Law Enforcement Assistance Administration, as required by relevant laws and regulations.

The criminal justice agency created by the Governor to implement the Safe Streets Act within each state shall certify that it requires, as a condition of the receipt of block grant funds, that recipients from it have executed an Equal Employment Opportunity Program in accordance with this subpart, or that, in conformity with the terms and conditions of this regulation no equal employment opportunity programs are required to be filed by that jurisdiction.

§ 42.306 Guidelines.

(a) Recipient agencies are expected to conduct a continuing program of self-evaluation to ascertain whether any of their recruitment, employee selection or promotional policies (or lack thereof) directly or indirectly have the effect of denying equal employment opportunities to minority individuals and women.

(b) Post award compliance reviews of recipient agencies will be scheduled by LEAA, giving priority to any recipient agencies which have a significant disparity between the percentage of minority persons in the service population and the percentage of minority employees in the agency. Equal employment program modification may be suggested by LEAA whenever identifiable referral or selection procedures and policies suggest to LEAA the appropriates of improved selection procedures and policies. Accordingly, any recipient agencies falling within this category are encouraged to develop recruitment, hiring or promotional guidelines under their equal employment opportunity program which will correct, in a timely manner, any identifiable employment impediments which may have contributed to the existing disparities.

(c) A significant disparity between minority representation in the service population and the minority representation in the agency workforce may be deemed to exist if the percentage of a minority group in the employment of the agency is not at least seventy (70) percent of the percentage of that minority in the service population.

§ 42.307 Obligation of recipients.

The obligation of those recipients subject to these Guidelines for the maintenance of an Equal Employment Opportunity Program shall continue for the period during which the LEAA assistance is extended to a recipient or for the period during which a comprehensive law enforcement plan filed pursuant to the Safe Streets Act is in effect within the State, whichever is longer, unless the assurances of compliance, filed by a recipient in accordance with § 42.204(a)(2), specify a different period.

§ 42.308 Noncompliance.

Failure to implement and maintain an Equal Employment Opportunity Program as required by these Guidelines shall subject recipients of LEAA assistance to the sanctions prescribed by the Safe Streets Act and the equal employment opportunity regulations of the Department of Justice. (See 42 U.S.C. 3757 and § 42.206).

Effective Date—This Guideline shall become effective on August 31, 1973.

Dated August 24, 1973

Donald E. Santarelli,

Administrator, Law Enforcement Assistance Administration.

(FR Doc. 73–18555 Filed 8–30–73; 8:45 am)

B. Brief References to Relevant Sections of Selected Laws and Regulations

1. U.S. Constitutional Amendments

a. *Thirteenth Amendment* to the U.S. Constitution (ratified in 1865):

"Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Sec. 2. Congress shall have power to enforce this article by appropriate legislation."

b. *Fourteenth Amendment* to the U.S. Constitution (ratified in 1868):

"Sec. 1. . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

"Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

2. Federal Statutes

a. *The Civil Rights Act of 1866* (codified as 42 U.S.C. 1981), enacted by Congress pursuant to the enabling provision contained in Section 2 of the 13th Amendment, *supra*:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens . . . ."

b. *The Civil Rights Act of 1871* (codified as 42 U.S.C. 1983), enacted by Congress pursuant to the enabling provision contained in Section 5 of the 14th Amendment, *supra*:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured . . . ."

c. *Title VI of the Civil Rights Act of 1964* (42 U.S.C. 2000d) states that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (See Appendix B)

d. *Title VII of the Civil Rights Act of 1964* (42 U.S.C. 2000e as amended by the Equal Employment Opportunity Act of March 24, 1972, Public Law No. 92–261) essentially provides that it is unlawful for an employer with 15 or more employees:

"...to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin;

...to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex, or national origin." (See Appendix C)

The 1972 amendments to the 1964 Act made two significant changes to Title VII by:

(1) providing the U.S. Equal Employment Opportunity Commission (EEOC), the agency empowered to administer the law, the authority to enforce its provisions in federal court; and

(2) extending EEOC's jurisdiction to include public employers with 25 or more employees as well as private employers (15 or more employees after March 1973); the U.S. Attorney General presently has the power to enforce the prohibitions concerning public employers, and this power was transferred to EEOC on March 24, 1974.

e. *Omnibus Crime Control and Safe Streets Act of 1968* (42 U.S.C. par. 3711 et seq.) as amended by the Crime Control Act of 1973 (P.L. 93–83) provides:

"Section 518(c)(1). No person in any State shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title." (See Appendix D)

3. Federal Executive Orders

a. *Executive Order* 11246 3 CFR par. 173 (1973) as amended by *Executive Order* 11375 (32 Fed. Reg. 14304) prohibits employment discrimination by employers with Federal contracts of more than $10,000, and their subcontractors; and by contractor and subcontractors in federally assisted construction. (See Appendix E)

Complaints may be filed with the Office of Federal Contract Compliance or the Office of Civil Rights Compliance and if the matter cannot be settled informally, formal proceedings may be commenced which may result in either (1) cancellation of the existing contract or (2) debarment from future contracts until compliance is achieved.

Executive Order 11375 expanded the coverage of Order 11246 to include discrimination on account of sex.

4. Guidelines and Regulations Issued Pursuant to Federal Laws and Executive Orders

a. Regulations and Guidelines issued by LEAA pursuant to the 14th Amendment "Equal Protection" guarantees:

(1) *Equal Employment Opportunity Regulations* (28 CFR 42.201) require every grant applicant to file an assurance with its application that it shall not discriminate in its employment practices against employees or applicants because of race, color, creed, sex or national origin and provide administrative or court enforcement mechanisms. These are attached as Appendix F.

(2) *Equal Employment Opportunity Guidelines* (28 CFR par. 42.301 et seq.) require that each grant applicant analyze its work force and

develop an EEO program; these were presented as Section A of this part of the manual, immediately preceding this present section.

(3) *Equal Rights Guidelines, Effect on Minorities and Women of Minimum Height Requirements for Employment of Law Enforcement Officers* (G7400.2) require that recipients of LEAA funding eliminate minimum height requirements which cannot be demonstrated to be an "operational necessity"; the full text is reprinted here as Appendix G.

b. Regulations issued by the Department of Justice pursuant to Title VI of the Civil Rights Act of 1964:

(1) *Nondiscrimination in Federally Assisted Programs* (28 CFR 42.105 et seq., as amended by 38 Fed. Reg. 17955, July 5, 1973) required all applicants for federal financial assistance from the Department of Justice which has employment as its primary objective to ensure that both employment in and benefits of the federally assisted activities will be conducted on a nondiscriminatory basis. (See Appendix H)

c. Regulations and Guidelines issued by EEOC pursuant to Title VII of the Civil Rights Act of 1964:

(1) *Reporting and Recordkeeping* (29 CFR 1602) regulations require state and local government with 100 or more employees to file information reports on "EEO–4" forms beginning July 30, 1974. (See Appendix I)

(2) *Guidelines on Employee Selection Procedures* (29 CFR 1607) provide that any employment selection device, including but not limited to the written test, which has the effect of screening out disproportionate numbers of the protected class, is discriminatory unless the device "has been validated and evidences a high degree of utility." The guidelines define what constitutes a "validation study" and essentially ensure that an employment criterion does the job that it is designed to do: i.e., predict job performance. (See Appendix J)

(3) *Guidelines on Employment Discrimination Because of Sex* (29 CFR 1604) basically provide:

(a) that the statutory exemption as to "bona fide occupational qualifications" shall be construed narrowly;

(b) that state "protective" laws are contrary to Title VII;

(c) that pregnancy and childbirth shall be treated by the employer as any other temporary disability. This guideline is attached as Appendix K.

d. Guidelines issued by OFCC pursuant to Executive Orders 11246 11375:

(1) *Revised Order No. 4* (41 CFR 60–2) applicable to nonconstruction contractors with 50 or more employees and a contract exceeding $50,000, requires:

(a) the development of an affirmative action program, and;

(b) methods of implementing the program through goals and timetables.

Selected portions are reprinted as Appendix M.

5. A memorandum entitled *Federal Policy Statement* dated March 23, 1973, was signed by the U.S. Department of Justice, U.S. Civil Civil Service Commission, OFCC and EEOC. It acknowledges the similar and sometimes overlapping civil rights compliance responsibilities of the cosignators and defines what constitutes permissible remedial goals and timetables in affirmative action programs developed by state and local governments. (See Appendix N)

6. LEAA's contract with the University of Illinois requires the National Clearinghouse for Criminal Justice Planning and Architecture to clear all new construction projects supported with LEAA Part E funds in order to determine whether the proposed location of a correctional facility will, or will tend to:

a. exclude, diminish or otherwise adversely affect the employment opportunities of minority individuals;

b. subject minority individuals to inferior or a diminished number of programs, services, and activities; or

c. make minority employment or participation difficult because of the lack of adequate public transportation or local housing or both.

If the proposed location will produce any of the above-mentioned results, the correctional agency "must take steps to secure actual employment of minority individuals" including such steps as ensuring that there is an adequate housing supply available and providing transportation to the facility.

Note: Appendix O presents the U.S. Supreme Court's decision in the *Griggs* v. *Duke Power Co.*, and Appendix P presents an outline of substantive case law interpreting the legal authorities prohibiting employment discrimination.

PART III

RECOMMENDED CONTENT AND PROCEDURES IN THE DEVELOPMENT OF EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

As indicated in PART I of this manual, the essential first step in the development of an equal employment opportunity program is a comprehensive and detailed review and analysis of all the agency's employment practices and procedures, with particular respect and attention to their effect on the employment and utilization of minorities and women.

It is the purpose of this part of the manual to set forth the specific requirements for doing this as provided in the Guidelines, to provide discussion of the relevant terms, and to suggest practical content and approaches to the required analytical and evaluative work.

As mentioned earlier the different nature and characteristics of the criminal justice agency will, of necessity, influence the specifics of the tasks performed and data collected, and some of the procedures, forms, and inquiries recommended in this part will have differing degrees of utility for different agencies.

It is important to understand that there is no "model program" that can be adopted and utilized by a criminal justice agency, not even for a specific type and size of agency. To be realistic and to be effective an agency's program must be based on analysis and appraisal of its own unique set of past and present policies, practices, and conditions and its own present workforce and local labor market. Its action program for improving equal employment opportunity develops directly out of this review and analysis and therefore contains elements and approaches tailored specifically to the findings and needs of that agency. This manual's primary purpose is to assist agencies in carrying out this two-fold task.

Since the analysis and reporting requirements of the Guidelines are closely related, it is recommended that this entire PART III be read and understood as an integrated whole.

It is important to understand that none of the specific charts or data collection forms presented in this manual are themselves required by LEAA. They are presented here as suggested optional ways for reviewing, analyzing and reporting on employment practices as required by the Guidelines.

A criminal justice agency should not assume that a jurisdiction-wide program of which it is a part automatically meets LEAA Guideline requirements. Agencies which are a part of a jurisdiction-wide equal employment opportunity or affirmative action plan should give recognition to this fact in their response to the Guideline requirements. To the extent that the jurisdiction-wide plan has included the collection, review and

evaluation of employment data and conditions *specific to the individual agency* (e.g., police department, corrections agency) and/or has evaluated employment policies and practices *as they affect that individual agency*, such work need not be replicated but rather should be accepted, identified and incorporated as part of the required equal employment opportunity program development and write-up. This work should then be supplemented with any further analysis, data reporting or action step planning that is required by the Guidelines for recipient agencies but which is not already a part of the jurisdiction-wide plan.

If the review and analysis element of equal employment opportunity program development as described in this section of the manual is carried out with thoroughness and good judgment, the preparing of the written program will be primarily a matter of reporting the resultant findings and evaluations, interpreting their implications for needed steps toward improvement, designating continuing program responsibility, and arranging for program dissemination, as will be discussed in PART III C.

A. Relevant Guideline Provisions and Special Terminology

A necessary prerequisite to the development and implementation of a satisfactory equal employment opportunity program is the identification and analysis of any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, and promotion) and the evaluation of employment opportunities for minorities and women. 28 CFR 42.303(a).

In many cases an effective equal employment opportunity program may only be accomplished where the program is coordinated by the recipient agency with the cognizant Civil Service Commission or similar agency responsible by law, in whole or in part, for the recruitment and selection of entrance candidates and selection of candidates for promotion. 28 CFR 42.303(b).

In making the evaluation of employment opportunities, the recipient shall conduct such analysis separately for minorities and women. However, all racial and ethnic data collected to perform an evaluation pursuant to the requirements of this section should be cross-classified by sex to ascertain the extent to which minority women or minority men may be underutilized. The evaluation should include but not necessarily be limited to the following factors:

1. An analysis of present representation of women and minority persons in all job categories;

2. An analysis of all recruitment and employment selection procedures for the preceding fiscal year, including such things as position descriptions, application forms, recruitment methods and sources, interview

procedures, test administration and test validity, educational prerequisites, referral procedures and final selection methods, to insure that equal employment opportunity is being afforded in all job categories;

3. An analysis of seniority practices and provisions, upgrading and promotion procedures, transfer procedures (lateral or vertical), and formal and informal training programs during the preceding fiscal year, in order to insure that equal employment opportunity is being afforded;

4. A reasonable assessment to determine whether minority employment is inhibited by external factors such as the lack of access to suitable housing in the geographical area served by a certain facility or the lack of suitable transportation (public or private) to the workplace. 28 CFR 42.303(c).

"Employment practices" that are to be covered by the formulated plan are specified in the Guidelines (42.302d) as being those set forth in Section 42.202(b) of Subpart D, the EEO Regulation issued by LEAA in August, 1972. Section 42.202(b) states the term "employment practices" means all terms and conditions of employment including but not limited to all practices relating to the screening, recruitment, selection, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, discipline, layoff and termination, upgrading, transfer, leave practices, rates of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities.

"Fiscal year" means the twelve calendar months beginning July 1, and ending June 30, of the following calendar year. A fiscal year is designated by the calendar year in which it ends. 28 CFR 42.302(g).

"Minority persons" shall include persons who are Negro, Oriental, American Indian, or Spanish–surnamed Americans. "Spanish–surnamed Americans" means those of Latin American, Cuban, Mexican, Puerto Rican or Spanish origin. In Alaska, Eskimos and Aleuts should be included as "American Indians." 28 CFR 42.302(e).

While not required by the Guidelines or by other laws or regulations, the identification and coding system that will be used in this manual for minority and non-minority groupings will be the so-called "coins" system, in which the letters C–O–I–N–S represent groups as follows:

C = Caucasians, the non-minority grouping, which are frequently referred to as "Whites" and which primarily include persons of Indo-European descent, including Pakastani and East Indian.

O = Orientals, including persons of Japanese, Chinese, Korean or Philipino descent.

I = American Indians, which are persons who identify themselves as such or who are known as such by virtue of tribal association. Eskimos and Aleuts are to be included in this category.

N = Negro, or black people, including persons of African descent as well as those identified as Jamaican, Trinidadian, and West Indians.

S = Spanish–surnamed Americans, which includes persons of Mexican, Puerto Rican, Cuban, Latin American or Spanish descent.

Also not required by the Guidelines or by law but recommended and included at appropriate points in this manual is a distinction between "sworn" and "unsworn" personnel. This distinction is not applicable in some criminal justice agencies (e.g., planning agencies) but is operational in most (e.g., police departments, sheriff's departments, corrections departments, probation and parole agencies).

Sworn personnel – refers to those employees whose appointments involve taking an oath of office upon assuming the position and its attendant duties and responsibilities. This usually includes such law enforcement and criminal justice positions (entrance level and promotional) as police officers, sheriffs and deputy sheriffs, bailiffs, correctional officers, and probation and parole agents.

Unsworn personnel – refers to those civilian employees who are support personnel, such as clerks, accountants, computer technicians, auto repairmen, radio technicians, maintenance personnel and the like.

Agencies which have no positions that involve taking such an oath of office would of course ignore the sworn–unsworn distinctions recommended by the manual at selected points in the analysis, evaluation and planning operations.

B. Analysis of the Nature and Effect of Present Policies and Practices

This section of the manual sets forth procedures for collecting and assessing relevant information and data on specific elements of an agency's employment program as required by the Guidelines. It will recommend procedures to follow, forms that can be used, situations to look for, and questions to be asked. Since criminal justice agencies vary as to type, size, general nature of the personnel program and level of development, the recommended techniques, forms and procedures will have to be selected from, adapted to, and expanded upon by the agency in terms of its own characteristics and capabilities. However, as much as possible the material has been developed and formulated to be of use to agencies of different types and sizes.

Just as there is no completely standardized approach to the collection and summarizing of relevant data and information, there is likewise no precise mathematical formula or criterion to be applied in assessing the data and the procedural information that is assembled. In each instance the agency must consider the probable effect of this practice or procedure on the employment of minorities and women and must look at the data for possible evidences of disparate effects or circumstances resulting from present operations. The basic intent of the review and analysis is to provide the agency with a systematically developed picture of itself with regard to the employment and utilization of minorities and women so that it acquires awareness of problem areas and of questionable or negative practices and can, on the basis of this awareness, plan and implement action steps to bring about improvement.

1. Current Agency Employment Data

A very basic and important step in evaluating the effect of agency employment practices is the collecting, summarizing, charting and analyzing of data showing the present representation of women and minority persons in the agency's current workforce. The basic data as to the employee's sex and minority group membership is, by this point in time, usually already a part of personnel data record and files as a result of previous requests or requirements of this type of information. If minority information is not already available, it can usually be best acquired through self-reporting techniques in which the employee, after being informed of the equal employment opportunity intent of the survey, is asked to categorize himself as to grouping. As an alternative to this, an agency may want to follow race/ethnic identification procedures described on page 10 of the EEO–4 Reporting Form (Appendix I).

The charting of this data may be done in any of several forms, as long as it presents complete information in a manner that permits reasonably clear and direct evaluation. One form that could be used is the EEO–4 Reporting Form (Appendix I) which state and local governments are required to fill out for their jurisdiction. A separate copy should be

completed for the individual criminal justice agency so that its workforce make-up would be clear and would not be confused with the jurisdiction as a whole. A specially prepared sheet has been attached to the EEO–4 Reporting Form in Appendix I to recommend how criminal justice job titles (police chief, warden, sheriff, bailiff, correctional officers, etc.) be reported according to the job categories specified in the EEO–4 Form.

Another form that could be used in charting workforce data is that presented in Chart I, which is basically similar to that required by LEAA from police and sheriff's departments, but is generalized for use by any criminal justice agency, and is amended to provide space for listing pay ranges and job classifications in use in the agency. Note that the format presented in Chart I is not another form for reporting information to a federal agency but rather is a suggested format for the agency's own charting and analysis of its employment picture.

As stated earlier, an agency may use any form it wishes as long as the workforce is fully and accurately represented. Exhibit 2 shows the format developed and used by the Greensboro, North Carolina, Police Department. Note that it represents information on only blacks and whites (blacks are the only minority with significant numerical representation in the jurisdiction) and that it presents succinct information on job duties, though complete job specifications also are included in the department's plan.

If an agency is large and operates separate major divisions, branches or institutions, it is recommended that workforce charts also be prepared for those individual organizational components to permit a more complete and effective analysis of women and minority employee utilization within the agency.

If the agency operates more than one shift or assigns employees within each shift to varying locations, as in law enforcement agencies, the number of employees by race, sex and national origin on each shift and in each location should be identified. When relevant, the racial–ethnic composition of the geographic areas should be identified.

After the appropriate compilation of current workforce data has been prepared, several types of analyses and evaluations should be made of this data. One important appraisal would be the extent to which the agency workforce percentages of minorities are in proportion to their numbers in the service population. (See earlier definition and discussion of service population.) According to the Guidelines, a significant disparity between minority representation in the agency workforce may be deemed to exist if the percentage of a minority group in the employment of the agency is not at least seventy (70) percent of the percentage of that minority in the service population. 28 CFR 42.306(c). The Guidelines do not suggest any standards for evaluating the adequacy of female representation in the workforce. It is recommended that among the facts to be taken into consideration in evaluating female employment percentages would be information as to the distribution of females within the agency and rate of employment in relation to males.

CHART I
AGENCY WORKFORCE DATA

JOB CLASSIFICATION	PAY RANGE	MALES					FEMALES					TOTAL
		C	O	I	N	S	C	O	I	N	S	
Sworn Classes												
a.												
b.												
c.												
d.												
e.												
f.												
g.												
h.												
i.												
j.												
Total Sworn												
Unsworn Classes												
a.												
b.												
c.												
d.												
e.												
f.												
g.												
h.												
i.												
j.												
k.												
l.												
Total Unsworn												
Agency Total												

EXHIBIT 2
JOB CLASSIFICATION CHART
GREENSBORO POLICE DEPARTMENT
September 30, 1973

POSITION	MALE		FEMALE		TOTAL		PAY RANGES*	PRINCIPLE DUTIES
	Black	White	Black	White	M	F		
Chief of Police		1			1		$1,619 - 2,066	Department Head
Police Lieut. Colonel		3			3		1,399 - 1,619	Bureau Cmdrs.--Admin., Ops., Staff
Police Major		1			1		1,269 - 1,469	Patrol Division Commander
Police Captain		11			11		1,151 - 1,332	Watch, Division & District Cmdrs.
Police Lieutenant		14			14		1,044 - 1,151	Div. & Section Cmdrs.. Dist. Exec.
Police Sergeant	3	36			39		947 - 1,044	Squad & Section Supervisors
Police Detective	6	43	1	2	49	3	818 - 947	Criminal Investigation, Follow-up
Police Patrolman II	1	87			88		818 - 947	Patrol, Specialized Assignment
Police Patrolman I	20	107	1	3	127	4	641 - 818	Entry Level, Patrol
Parking Enforce. Officer				2		2	527 - 673	Enforce Parking Regulations
Animal Control Officer		4			4		581 - 742	Enforce Animal Ordinances
TOTAL SWORN PERSONNEL	30	307	2	7	337	9		
Police Legal Advisor		1			1		1,209 - 1,399	Attorney, Legal Advisor
Police Records Director		1			1		902 - 1,151	Division Head
Police Com. Rel. Director	1				1		902 - 1,151	Division Head
Asst. Police Records Dir.		1			1		779 - 994	2nd Level Supervisor, Records
Police Records Supervisor		2			2		673 - 859	Shift Supervisor
Police Records Specialist	1	4	1	2	5	3	527 - 673	Locate Records, Filing, Oper. Equip.
Police Cadet		12			12		527 - 581	Records Work, Parking Enf., Clerical
Community Service Officer	3		1		3	1	527 - 673	Personal Contacts w/residents, program
Identification Supervisor		1			1		818 - 1,044	Supervise Ops. of Pol. Laboratory
Identification Specialist II		3			3		673 - 859	Film Process., Print Comparison, etc.
Identification Specialist I		6			6		610 - 779	Process Crime Scenes, Photography
Clerk - Typist II				2		2	455 - 581	Clerical Work, Typing
Clerk - Typist I			2			2	392 - 502	Assist in Clerical Work, some typing
Clerk II				3		3	455 - 581	Prepare Data for Computer Punching
Secretary III				1		1	581 - 742	Secretary to Department Head
Secretary II				2		2	527 - 673	Sec./Recept. for Bureau Commanders
Secretary I			2	8		10	478 - 610	Division Secretary/Receptionist
TOTAL UNSWORN PARSONNEL	5	31	6	18	36	24		
TOTAL FULL-TIME EMPLOYEES	35	338	8	25	373	33		
PART-TIME EMPLOYEES School Guard			15	24		39	$2.40 per hr.	School Crossing Guards

* Salaries indicated are minimum and maximum in each job classification. Annual review and merit system apply for increases to top pay level.

In addition to the question of the adequacy and appropriateness of the percentages of minorities and women in the agency's overall workforce, there are a number of areas to be explored relating to how those minorities and women who are in the agency's workforce are distributed within, and utilized by, the agency. Are those minority and female employees presently in the agency workforce appropriately and fairly represented in the agency's various job classifications, supervisory and management levels, shifts, special pay categories, major units, and work locations? Where disproportions exist, are there valid and supportable justifications for such differences? If so, what are these? If not, what improvement steps need to be taken?

The detailed analysis of the agency's workforce data charts will tend to show where problems exist in the agency with regard to the equal employment of minorities and women, and will give some indication of the degree and extent of the problem, but the more accurate identification of any problem areas and their probable causes will depend on analyses of recruitment, selection, promotion, transfers, termination and other employment policies and practices as discussed in subsequent sections of the manual.

2. Community and Area Labor Characteristics

Making an effective analysis and evaluation of the agency's current workforce characteristics requires accumulation of available information about the community and area labor characteristics. This information is also specifically required by the Guidelines. 28 CFR/42.304(f).

For agencies where the service population is defined as the inmate or client population served, the community and area labor characteristics information will give added perspective to recruitment potentials and problems. It is expected that inmate or client population data maintained by such agencies will typically include the race and sex identification required for the workforce analysis and for the other analyses to be discussed shortly.

The community and area labor characteristics for the relevant geographic area may be obtained from the Bureau of Labor Statistics, Washington, D.C., state and local employment services, or other reliable sources. For most agencies, population data will be most easily and reliably available from the nearest regional office of the Bureau of the Census. Appendix U describes the Bureau's available data relevant to the task at hand and lists the address of the Bureau's regional offices. Current information on the area's available workforce and unemployment statistics will generally be available through the state agency responsible for collecting and disseminating periodic summaries of such information.

3. Recruitment

The analysis of recruitment is both statistical and procedural. Again, it is important to gather both facts and figures.

Appendix A–1 presents a format by which an agency, particularly a smaller one without a formalized or centralized personnel system, might keep a log for recording not only job applications but for recording related information as well.

Chart II on the next page presents one way in which data collected for the required fiscal year period could be presented in summary form by any agency. In agencies where the sworn–unsworn distribution is applicable, the data would preferably be grouped and summarized in these categories.

A review of the application data as it would be summarized in this form would serve to point up if and where job applications by race, national origin, and sex were significantly different from what might be expected, based on population characteristics.

The review of the recruitment practices of the agency should be quite thorough, particularly if the application statistics show problem areas. Position description are very important not only to recruitment but to the setting of selection standards and developing the selection process, as will be discussed later. If there are not clear, current and accurate descriptions of the jobs as they actually exist and are to be performed, the descriptions could, as part of the content of job announcements, form barriers to applications by presenting an unrealistically difficult or demanding description of the work and by resulting in unjustifiable minimum qualifications being contained in the announcements so that applications are discouraged.

The application form itself should be reviewed. Application forms that are lengthy, complex and cumbersome tend to lessen applications by minority group persons who may have more difficulty with such forms as a function of the quality of formal education made available to them and their lesser experience with forms completion.

The recruitment methods and sources are, of course, extremely important to the employment process and can range from legally required announcements in local papers and "walk-ins" to comprehensive and highly effective outreach programs with special emphasis on the recruitment of minorities and women. If there is any evidence of the inadequacy of minority or female applications, there are a number of questions that an agency might ask itself in the interest of possible improvement. A few of these might be:

a. Are key leaders in the minority community, including representatives from business, churches, and schools, asked for their advice and assistance in minority recruitment?

CHART II

NUMBER OF JOB APPLICANTS DURING FISCAL YEAR _____

JOB CLASSIFICATION	NUMBER OF APPLICANTS										TOTAL
	MALES					FEMALES					
	C	O	I	N	S	C	O	I	N	S	

b. Do job announcements and recruitment brochures depict females and minorities in meaningful employment roles?

c. Are job vacancies advertised in newspapers and in radio and television stations which are minority oriented?

d. Are women's organizations asked for assistance in recruiting females at both the entrance and higher level positions?

e. Are job announcements posted at (or disseminated through) organizations serving females and minorities?

f. Are competent recruiters, including women and minority group members, available for addressing meetings of minority group and female organizations?

g. Do recruiters go to schools and organizations in minority communities to recruit on-site?

h. In larger cities, are community centers, store-front operations or similar locations in minority communities used as sources of job information and applications?

i. Is recruitment literature published in a second language in instances and locations where this would be appropriate?

j. Are newspapers supplied with special stories or articles publicizing the agency's interest in attracting minorities and women, including appropriate photographs?

Certain organizations, such as the Urban League, Job Corps, Concentrated Employment Programs, Neighborhood Youth Corps, the State Employment Service, and specialized employment agencies, are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills may include National Organization for Women, Welfare Rights Organizations, Women's Equity Action League, women's caucuses, and sororities and service groups. Community leaders as individuals may also serve as effective recruiting sources.

An important element in the evaluation of present workforce characteristics and the recruitment experiences that strongly influence workforce characteristics, especially in the case of some correctional institutions and other specially located agencies or branches, is the effect on minority employment of any inhibiting external factors such as the lack of access to suitable housing in the area or the lack of suitable transportation to the workplace. In instances where such factors may be a significant influence on employment, their effect should be carefully evaluated and all possible means for eliminating or moderating the negative effect should be considered, and steps taken to provide corrective action. In some instances the agency can reduce the problem by providing special help to potential new minority employees in finding and arranging for housing or can make buses available or assist in setting up car pools to improve transportation, but in other instances more major efforts, such as actually making employee housing available, may need to be considered. Certainly any new locating of branches or constructing of institutions will need to give consideration to the effect of the location on minority employment.

4. Selection Standards and Procedures

As is now well known to most criminal justice agencies, employee selection standards and selection procedures have been under very close scrutiny over the last several years following the U.S. Supreme Court's *Griggs* v. *Duke Power Co.* decision and a host of subsequent lower court cases. (See Appendices O, P, and Q for the decision, some relevant case history, and interpretation.)

The general principal controlling personnel selection that has come into being as a result of the *Griggs* v. *Duke Power Co.* and subsequent other court decisions is that no test may be used in the selection of employees if it has a negative impact (adverse effect) on the hiring of minority persons unless that test can be shown to be demonstrably related to actual performance of the job. "Tests" refer to all selection criteria and procedures including height and education requirements, written and oral tests, and all other entrance requirements and screening procedures.

There are specific procedures to be followed in demonstrating relationship between a test and job performance. Demonstrating this relationship is called "validating" the test, or "making a validation study." Procedures and minimum standards for making a validation study are set forth in the Equal Employment Opportunity Commission's "Guidelines on Employee Selection Procedures" (see Appendix J). All selection procedures in use by LEAA recipients are required to be in conformity with the provisions of the EEOC Guidelines as these relate to the employment of both minorities and women. 28 CFR 42.304(g) (1).

Entrance standards or qualifications are usually in operation for most entrance classes. These involve set requirements relating to such things as height, age, sex and education. Applicants either meet or fail to meet these requirements; there is no ranking or rating. It is difficult if not impossible to develop statistical data on the effect of these requirements because (1) most "rejections" of persons not meeting the requirements is done informally through discussion, information and advice by agency recruitment representatives before formal applications, and (2) there is no way of determining how many potential candidates eliminate themselves by comparing their own qualifications with those stated on recruitment brochures, job announcements, etc.

This is why it is very important that an agency give careful attention to the probable effects of their minimum requirements set for entrance, especially as related to minorities and women. Guidelines on the use of height requirements have been specifically set forth by LEAA (see Appendix G). Discrimination on the basis of sex is prohibited by a number of federal laws and regulations (see PART II of this manual) and is governed by specific guidelines set forth by the Equal Employment Opportunity Commission. (See Appendix K.) The situation with regard to educational requirements is less clear and definite at this point, but the basic principle remains applicable--that if it has a discriminatory effect in the hiring of minorities or women, the requirement's relationship to job performance must be demonstrated through established technical procedures (Appendix J). Age requirements have not frequently been seen as having a discriminatory effect on minorities and women--though there is an increasing tendency for criminal justice agencies to lower entrance age requirements in line with other movement toward increased responsibilities at an earlier age (voting, purchase of alcoholic beverages).

Once applicants have submitted formal applications and been accepted for processing through the remainder of the selection process, the recording and analysis of statistical data on sex and minority group identification of candidates becomes feasible and essential. Most jurisdictions acquire sex and minority group identification information at the time of application, either on the application form itself or on a separate form that reports the candidate's name, sex and minority group identification and which is sealed and not opened until the selection process is completed.

The objective of the review and analysis presently under discussion is to determine whether any element in the testing and screening of applicants is resulting in a disparate or negative effect in the selection of minorities or women. To do this it is necessary to collect and analyze data on the effect on candidates of each element in the selection process, comparing the relative success rates of women and minorities with other candidates. One form for doing this is shown in Chart III. This can be used to summarize data from whatever number of examinations was given for a particular entrance class (e.g., correction officer, police officer, cadet, typist, mechanic, etc.) during the past fiscal

CHART III

EXAMINATION FOR _____ , FY _____

ANALYSIS OF EFFECT OF SELECTION PROCEDURES

STEPS IN THE SELECTION PROCESS	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
No. of Applicants											
No. Taking _____											
No. Passing _____											
No. Taking _____											
No. Passing _____											
No. Taking _____											
No. Passing _____											
No. Taking _____											
No. Passing _____											
No. Taking _____											
No. Passing _____											
No. Taking _____											
No. Passing _____											
No. Eligible for Job											
No. Offered Employment											
No. Employed											

EXHIBIT 3

EXAMINATION DATA ILLUSTRATION

EXAMINATION FOR Correctional Off. 1 , FY 1974

ANALYSIS OF EFFECT OF SELECTION PROCEDURES

STEPS IN THE SELECTION PROCESS	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
No. of Applicants	260	-	1	65	24	90	-	-	30	3	473
No. Taking Written	250	-	1	48	24	89	-	-	30	3	445
No. Passing Written	123	-	-	15	8	45	-	-	9	2	202
No. Taking Oral	120	-	-	14	8	44	-	-	8	2	196
No. Passing Oral	80	-	-	9	6	20	-	-	6	2	123
No. Taking Physical	78	-	-	9	6	19	-	-	6	2	120
No. Passing Physical	52	-	-	7	5	10	-	-	4	1	79
No. Taking Background Investigation	51	-	-	7	5	10	-	-	4	1	78
No. Passing Background Investigation	40	-	-	3	4	8	-	-	3	-	58
No. Taking Psychological	40	-	-	3	4	8	-	-	3	-	58
No. Passing Psychological	35	-	-	3	3	7	-	-	3	-	51
No. Taking _____											
No. Passing _____											
No. Eligible for Job	35	-	-	3	3	7	-	-	3	-	51
No. Offered Employment	35	-	-	3	3	7	-	-	3	-	51
No. Employed	25	-	-	2	3	6	-	-	3	-	39

year or to present data from one examination if only one examination was given for the class that year. It has lines for reflecting the "taking" and "passing" data for six elements contained in an examination. Not many examinations will have this number of elements, but the form can either be modified or unnecessary lines left blank. This type of form is most important and useful for the basic professional entrance classes (i.e., police officer, deputy sheriff, corrections officer) because of the generally larger number of candidates involved. However, the principle involved, that of collecting and analyzing data reflecting the effect of each step in the selection process, should be carried out for each entrance class.

In many classes, the numbers of actual cases involved will not be large enough to be statistically significant on a technical basis. Generally this would be when thirty or fewer cases are involved. Nevertheless differences in pass–fail percentages even when smaller numbers are involved can indicate areas which should be reviewed with special care as to the content and administration of the selection procedure involved.

Whether or not there is clear numerical evidence of problem areas relating to the selection of minorities and women for employment, there are a number of useful questions the agency might raise regarding its selection practices. Some of these are:

a. Has the written test, if one is used, been validated so that the agency has a scientifically based reason to believe the test has a relationship to performance on the job?

b. Has the oral interview been validated?(for the same reasons as the written test). Is it developed and carried out in a way that avoids any discrimination, even unintentional, against women and minorities?Are women and minority groups appropriately represented on the interview boards?(This last mentioned item tends to be as important in its effect on recruitment as it is in bringing balance to the interview results.)

c. Are medical examination and physical ability or agility tests or requirements validated?

d. Are female and minority group officers among those assigned to make background investigations? Does the evaluation of background investigation results give appropriate consideration to cultural, educational and economic differences associated with minority groups?

5. Appointment

Appointment procedures, especially within formal civil service or merit systems, tend to be fairly standardized in their major aspects——the development and posting of eligible lists, the appointing authority request for names from the lists for filling vacancies, the certification (supplying) of names from the list by the central personnel agency, and the selection of individuals for hiring by the appointing authority from the list of names thus certified, in accordance with relevant local rules such as the "Rule of Three" (selection from among the top three names), "Rule of Five," etc.

In such agencies the primary area for review and evaluation would probably be in the one area where discretion is involved, the selection of actual hirees from the list of names certified.

A suggested means of charting application and appointment data for agencies with both formal and less formal systems is presented in Chart IV. As indicated on the chart, the applicant figure should represent the number of persons actually available to the agency for employment. This would make the comparison of this figure to the number of job offerings and actual hirings more meaningful. Any significant differences in the "applicant to offer to hiring" ratios between males and females or between minority group members and other groups would, of course, suggest the need for analysis as to the cause(s).

Analysis of appointment procedures and results should be made for each entrance class.

6. Training

Training activities are one of the most difficult to quantify and evaluate because of their great diversity in purpose, nature, length, location, intermittancy and quality. In agencies large enough to have their own training units and in smaller agencies where training is given a special and systematic attention, training reports and data will already be available and may require only the addition of sex and minority group identification information to be useful for analysis. Other agencies not having data available should begin to collect it and might use some form similar to that presented in Appendix A-2.

Nevertheless most training activity analysis and evaluation cannot be based on summarized data but should involve instead a review of relevant practices and procedures. Some of the questions an agency might ask with regard to its training are:

a. Are training programs publicized and made available equally to all eligible employees?(to the end that equal opportunity for women and minorities is achieved).

CHART IV
APPOINTMENTS TO POSITION
CLASSIFICATION OF _____, FY ____

	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
Number of Applicants*											
Number Offered Appointment**											
Number Actually Hired											

* In agencies with formal selection and certification procedures, and which have analyzed the effect of the selection process in entrance classes (see text, including Chart III) this figure would represent those persons certified to the agency as eligible for hiring. In other agencies it would represent actual number of applicants as determined from information collected on a form such as that presented in Appendix A-1.

** In agencies which entered, in the line above, the number of eligibles certified to the agency, this figure would represent persons sent "Notices to Report" or provided other notification of employment offer and would include those who subsequently failed to respond to such notification. In other agencies, it would represent job offers as reflected in a record such as that suggested in Appendix A-1.

b. Are training programs developed and made available for minority employment candidates to enable them to improve their chances of passing entrance employment tests?

c. Have trainee and paraprofessional classes been developed to improve opportunities for minority persons?

d. Is seniority a factor in accepting employees for training programs, and does this have an influence on perpetuating and extending past sex or racial hiring inequities?

7. Transfer

The numerical charting of employee transfer information can be relatively simple if adequate records are kept. In many agencies the only record of transfer is in the employee's own personnel jacket or personnel record card which shows the employee's history of assignments within the agency. To be fully adequate a transfer record system will show what transfer requests were made, what requests were approved and put into effect and reasons for denial of the request if such was the case.

If any agency does not have a record system that provides this information, one should be developed and put into use. One relatively simple format for doing this is presented in Appendix A-3. Some agencies use a more formalized transfer request and approval system, in which a multiple-copy form is used to record the employee's request, the approval or disapproval of the supervisors of the two units involved (with explanation of any disapproval) and the date of the transfer, if it is made.

It is important that whatever system is used reflects not only how many requests were made (including data on race and sex) and how many of these requests were accepted and put into effect, but also the reasons for any decision not to transfer. This last type of information is important so that if disparities are found in the rates of granting of transfer requests, some of the possible causes might be found through analysis of the reasons for disapproval. The analysis might show justification for the differential or might point up approaches to improvement in the transfer system.

Chart V shows a simple way of charting overall transfer information for an agency, and might point up some agency-wide patterns requiring exploration. In agencies where geographical or shift assignments are involved or there may be some reason for questioning transfers or assignments within a particular organizational unit, a similar charting and analysis might be made of data relating to the specific question involved (e.g., branch, shift). It is recommended that a separate analysis of transfer data on sworn personnel be made in agencies where such distinction is applicable.

CHART V
TRANSFER DATA, FY _____

	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
Basic Workforce Data											
No. of Transfers Requested											
No. of Requests Approved and Put into Effect											

Note: In agencies where the sworn-unsworn distribution is applicable, transfer data would preferably be compiled separately for the two groups.

The basic purpose of the analysis of transfer data would be, of course, to determine whether there was any significant area or pattern of disparity of treatment of females and minorities. Information on present workforce composition is suggested for inclusion in the chart so that the relevant numerical comparisons might be more easily made.

Although the statistics on transfer request and action are probably the best technique for identifying possible disparate treatment in transfers it is also important to review agency policies and practices in such matters as to whether all employees, including women and minorities (and supervisors) are given full notice of the agency's equal opportunity transfer policy, and whether procedures have been developed and put into effect that result in all employees being given equal and open notice as to opportunities for transfer into divisions or units with openings.

It is also important to review whether seniority with the agency and/or in the job class is a factor in approving transfer requests and, if so, whether it has the effect of perpetuating and extending past discriminatory employment practices.

8. Promotion

The analysis and evaluation of promotional practices and procedures can be very complex, especially in a large agency, for such reasons as the number of different position classes that can be involved in promotions during a year, and variations in the promotion system procedures and content for different position classes.

Again the agency must develop, adapt and/or adopt analysis and evaluation techniques according to its own characteristics and circumstances, but the basic elements remain the same: (1) thorough review of the agency's policies, practices and procedures as these affect or may affect minority and female employment, and (2) collection, summarizing and evaluation of data on the actual results in numerical terms of the application of these policies, practices and procedures.

In reviewing promotional policies and practices, some of the questions an agency might ask of itself are these:

a. Are promotional opportunities made fully and equally known to all employees?

b. Are training opportunities preparing present employees for promotion equally available to all employees?

c. Do requirements for eligibility for promotion (e.g., time in grade, time with the agency) have a disparate effect on women and minorities? Have such requirements been validated as to their relationship to job performance in the higher level job? (See earlier section on "Selection Standards and Procedures" for discussion on validation.)

d. Do any of the elements of the promotional selection process (e.g., written test, oral interview, performance ratings, etc.) have a disparate effect on female or minority candidates? Have these promotional selection elements been validated?

e. Are female and minorities represented in the administration of the promotional selection procedures, such as the administering of any written test, being on any interview board, and the scoring of test elements?

f. Is seniority a factor in promotion? What is its nature and effect? If there is a disparate effect on minorities or women, has its relationship to performance in the higher job been validated?

g. What is the nature of the promotional appointment procedure (e.g., certification, selection by rule of three) and what, if any, identifiable effect does this have on the promotion of minorities and women?

The agency's overall promotion data for the fiscal year being reported on might be assembled as suggested in Chart VI. Although not specifically required by the guidelines, such listing could be useful in appraising the overall effect of the agency's promotion practices and procedures. The "Number in Agency Workforce" would be available from Chart I, presented earlier. It would present the base data for comparison with other figures on the chart. The "Number Eligible for Promotion" figures, when compared with the line above, would indicate any disparate effect of promotional eligibility requirements. The "Number Who Applied for Promotion" figures, when compared to the line above, might show different ratios for different group and lead to questions as to what agency practices or circumstances might cause such results. The "Number Promoted" figure could, of course, be compared with each of the previous lines for the overall view of the effect of the agency's promotion policies and practices.

As with original entrance selection, one of the most productive approaches to identifying areas of problems (or of progress) is the analysis of the effect of each element or step in the promotion process in connection with a particular examination. Chart VII presents one format for assembling and analyzing this type of data. It is particularly useful for analyzing the results of tests in which some or all of the steps or elements acts as hurdles (must pass to go on to next step). However even if the test elements do not serve as hurdles, the format can be used to reflect and review the basic data as to the number of employees eligible, applying, passing and promoted.

CHART VI
AGENCY PROMOTION DATA, FY _____

	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
Sworn Personnel											
No. In Agency Workforce*											
No. Eligible for Promotion											
No. Who Applied for Promotion											
No. Promoted											
Unsworn Personnel											
No. In Agency Workforce*											
No. Eligible for Promotion											
No. Who Applied for Promotion											
No. Promoted											
Total Agency Personnel											
No. In Agency Workforce*											
No. Eligible for Promotion											
No. Who Applied for Promotion											
No. Promoted											

* From Agency Workforce Chart

CHART VII
PROMOTIONAL EXAMINATION DATA
EXAMINATION FOR POSITION OF _____

	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
No. of Employees Eligible to Apply											
No. of Eligible Employees Making Application											
No. Taking _____ Test											
No. Passing _____ Test											
No. Taking _____ Test											
No. Passing _____ Test											
No. Taking _____ Test											
No. Passing _____ Test											
No. Eligible for Promotion*											
No. Promoted to Date											

* This would be the number of employees eligible for promotion after having passed the specific tests identified in the form and who are put on a formal or informal eligibility list after any seniority and performance rating factors had been applied and a "cut off" or passing point had been determined.

It is recommended that this format and approach (or one that accomplishes the same purpose) be used to evaluate any and all promotional examinations held, in whole or part, during the fiscal year being reviewed and reported on and which involved positions unique to the recipient agency (e.g., Police Lieutenant, Division Chief (Sheriff's Office), Supervising Probation Officer, Police Radio Technician II.) It can also be used as a tool for analysis of other examinations held in the past and for examinations for classes of positions shared with other agencies in a jurisdiction (e.g., Senior Clerk) whenever the workforce data chart or other data suggests the need for such further analysis.

It can be seen by looking at Chart VII that some individual promotion elements such as performance ratings or seniority points (and written and oral tests if they don't serve as hurdles) must be separately analyzed and evaluated if their effect is to be understood.

A general format for charting a variety of relevant promotional factors that take the form of numerical ratings is presented in Chart VIII. It can be used for performance ratings, seniority points, written and oral test results, etc. It is suggested that this type of analysis be made whenever (1) the element or factor does not act as a hurdle and (2) the factor may be causing, or contributing to, disparate overall test results as indicated by the ratio of the number "Accepted for Testing" to the number "Eligible for Promotion" in Chart VI for different race and sex groupings.

An illustration of the analysis of performance rating data is presented in Exhibit 4.

9. Disciplinary Actions

This is an area of review where considerable factual material is usually available and is in a form that permits charting and numerical appraisal. Practically all agencies maintain records of disciplinary actions, and either summarize them annually or have the data available in a form that can be summarized. However, agency disciplinary procedures and terminology for different kinds of disciplinary actions and the sanctions imposed vary so greatly that no standard form would be appropriate to all agencies, and many agencies will need to develop their own approach to the analysis of disciplinary action data.

An agency compiling its disciplinary data for analysis should keep two points in mind:

a. Disciplinary actions involving formal charges and investigation (usually these are the more serious matters) should be kept separate from actions taken for minor infractions (with sanctions usually imposed by unit commanders, for such things as being out of uniform, being late, loss of equipment, etc.). This latter category (minor infractions) is of less overall importance but at times points up possible differential treatment requiring review and evaluation.

CHART VIII
PROMOTIONAL EXAMINATION FACTOR ANALYSIS:
FACTOR BEING ANALYZED: _____

SCORES	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
Average Scores											

As indicated in the text, this type of form can be used to identify possible disparate effect of any promotional examination element which does not act as a hurdle (pass-fail) but which involves numerical ratings. This could be used for performance ratings, seniority scores, written test scores, oral interview ratings or other test elements.

EXHIBIT 4

PROMOTIONAL EXAMINATION FACTOR ANALYSIS:
FACTOR BEING ANALYZED: Performance Ratings

RATINGS	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
90-100	20	-	-	8	-	4	-	-	3	-	35
80-89	80	-	-	45	2	14	-	-	14	2	157
70-79	78	-	-	156	8	10	-	-	3	-	255
60-69	2	-	-	1	-	-	-	-	-	-	3
59 or less	-	-	-	-	-	-	-	-	-	-	-
Total Employees	180	-	-	210	10	28	-	-	20	2	450
Average Score	82.3	-	-	76.8	77.1	83.6	-	-	84.1	82.5	78.2

Male Average Score - 77.5
Female Average Score - 83.8

b. Use the agency's own terminology for sanctions, but report actions in sufficiently specific categories (length of suspension, etc.) that effective analysis is possible.

Chart IX presents an example of one format in which an agency might collect its disciplinary action data. An agency might find it appropriate to use this type of format but substitute its own disciplinary terminology and categories. In small agencies the numbers involved may not justify charting but should nevertheless be carefully reviewed and described, including the data, when the written plan is prepared.

It is recommended that separate analysis of disciplinary data on sworn and unsworn personnel be made in agencies where such distinction is applicable.

Oral reprimands are mentioned in the Guidelines and should be included among the data reported if such information is available.

Although analysis of disciplinary action case data is usually the best means of identifying possible areas of discrimination against women and minorities so that these areas can be explored to determine what might be causing the differential results, a review and evaluation should be made of all of the agency's disciplinary policies and practices with regard to their implications for the treatment of women and minorities. As illustrative examples, review should be made, particularly in the larger departments, as to whether there is appropriate minority group or female representation in any complaint investigation unit or in the procedures for carrying out investigation of charges, and in any disciplinary board of panel that evaluates the findings and makes decisions or recommendations on penalties to be imposed.

10. Termination

Termination data is readily available in most agencies. If not already available, provisions should be made for acquiring it, including the number of terminations, whether they were voluntary or involuntary, and the race and sex identification of those terminated. Appendix A-5 presents one format in which such information might be acquired in the course of normal operations for later summarization and analysis.

Chart X suggests a simple format for summarizing the agency's termination data. It is recommended that separate analysis of termination data on sworn and unsworn personnel be made in agencies where such distinction is applicable. The termination figures would not themselves explain any differences in separation rates for men and women or for members of minority groups but they would identify any areas requiring exploration and explanation. Involuntary terminations, already discussed as part of the review of disciplinary actions, would have substantial information as to the causes of such separations, and such causal information would be available for review and evaluation should disparities be shown. It is

CHART IX
NUMBER AND TYPE OF DISCIPLINARY
SANCTIONS IMPOSED, FY _____

FORMAL CHARGES INVOLVING INVESTIGATION

TYPE OF SANCTION	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
Written Reprimand											
Suspension: 1-5 days											
6-15 days											
16 days or more											
Reduction in Job and/or Pay											
Termination											
Other _____											
Exonerated											
Total Cases											

SUMMARY PUNISHMENT FOR MINOR INFRACTIONS

TYPE OF SANCTION	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
Days Off w/o Pay: 1 day *											
2 days											
Extra Work w/o Pay: 1 day											
2 days											
Other _____											

* Includes being sent home at beginning of work shift and not receiving pay for that day.

CHART X
TERMINATION DATA
FY _____

	MALES					FEMALES					TOTAL
	C	O	I	N	S	C	O	I	N	S	
Employees in Agency Workforce *											
Employees Terminating Voluntarily											
Employees Involuntarily Terminated **											
Total Employees Terminated											

* Available from Agency Workforce Chart

** Available from Disciplinary Action Chart

recommended that retirements not be included in voluntary termination figures, or that, if they are, they be separately reported because of their special nature. If lay-offs because of work shortages (or for other reasons not the fault of the employee) are a part of the involuntary separations, these figures and the lay-off policies and practices should be separately reviewed and evaluated.

The reasons for voluntary separations are frequently not as well-defined and recorded as are those for involuntary ones and it is therefore important that voluntary terminations, whenever possible, involve an exit interview to find the cause for the employee's leaving. Experience has shown that brief, perfunctory exit interviews generally have little or no value, so care, time and effort must be used if the real reasons for voluntary separations are going to be accurately determined.

C. Written Program Content and Form

The Guidelines themselves call for the written program to contain:

1. a number of specific sets of data and information (on present workforce, disciplinary actions, applications and hirings, promotions and transfers, and terminations), 28 CFR 42.304(a)-(e),

2. available community and area labor characteristics, 28 CFR 42.304(f),

3. a detailed narrative statement describing existing employment policies and practices, with analysis of their effect on the employment of women and minorities, and with planned specific steps for improvements where needed to achieve full and equal employment opportunity, 28 CFR 42.304(g),

4. a plan for disseminating the equal employment opportunity program to all personnel, applicants and the general public, 28 CFR 42.304(h), and

5. designation of specified personnel to implement and maintain adherence to the program, accompanied by a description of their specific responsibilities. 28 CFR 42.304(i).

As indicated earlier, if the analysis and evaluation work discussed in the previous section of the manual is performed thoroughly and well, preparing the written program will be mostly a matter of presenting the results of this work, deciding what action steps are needed for making improvement in any problem area, assigning continuing responsibility for the program and providing for program dissemination.

This manual therefore recommends that the written program requirements of the Guidelines be met by setting forth the required content as follows:

1. the agency's current employment data,

2. the community and area labor characteristics,

3. the detailed narrative statement setting forth in logical order and for each personnel program component;

   a. present policies and practices,

   b. the findings (including charts and tables presenting required data) resulting from the review and evaluation of those policies and practices, and

   c. the specific action steps planned to bring about needed improvement in any problem area.

4. the program dissemination plan, and

5. the assignment of responsibility for implementing and maintaining the program.

The remainder of this section of the manual suggests recommended content of each part of the written plan.

1. Current Agency Employment Data

This section should present the agency's current employment (workforce) data in a tabular manner, such as the EEO-4 Form or the Chart I suggested earlier in this manual. The overall chart for the agency should be supplemented by additional chartings for major branches or divisions where appropriate as discussed in III B1. The charted

information should be accompanied by job specifications (or other description of major duties of each classification), by pay range and pay plan information (including seniority, incentive or special duty pay elements), and by geographic and shift assignment data and information.

2. Community and Area Labor Characteristics

This section should present population, workforce and unemployment data for the relevant geographic area by sex, racial and ethnic groupings as discussed in III B2. The agency's source(s) of this information should be identified.

3. Description of Existing Employment Policies and Practices, of Findings and Evaluations, and of Planned Improvements

a. Recruitment and Applications

This section should contain a detailed statement describing the agency's policies, practices and procedures in recruiting new personnel and in the application form and process. It should present and evaluate the agency's general and special recruitment efforts, as discussed in III B3. Samples of job announcements, brochures and application forms would be appropriate. Data on the number of applications for each entry class for the prior fiscal year, such as that suggested in Chart II, should be presented and evaluated as to implications for recruitment of minorities and women, giving consideration to such factors as the area labor characteristics and the agency workforce data just presented. If the evaluation shows that improvement is needed, specific steps should be planned and stated. Suggested approaches for making improvements in this area are contained in Revised Order No. 4 of the Office of Federal Contract Compliance (see Appendix M, Section 60-2.24e) and in this manual's earlier discussion of the subject.

b. Selection and Appointment

This section should present a detailed description of all the agency's policies and procedures in regard to the selection and appointment of new employees, from the setting of minimum

entrance requirements through the final appointment procedure, as discussed in III B4 and 5. Charts III and IV could be useful in presenting data on the effect of selection and appointment procedures. Regardless of the format used, the data must show, in whatever manner is most feasible and clear, the relationship between the numbers of applicants for entrance classes and the number actually hired, identified as to sex, race and national origin. In any instance in which the review shows a disparate effect of a selection process or element (test), the complete study establishing the validity of the test should be presented or clear plans for evaluating the validity of the test should be set forth.

Other steps for making necessary improvements in the selection and appointment process should be included at this point.

c. Training

This section should set forth a complete description of the agency's training practices and programs. It should include but not be limited to the type of information discussed in III B6. Available statistics, such as those that would result from a log of the type presented in Appendix A, should be included. Any and all information that would show the training's availability to and effect on minority and female employment would be relevant.

Action steps for improving training policies and practices as suggested by the review and evaluation of the training program should be set forth.

d. Transfer

This section should provide a detailed description of the agency's transfer policies and procedures, and should present transfer information and data of the type discussed in III B7 and suggested in Chart V. Any agency rules or policy statement on transfer should be included. If adequate data on transfer and

transfer requests as discussed in III B7 is not available, plans for acquiring such information should be stated. If the data is available and indicates need for improvement as related to minorities and females, constructive action steps should be identified and planned.

e. Promotion

This section should present a detailed description of promotion policies and practices as discussed in III B8, including but not limited to information on eligibilities, scheduling, test content and procedures, administration and scoring, seniority factors, eligibility lists, appointment procedures, and any probationary period. It should also include information, data and evaluation of any reclassification or upgrading procedures which have the effect of moving an employee to a higher level position and/or increasing pay without use of promotional examination procedures.

Promotion statistics of the type suggested in Charts VI, VII, and, where appropriate, Chart VIII should be presented.

Where the review and evaluation of promotion procedures and statistics indicate disparate treatment of effect on minorities and women, the agency's plan for improvement should be described. In particular any testing element with disparate effect should have been validated or plans should be made for validation.

f. Discipline

This section should present a detailed description of the agency's disciplinary policies and procedures. Many agencies will have written rules and procedures in matters of discipline and these would be appropriate to include at this point. Questions as to appropriate participation by minorities and women in investigation, decision and review procedures, as discussed in III B9, should be considered.

Data on the number of disciplinary actions and the penalties, when imposed, should be presented as suggested in Chart IX or other appropriate format.

Where the evaluation of policies, procedures and/or disciplinary statistics indicates disparities, possible causes should be determined and steps planned where corrective action is indicated.

g. Termination

This section should present information on policies and procedures relating to terminations other than involuntary ones, which presumably have been adequately covered in the section on discipline. As indicated in III B10, if information on the reasons for and circumstances surrounding voluntary terminations has not been systematically acquired in the past, it should be, so that the causes of any disparities in the termination data presented in Chart X or its equivalent can be evaluated.

If the evaluation of the voluntary separation data discloses evidence of disparate treatment, action steps for remedying the situation should be set forth.

4. Dissemination of the Program

The Guidelines require that recipient agencies plan for the dissemination of the equal employment opportunity program to all personnel, applicants and the general public, and refer to Revised Order No. 4 of the Office of Federal Contract Compliance for recommendations on dissemination of policy. 28 CFR 42.304(h). (See Appendix M, Section 60-2.21.)

It seems apparent from this Guideline requirement and its reference to dissemination of *policy* (and from Revised Order No. 4's comprehensive listing of techniques for dissemination of the policy of nondiscrimination and affirmative action) that the intent here is to have the agency clearly and affirmatively announce and publicize its policy of providing full and equal employment opportunity for minorities and women, rather than reproduce and distribute large quantities of the complete written program as set forth in

the Guidelines and described in this manual. The written program, especially if it contains copies of all job specifications, relevant agency rules and procedures, copies of validation studies and the like, may be quite voluminous.

It is recommended therefore that the agency prepare an official statement of its equal employment opportunity policy and program, giving special attention to the positive action steps and goals resulting from its review and evaluation of present employment practices, and that this statement of policy and program be made available in quantity for distribution to all employees, applicants and the general public and for use in meetings and media publicity as suggested in Revised Order No. 4.

5. Assignment of Program Responsibility

The Guidelines require that specified personnel be designated to implement and maintain adherence to the equal employment opportunity program. Revised Order No. 4, Section 10-2.22, is referred to as a source of suggesting specific responsibilities which may be assigned. (See Appendix M.) Although written to apply to governmental contractors, the duties set forth can be readily translated into recipient agency terms and circumstances. It is important that the designated person be given top level management support and necessary staff assistance, and that his or her equal employment opportunity program responsibilities be made known to all employees and to appropriate outside agency contacts.

Exhibit 5 illustrates one agency's approach to the assignment of program responsibilities.

EXHIBIT 5
SAMPLE EEOP COORDINATOR RESPONSIBILITIES

A. Equal Employment Opportunity Program Coordinator

The Equal Employment Opportunity Program Coordinator shall act as the Director's staff assistant for administering the Program, and as executive secretary of the Equal Employment Opportunity Committee.

The Equal Employment Opportunity Program Coordinator shall be responsible for:

1. Assisting members of management in resolving problems relative to any requirement or provision of the Program.

2. Developing and implementing audit and reporting systems designed to:

   a. Continually measure the effectiveness of the Program and its parts.

   b. Point out deficiencies and needs for remedial action.

   c. Determine degree to which goals and objectives have been reached.

3. Conducting periodic audits of hiring and promotion patterns and techniques to insure that provisions of the Program are being carried out and the goals and objectives are being met.

4. Making a periodic review of the Program and submitting recommendations for expansion and improvement of the Program where applicable.

5. Serving as liaison between the Department and enforcement agencies, minority organizations, and community action groups.

6. Keeping the Equal Employment Opportunity Program Committee, the Director and departmental management informed of the latest developments in the equal opportunity area.

7. Assisting in the identification of problem areas and establishing specific goals and objectives.

8. Holding regular discussions with division heads, supervisors and employees to insure that the equal employment opportunity policies are being followed.

9. Providing analyses of all departmental activities to assure equal employment opportunity.

10. Involving departmental staff in the goal-setting process.

6. Goals and Timetables

The setting of equal employment opportunity action goals and timetables is not specifically required by the Guidelines but is discussed here as a recommended natural component of an effective equal opportunity program. Agencies which have a strong and clear commitment to equal employment opportunity objectives find that the setting of reasonable numerical goals and the establishment of realistic timetables facilitates the achievement of these objectives.

It is important to distinguish between numerical equal employment opportunity goals, achieved through an effective merit system, and quota systems, which are prohibited by law and which tend to be inconsistent with merit principles of employment. Appendix N presents a statement relevant to the setting of equal employment opportunity goals prepared by the Federal Equal Employment Opportunity Council. This statement represents an agreed upon position on goals by the four major federal agencies involved in advising state and local governments as to how to discharge their legal responsibilities to ensure nondiscrimination in their personnel systems. It describes a goal as a numerical objective, fixed realistically in terms of the number of vacancies expected and the number of qualified applicants in the relevant job market. The statement should be read in its entirety to acquire a full perspective on the subject.

Recipient agencies are encouraged to develop, as an outgrowth of the preparation of their equal employment opportunity program, a set of specific goals and associated timetables as a means of facilitating the achievement of improved equal employment opportunities within the agency.

APPENDICES

APPLICANT INTERVIEW AND HIRING RECORD

From:_____ To:_____

NAME	POSITION APPLIED FOR	DATE OF INTERVIEW	OFFERED JOB (YES/NO)	DATE EMPLOYED	REASON IF NOT EMPLOYED	SOURCE*	SEX	RACE**

* Enter number to indicate how applicant was referred:

1. Job Announcement
2. Current Employee
3. School/College
4. Newspaper
5. Radio/Television
6. Community Agency
7. Personnel Office
8. Other Agency
9. Friend
10. Other (If other, specify)

** C- Caucasian (white)
O- Oriental
I- American Indian
N- Negro (black)
S- Spanish-surnamed Americans

APPENDIX A-2

EMPLOYEE TRAINING RECORD

From:_____ To:_____
Date Date

NAME	* RACE	SEX	PRESENT POSITION	PRESENT GRADE OR SALARY	TRAINING COURSE TITLE	COURSE DATES FROM	COURSE DATES TO	HOURS COMPLETED

* C- Caucasian (white)
O- Oriental
I- American Indian
N- Negro (black)
S- Spanish-surnamed Americans

APPENDIX A-3

TRANSFER REQUEST RECORD

From:_____ To:_____
Date Date

NAME	FROM	TO	DATE OF REQUEST	APPROVED YES/NO	DATE APPROVED	REASON IF NOT APPROVED & DATE	SEX	RACE*

* C- Caucasian (white)
O- Oriental
I- American Indian
N- Negro (black)
S- Spanish-surnamed Americans

APPENDIX A-4

PROMOTION RECORD

From:_____ To:_____

NAME	FROM CLASSIFICATION	FROM GRADE	TO CLASSIFICATION	TO GRADE	DATE PROMOTED	SEX	RACE*

* C- Caucasian (white)
O- Oriental
I- American Indian
N- Negro (black)
S- Spanish-surnamed Americans

TERMINATION RECORD

From:_____ To:_____

NAME	CLASSIFICATION	REASON	VOLUN-TARY	INVOLUN-TARY	DATE	SEX	RACE*

* C- Caucasian (white)
O- Oriental
I- American Indian
N- Negro (black)
S- Spanish-surnamed Americans

APPENDIX A-5

APPENDIX B

CIVIL RIGHTS ACT OF 1964, AS AMENDED

TITLE VI - NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation, in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise sub-

ject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practive of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

APPENDIX C

92d Congress
2d Session

COMMITTEE PRINT

THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972

Title VII of Civil Rights Act of 1964 Showing Changes Made by Public Law 92–261 Approved March 24, 1972

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND
PUBLIC WELFARE
UNITED STATES SENATE

MARCH 1972

Printed for the use of the Committee on Labor and Public Welfare

U.S. GOVERNMENT PRINTING OFFICE
74-307 O WASHINGTON : 1972

FOREWORD

This Committee Print contains the text of the Equal Opportunity Act of 1972 (Public Law 92–261), together with the text of Title VII of the Civil Rights Act of 1964 (78 Stat 253; 42 U.S.C. 2000e *et seq.*) as amended by the Equal Employment Opportunity Act of 1972. The enactment of this Public Law is a major step forward in assuring the goal of equal employment opportunity to millions of minorities and women in our society. The expanded coverage provided by the Act, together with the newly created enforcement powers represents significant advancement in the Civil Rights field. This print has been prepared in order to provide information and assistance to the Members of Congress and other interested parties with regard to the new features in the law.

HARRISON A. WILLIAMS, JR.,
Chairman.

(III)

CIVIL RIGHTS ACT OF 1964 AS AMENDED

AN ACT To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * * * * * *

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY[1]

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, *governments, governmental agencies, political subdivisions,* labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has *fifteen* or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or *any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code),* or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, *except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972,* persons having fewer than *twenty-five* employees (and their agents) shall not be considered *employers.*

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the

[1] Includes 1972 amendments made by P.L. 92-261 printed in italic.

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) *twenty-five* or more during the first year after the *date of enactment of the Equal Employment Opportunity Act of 1972, or* (B) *fifteen* or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, *except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the excercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.*

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of

the Labor-Management Reporting and Disclosure Act of 1959, *and further includes any governmental industry, business, or activity.*

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's, religious observance or practice without undue hardship on the conduct of the employer's business.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, *educational institution,* or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, *educational institution,* or society of its *activities.*

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees *or applicants for employment* in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, *or applicants for membership* or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results 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 because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, *or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs*, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, employment *agency, or joint labor-management committee controlling apprenticeship or other training or retraining, in-*

cluding on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment *agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee* indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. *Members of the Commission* shall be appointed by the President by and with the advice and consent of the *Senate* for a term of five *years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.* The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and *except as provided in subsection (b)*, shall appoint, in accordance with the *provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.*

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title.

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) The Commission shall have an official seal which shall be judicially noticed.

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to *intervene* in a civil action brought *under section 706* by an aggrieved party *against a respondent other than a government, governmental agency, or political subdivision.*

(h) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(i) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) *The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.*

(b) Whenever *a charge is filed by or on behalf of a* person claiming to be aggrieved, or by a member of the Commission, *alleging* that an employer, employment agency, labor *organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,* has engaged in an unlawful employment practice, the Commission shall *serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on* such employer, employment agency, labor *organization, or joint labor-management committee* (hereinafter referred to as the "respondent") *within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges* shall not be made public by the Commission. If the Commission *determines* after such investigation that there is *not* reasonable cause to believe that the charge is true, *it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true,* the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such *informal* endeavors may be made public by the *Commission, its officers or employees, or used as evidence in a subsequent proceeding* without the written consent of the *persons concerned.* Any *person* who *makes* public information in violation of this subsection shall be fined not more than $1,000 or imprisoned *for* not more than one *year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) from the date upon which the Commission is authorized to take action with respect to the charge.*

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts

upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(*d*) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective *date* of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(*e*) A charge under *this section* shall be filed within *one hundred and eighty* days after the alleged unlawful employment practice *occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter*, except that in *a* case of an unlawful employment practice with respect to which the person aggrieved has *initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof*, such charge shall be filed by *or on behalf of* the person aggrieved within *three hundred* days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(*f*)(*1*) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (*c*) *or* (*d*), the Commission has been unable to *secure from the respondent a conciliation agreement acceptable to the Commission*, the Commission *may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has notified a civil action in a*

case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved, or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the *Commission*, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action *upon certification* that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (*c*) *or* (*d*) *of this section or further* efforts of the Commission to obtain voluntary compliance.

(*2*) *Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.*

(*3*) *Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.*

(*4*) *It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the*

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case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).

(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to detine and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101–115), shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under *this section*, the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under *this section* and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

SEC. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a

complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9, of title 5, United States Code, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all

court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, *engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and* utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, *pay by advance or reimbursement* such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

(c) *Every* employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable,

necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and *to* furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, *and, if such application for an exemption is denied,* bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. *If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.*

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

INVESTIGATORY POWERS

SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of

the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply.

NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under the section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of *sections 111 and 1114* title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. *Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official*

functions under this Act shall be punished by imprisonment for any term of years or for life.

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to 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. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of

the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex, or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department,

agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) The provisions of section 706(f) through (k), as applicable, shall govern civil actions brought hereunder.

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

SPECIAL PROVISIONS WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

SEC. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

PROVISIONS OF EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 WHICH RELATE TO BUT DO NOT AMEND THE CIVIL RIGHTS ACT OF 1964

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof the following new clause:

"(131) General Counsel of the Equal Employment Opportunity Commission."

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (10) the last time it appears therin in the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS–16, GS–17, and GS–18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

SEC. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter.

RELEVANT SECTIONS OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, AS AMENDED

"SEC. 203. (a) A grant made under this part to a State shall be utilized by the State to establish and maintain a State planning agency. Such agency shall be created or designated by the chief executive of the State and shall be subject to his jurisdiction. The State planning agency and any regional planning units within the State shall, within their respective jurisdictions, be representative of the law enforcement and criminal justice agencies, units of general local government, and public agencies maintaining programs to reduce and control crime and may include representatives of citizen, professional, and community organizations. The regional planning units withing the State shall be comprised of a majority of local elected officials.

"(b) The State planning agency shall--

"(1) develop, in accordance with part C, a comprehensive statewide plan for the improvement of law enforcement and criminal justice throughout the State;

"(2) define, develop, and correlate programs and projects for the State and the units of general local government in the State or combinations of States or units for improvement in law enforcement and criminal justice; and

"(3) establish priorities for the improvement in law enforcement and criminal justice throughout the State.

"(c) The State planning agency shall make such arrangements as such agency deems necessary to provide that at least 40 per centum of all Federal funds granted to such agency under this part for any fiscal year will be available to units of general local government or combinations of such units to enable such units and combinations of such units to participate in the formulation of the comprehensive State plan required under this part. The Administration may waive this requirement, in whole or in part, upon a finding that the requirement is inappropriate in view of the respective law enforcement and criminal justice planning responsibilities exercised by the State and its units of general local government and that adherence to the requirement would not contribute to the efficient development of the State plan required under this part. In allocating funds under this subsection, the State planning agency shall assure that major cities and counties within the State receive planning funds to develop comprehensive plans and coordinate functions at the local level. Any portion of such 40 per centum in any State for any fiscal year not required for the purpose set forth in this subsection shall be available for expenditure by such State agency from time to time on dates during such year as the Administration may fix, for the development by it of the State plan required under this part.

"(d) The State planning agency and any other planning organization for the purposes of the title shall hold each meeting open to the public, giving public notice of the time and place of such meeting, and the nature of the business to be transacted, if final action is taken at that meeting on (A) the State plan, or (B) any application for funds under this title. The State planning agency and any other planning organization for the purposes of the title shall provide for public access to all records relating to its functions under this Act, except such records as are required to be kept confidential by any other provisions of local, State, or Federal law.

"SEC. 509. Whenever the Administration, after reasonable notice and opportunity for hearing to an applicant or a grantee under this title, finds that, with respect to any payments made or to be made under this title, there is a substantial failure to comply with--

"(a) the provisions of this title;

"(b) regulations promulgated by the Administration under this title; or

"(c) a plan or application submitted in accordance with the provisions of this title;

the Administration shall notify such applicant or grantee that further payments shall not be made (or in its discretion that further payments shall not be made for activities in which there is such failure), until there is no longer such failure.

"SEC. 510. (a) In carrying out the functions vested by this title in the Administration, the determinations, findings, and conclusions of the Administration shall be final and conclusive upon all applicants, except as hereafter provided.

"(b) If the application has been rejected or an applicant has been denied a grant or has had a grant, or any portion of a grant, discontinued, or has been given a grant in a lesser amount than such applicant believes appropriate under the provisions of this title, the Administration shall notify the applicant or grantee of its action and set forth the reason for the action taken. Whenever an applicant or grantee requests a hearing on action taken by the Administration on an application or a grant, the Administration, or any authorized officer thereof, is authorized and directed to hold such hearings or investigations at such times and places as the Administration deems necessary, following appropriate and adequate notice to such applicant; and the findings of fact and determinations made by the Administration with respect thereto shall be final and conclusive, except as otherwise provided herein.

"(c) If such applicant is still dissatisfied with the findings and determinations of the Administration, following the notice and hearing provided for in subsection (b) of this section, a request may be made for rehearing, under such regulations and procedures as the Administration may establish, and such applicant shall be afforded an opportunity to present such additional information as may be deemed appropriate and pertinent to the matter involved. The findings and determinations of the Administration, following such re-

hearing, shall be final and conclusive upon all parties concerned, except as hereafter provided.

"SEC. 511. (a) If any applicant or grantee is dissatisfied with the Administration's final action with respect to the approval of its application or plan submitted under this title, or any applicant or grantee is dissatisfied with the Administration's final action under section 509 or section 510, such applicant or grantee may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such applicant or grantee is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administration. The Administration shall thereupon file in the court the record of the proceedings on which the action of the Administration was based, as provided in section 2112 of title 28. United States Code.

"(b) The determinations and the findings of fact by the Administration, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Administration to take further evidence. The Administration may thereupon make new or modified findings of fact and may modify its previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact or determinations shall likewise be conclusive if supported by substantial evidence.

"(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Administration or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. United States Code.

"SEC. 512. Unless otherwise specified in this title, the Administration shall carry out the programs provided for in this title during the fiscal year ending June 30, 1974, and the two succeeding fiscal years.

"SEC. 513. To insure that all Federal assistance to State and local programs under this title is carried out in a coordinated manner, the Administration is authorized to request any Federal department or agency to supply such statistics, data, program reports, and other material as the Administration deems necessary to carry out its functions under this title. Each such department or agency is authorized to cooperate with the Administration and, to the extent permitted by law, to furnish such materials to the Administration. Any Federal department or agency engaged in administering programs related to this title shall, to the maximum extent practicable, consult with and seek advice from the Administration to insure fully coordinated efforts, and the Administration shall undertake to coordinate such efforts.

"SEC. 514. The Administration may arrange with and reimburse the heads of other Federal departments and agencies for the performance

of any of its functions under this title.

"SEC. 515. The Administration is authorized--

"(a) to conduct evaluation studies of the programs and activities assisted under this title;

"(b) to collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of law enforcement within and without the United States; and

"(c) to cooperate with and render technical assistance to States, units of general local government, combinations of such States or units, or other public or private agencies, organizations, institutions, or international agencies in matters relating to law enforcement and criminal justice.

Funds appropriated for the purpose of this section may be expended by grant or contract, as the Administration may determine to be appropriate.

"SEC. 516. (a) Payments under this title may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administration, and may be used to pay the transportation and subsistence expenses of persons attending conferences or other assemblages notwithstanding the provisions of the joint resolution entitled 'Joint resolution to prohibit expenditure of any moneys for housing, feeding, or transporting conventions or meetings', approved February 2, 1935 (31 U.S.C. sec. 551).

"(b) Not more than 12 per centum of the sums appropriated for any fiscal year to carry out the provisions of this title may be used within any one State except that this limitation shall not apply to grants made pursuant to part D.

"SEC. 517. (a) The Administration may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates of compensation for individuals not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5, United States Code.

"(b) The Administration is authorized to appoint, without regard to the civil service laws, technical or other advisory committees to advise the Administration with respect to the administration of this title as it deems necessary. Members of those committees not otherwise in the employ of the United States, while engaged in advising the Administration or attending meetings of the committees, shall be compensated at rates to be fixed by the Administration but not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5 of the United States Code and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

"SEC. 518. (a) Nothing contained in this title or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other law enforcement and

criminal justice agency of any State or any political subdivision thereof.

"(b) Notwithstanding any other provision of law nothing contained in this title shall be construed to authorize the Administration (1) to require, or condition the availability or amount of a grant upon, the adoption by an applicant or grantee under this title of a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance in any law enforcement agency, or (2) to deny or discontinue to grant because of the refusal of an applicant or grantee under this title to adopt such a ratio, system, or other program.

"(c) (1) No person in any State shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

"(2) Whenever the Administration determines that a State government or any unit of general local government has failed to comply with subsection (c) (1) or an applicable regulation, it shall notify the chief executive of the State of the noncompliance and shall request the chief executive to secure compliance. If within a reasonable time after such notification the chief executive fails or refuses to secure compliance, the Administration shall exercise the powers and functions provided in section 509 of this title, and is authorized concurrently with such exercise--

"(A) to institute an appropriate civil action;

"(B) to exercise the powers and functions pursuant to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or

"(C) to take such other action as may be provided by law.

"(3) Whenever the Attorney General has reason to believe that a State government or unit of local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate U.S. District Court for such relief as may be appropriate, including injunctive relief.

APPENDIX E

EXECUTIVE ORDER 11246

EQUAL EMPLOYMENT OPPORTUNITY

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I - NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SECTION 102. The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SECTION 103. The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SECTION 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SECTION. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the

head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II - NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

Subpart A - Duties of the Secretary of Labor

SECTION. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

Subpart B - Contractors' Agreements

SECTION. 202 Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contacting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be finding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SECTION 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SECTION 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the

effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SECTION 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SECTION 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SECTION 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate

Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SECTION 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive brance of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209 (a) (6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D - Sanctions and Penalties

SECTION 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary of the appropriate contracting agency may;

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satistied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies

in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a) (2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a) (5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SECTION 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SECTION 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SECTION 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209 (a) (6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

Subpart E - Certificates of Merit

SECTION 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SECTION 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SECTION 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III - NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SECTION 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 203 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SECTION 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvement to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SECTION 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the admisistering department or agency.

SECTION 304. Any executive department or agency which imposes by rule, regulation, or order requirements of non-discrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

PART IV - MISCELLANEOUS

SECTION 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SECTION 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SECTION 403. (a) Executive Orders Nos. 10590 (January 18, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SECTION 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SECTION 405. This Order shall become effective 30 days after the date of this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE,

September 24, 1965.

EXECUTIVE ORDER
11375

AMENDING EXECUTIVE ORDER NO. 11246,
RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246 of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

NOW. THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(1) Section 101 of Part I, concerning nondiscrimination in Government employment, is revised to read as follows:

"SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

(2) Section 104 of Part I is revised to read as follows:

"SECTION 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission."

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin."

(4) Section 203 (d) of Part II is revised to read as follows:

"(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor of subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

LYNDON B. JOHNSON

THE WHITE HOUSE

October 13, 1967.

APPENDIX F

LEAA: EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS
(28 CFR 42.201 et seq. Subpart D.)

Subpart D--Equal Employment Opportunity in Federally Assisted Programs and Activities

Sec.
42.201 Purpose and application.
42.202 Definitions.
42.203 Discrimination prohibited.
42.204 Assurances required.
42.205 Compliance information.
42.206 Conduct of investigation, procedures for effecting compliance hearings, decisions, and judicial review; forms, instruction, and effect on other regulations.

AUTHORITY: The provisions of this Subpart D issued under 5 U.S.C. 301; and sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968. Public Law 90-351, 82 Stat. 197, as amended.

SEC. 42.201 Purpose and Application.

(a) The purpose of this subpart is to enforce the provisions of the 14th amendment to the Constitution by eliminating discrimination on the grounds of race, color, creed, sex, or national origin in the employment practices of State agencies or offices receiving financial assistance extended by this Department.

(b) The regulations in this subpart apply to the employment practices of planning agencies, law enforcement agencies, and other agencies or offices of States or units of general local government administering, conducting, or participating in any program or activity receiving Federal financial assistance extended under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (the Act). This subpart shall not apply to federally assisted construction contracts covered by Part III of Executive Order 11246. September 24, 1965; enforcement of nondiscriminatory employment practices under such contracts shall be effected pursuant to the Executive order.

SEC. 42.202 Definitions

(a) The definitions set forth in Sec 42.102 of Subpart C. Part 42, Title 28, Code of Federal Regulations are, to the extent not inconsistent with this subpart, hereby made applicable to and incorporated in this subpart.

(b) As used in this subpart, the term "employment practices" means all terms and conditions of employment including, but not limited to all practices relating to the screening, recruitment, selection, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classifi-

cation, discipline, layoff and termination, upgrading, transfer, leave practices, rates of pay, fringe benefits or other forms of pay or credit for services rendered and use of facilities.

(c) As used in this subpart, the terms "law enforcement," "State," and "unit of general local government" shall have the meanings set forth in section 601 of the Act.

SEC. 42.203 Discrimination prohibited.

No agency or office to which this subpart applies under Sec. 42.201 shall discriminate in its employment practices against employees or applicants for employment because of race, color, creed, sex, or national origin. Nothing contained in this subpart shall be construed as requiring any such agency or office to adopt a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance. Notwithstanding any other provision of this subpart, it shall not be a discriminatory employment practice to hire or assign an individual on the basis of creed, sex or national origin where the office or agency claiming an exception for an individual based on creed, sex, or national origin is able to demonstrate that the creed, sex, or national origin of the individual is essential to the performance of the job.

SEC. 42.204 Assurances required.

(a) (1) Every application for Federal financial assistance to carry out a program to which this regulation applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with the requirements of this subpart, and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(2) The responsible Department officials shall specify the form of the foregoing assurances. Such assurances shall be effective for the period during which Federal financial assistance is extended to the applicant or for the period during which a comprehensive law enforcement plan filed pursuant to the Act is in effect in the State, whichever period is longer, unless the form of the assurance as approved in writing by the responsible Department official specifies a different effective period.

(b) Assurances by States and units of general local government relating to employment practices of State and local law enforcement agencies and other agencies to which this subpart applies shall apply to the policies and practices of any other department, agency, or office of the same governmental unit to the extent that such policies or practices will substantially affect the employment practices of the recipient State or local planning unit, law enforcement agency, or other agency or office.

SEC. 42.205 Compliance information.

The provisions of Sec. 42.106 are hereby made applicable to and incorporated in this subpart.

SEC. 42.206 Conduct of investigations, procedures for effecting compliance, hearings, decisions, and judicial review: forms, instruction, and effect on other regulations.

(a) Each responsible Department official shall take appropriate measures to effectuate and enforce the provisions of this subpart; and shall issue and promptly make available to interested persons forms, instructions, and procedures for effectuating this subpart as applied to programs for which he is responsible. Insofar as feasible and not inconsistent with this subpart, the conduct of investigations and the procedures for effecting compliance, holding hearings, rendering decisions and initiating judicial review of such decisions shall be consistent with those prescribed by Sec. 42.107 through 42.111 of subpart C of this part; provided, that where the responsible Department official determines that judicial proceedings (as contemplated by Sec. 42.108 (d)) are as likely or more likely to result in compliance than administrative proceedings (as contemplated by Sec. 42.108(c)), he shall invoke the judicial remedy rather than the administrative remedy; and provided further, that no recipient of Federal financial assistance or applicant for such assistance shall be denied access to the hearing or appeal procedures set forth in sections 510 and 511 of the Act for denial or discontinuance of a grant or withholding of payments thereunder resulting from the application of this subpart.

(b) If it is determined, after opportunity for a hearing on the record, that a recepient has engaged or is engaging in employment practices which unlawfully discriminate on the ground of race, color, creed, sex, or national origin, the recipient will be required to cease such discriminatory practices and to take such action as may be appropriate to eliminate present discrimination to correct the effects of past discrimination and to prevent such discrimination in the future.

(c) Nothing in this subpart shall be deemed to supersede any provisions of Subparts A, B, and C of Part 42, Title 28, Code of Federal Regulations, or of any other regulation and instruction which prohibits discrimination on the ground of race, color, creed, sex, or national origin in any program or situation to which this subpart is inapplicable, or which prohibits discrimination on any other ground

Effective date. This regulation shall become effective upon publication in the FEDERAL REGISTER (8-18-72).

Dated: August 9. 1972.

Jerris Leonard,
Administrator, Law Enforcement
Assistance Administration.

Concur:
Richard W. Velde, Associate Administrator.
Clarence M. Coster, Associate Administrator.

APPENDIX G

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT ASSISTANCE
ADMINISTRATION

Guideline

G 7400.2A

June 18, 1974

Subject: THE EFFECT ON MINORITIES AND WOMEN OF MINIMUM HEIGHT REQUIREMENTS FOR EMPLOYMENT OF LAW ENFORCEMENT OFFICERS

1. PURPOSE. This guideline is issued to assist in the elimination of discrimination based on national origin, sex, and race caused by the use of restrictive minimum height requirements criteria where such requirements are unrelated to the employment performance of law enforcement personnel.

2. SCOPE. The provisions of the guideline apply to all recipients of LEAA funds. This guideline is of concern to all State Planning Agencies.

3. CANCELLATION. This directive cancels LEAA Guideline G 7400.2, The Effect on Minorities and Women of Minimum Height Requirements for Employment of Law Enforcement Officers, dated March 14, 1973.

4. BACKGROUND. The use of minimum height requirements as criteria for employee selection, assignment, or similar personnel action may tend to disqualify disproportionately women and persons of certain national origins, and races. Discrimination on the grounds of race, color, creed, sex, or national origin is prohibited by the Department of Justice regulations concerning employment practices of state agencies or offices receiving financial assistance extended by the Department (28 CFR Part 42, subpart D).

5. REQUIREMENT. The use of minimum height requirements, which disqualifies disproportionately women and persons of certain national origins and races, such as persons of Mexican and Puerto Rican ancestry, or oriental descent, will be considered violative to this Department's regulations prohibiting employment discrimination.

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Professional Personnel;
OCRC Personnel & OGC & OIG Prof. Staff

Initiated By: OCRC

6. EXCEPTIONS. In those instances where the recipient of Federal assistance is able to demonstrate convincingly through the use of supportive factual data such as professionally validated studies that such minimum height requirements used by the recipient is an operational necessity for designated job categories, the minimum height requirement will not be considered discriminating.

7. DEFINITION.

   a. The term operational necessity as used in this guideline shall refer to an employment practice for which there exists an overriding legitimate operational purpose such that the practice is necessary to the safe and efficient exercise of law enforcement duties; is sufficiently compelling to override any discriminatory impact; is effectively carrying out the operational purpose it is alleged to serve; and for which there are available no acceptable alternate policies or practices which would better accomplish the operational purpose advanced, or accomplish it equally well with a lesser discriminatory impact.

   b. The term law enforcement as used in this guideline is defined at Section 601(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and means all activities pertaining to crime prevention or reduction and enforcement of the criminal law.

Charles R. Work

CHARLES R. WORK
Deputy Administrator
for Administration

APPENDIX H

U.S. DEPARTMENT OF JUSTICE: NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (28 CFR 42.101 et seq.)

SUBPART C - NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS -- IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

AUTHORITY: The provisions of this Subpart C issued under secs. 601-605. 78 Stat. 252. secs. 1-11. 79 Stat. 828. 80 Stat. 379: 42 U.S.C. 2000d-2000d-4. 18 U.S.C. Prec. 3001 note. 5 U.S.C. 301. sec. 2. Reorganization Plan No. 2 of 1950. 64 Stat. 1261: 3 CFR. 1949-1953 Comp.

SOURCE: The provisions of this Subpart C contained in Order No. 365-66. 31 F.R. 10265. July 29, 1966, unless otherwise noted.

SECTION 42.101 Purpose.

The purpose of this subpart is to implement the provisions of Title VI of the Civil Rights Act of 1964. 78 Stat. 252 (hereafter referred to as the "Act"). to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Justice.

SECTION 42.102 Definitions.

As used in this subpart--

(a) The term "responsible Department official" with respect to any program receiving Federal financial assistance means the Attorney General, or such other official of the Department as has been assigned the principal responsibility within the Department for the administration of the law extending such assistance.

(b) The term "United States" includes the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessions of the United States, and the term "State" includes any one of the foregoing.

(c) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement,

arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, rehabilitation, or other services or disposition, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include any disposition, services, financial aid, or benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any disposition, services, financial aid, or benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(e) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(h) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

(i) The term "academic institution" includes any school, academy, college, university, institute, or other association, organization, or agency conducting or administering any program, project, or facility designed to educate or train individuals.

(j) The term "disposition" means any treatment, handling, decision, sentencing, confinement, or other prescription of conduct.

(k) The term "government organization" means the political subdivision for a prescribed geographical area.

SECTION 42.103 Application of this subject.

This subpart applies to any program for which Federal financial assistance is authorized under a law administered by the Department. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the date of this subpart pursuant to an application whether approved before or after such date. This subpart does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, or (b) employment practices except to the extent described in Section 42.104(c).

SECTION 42.104 Discrimination prohibited.

(a) General. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies.

(b) Specific discriminatory actions prohibited. (1) A recipient under any program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(ii) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function or benefit provided under the program; or

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site of location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this subpart.

(4) For the purposes of this section the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include any portion of any program or function or activity conducted by any recipient of Federal financial assistance which program, function, or activity is directly or indirectly improved, enhanced, enlarged, or benefited by such Federal financial assistance or which makes use of any facility, equipment or property provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and in paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) (1) Employment practices. Whenever a primary objective of the Federal financial assistance to a program, to which this subpart applies, is to provide employment, a recipient of such assistance may not directly or through contractual or other arrangements subject any individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities). That prohibition also applies to programs as to which a primary objective of the Federal financial assistance is (i) to assist individuals, through employment, to meet expenses incident to the commencement or continuation of their education or training, or (2) to provide work

experience which contributes to the education or training of the individuals involved. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c) (1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in such employment practices tends, on the ground of of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (c) (1) of this section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

SECTION 42.105 Assurance required.

(a) General. (1) Every application for Federal financial assistance to carry out a program to which this subpart applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this subpart. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, such assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, such assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interest therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real

property or interest therein from the Federal Government the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose, involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter are appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee.

(b) Assurances from government agencies. In the case of any application from any department, agency, or office of any State or local government for Federal financial assistance for any specified purpose, the assurances required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible Department official if the applicant establishes, to the satisfaction of the responsible Department official, that the practices in other agencies or parts or programs in other agencies or parts or programs of the governmental unit will in no way affect (1) its practices in the program for which Federal financial assistance is sought, or (2) the beneficiaries of or participants in or persons affected by such program, or (3) full compliance with this subpart as respects such program.

(c) Assurance from academic and other institutions. (1) In the case of any application for Federal financial assistance for any purpose to an academic institution, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible Department official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or

facility for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If, in any such case, the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(d) Continuing State programs. Any State or State agency administering a program which receives continuing Federal financial assistance subject to this regulation shall as a condition for the extension of such assistance (1) provide a statement that the programs is (or, in the case of a new program, will be) conducted in compliance with this regulation, and (2) provide for such methods of administration as are found by the responsible Department official to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this regulation.

SECTION 42.106 Compliance information.

(a) Cooperation and assistance. Each responsible Department official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this subpart and shall provide assistance and guidance to recipients to help them comply voluntarily with this subpart.

(b) Compliance reports. Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this subpart. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this subpart.

(c) Access to sources of information. Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this subpart. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall so certify in its report and set forth the efforts which it has made to obtain the information.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this subpart and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this subpart.

SECTION 42.107 Conduct of investigations.

(a) Periodic compliance reviews. The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this subpart.

(b) Complaints. Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this subpart may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) Investigations. The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this subpart. The investigation should include, whenever appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

(d) Resolution of matters. (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this subpart, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in Section 42.108.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this subpart, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or

hearing under this subpart. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this subpart, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

SECTION 42.108 Procedure for effecting compliance.

(a) General. If there appears to be a failure or threatened failure to comply with this subpart and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible Department official may suspend or terminate, or refuse to grant or continue, Federal financial assistance, or use any other means authorized by law, to induce compliance with this subpart. Such other means include, but are not limited to, (1) appropriate proceedings brought by the Department to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) Noncompliance with assurance requirement. If an applicant or recipient fails or refuses to furnish an assurance required under Section 42.105, or fails or refuses to comply with the provisions of the assurance it has furnished, or otherwise fails or refuses to comply with any requirement imposed by or pursuant to Title VI or this subpart, Federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of Title VI and this subpart. The Department shall not be required to provide assistance in such a case during the pendency of administrative proceedings under this subpart, except that the Department will continue assistance during the pendency of such proceedings whenever such assistance is due and payable pursuant to a final commitment made or an application finally approved prior to the effective date of this subpart.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart, (3) the action has been approved by the Attorney General pursuant to Section 42.110, and (4) the expiration of 30 days after the Attorney General has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular

political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Attorney General, and (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance.

SECTION 42.109 Hearings.

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by Section 42.108(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. That notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for that action. The notice shall (1) fix a date, not less than 20 days after the date of such notice, within which the applicant or recipient may request that the responsible Department official schedule the matter for hearing, or (2) advise the applicant or recipient that a hearing concerning the matter in question has been scheduled and advise the applicant or recipient of the place and time of that hearing. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing afforded by section 602 of the Act and Section 42.108(c) and consent to the making of a decision on the basis of such information as is available.

(b) Time and place of hearing. Hearings shall be held at the offices of the Department in Washington, D.C. at a time fixed by the responsible Department official, unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) Procedures, evidence, and record. (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied whenever reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) Consolidated or joint hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this subpart with respect to two or more programs to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Attorney General may, by agreement with such other departments or agencies, whenever appropriate, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this subpart. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with Section 42.110.

SECTION 42.110 Decisions and notices.

(a) Decisions by person other than the responsible Department official. If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record, including his recommended findings and proposed decision, to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Whenever the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision,

file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon filing of such exceptions, or of such notice of review, the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) Decisions on the record or on review by the reponsible Department official. Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given a reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) Decisions on the record whenever a hearing is waived. Whenever a hearing is waived pursuant to Section 42.109(a), a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) Rulings required. Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented and shall identify the requirement or requirements imposed by or pursuant to this subpart with which it is found that the applicant or recipient has failed to comply.

(e) Approval by Attorney General. Any final decision of a responsible Department official (other than the Attorney General) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart or the Act, shall promptly be transmitted to the Attorney General, who may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) Content of orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with, and will effectuate the purposes of, the Act and this subpart, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this subpart, or to have otherwise failed to comply with this subpart, unless and until, it corrects its noncompliance and satisfies the

responsible Department official that it will fully comply with this subpart.

(g) Post-termination procedings. (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

SECTION 42.111 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

SECTION 42.112 Effect on other regulations: forms and instructions.

(a) Effect on other regulations. Nothing in this subpart shall be deemed to supersede any provision of Subpart A or B of this part or Executive Order 11114 or 11246, as amended, or of any other regulation or instruction which prohibits discrimination on the ground of race, color, or national origin in any program or situation to which this subpart is inapplicable, or which prohibits discrimination on any other ground.

(b) Forms and instructions. Each responsible Department official, other than the Attorney General or Deputy Attorney General, shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this subpart as applied to programs to which this subpart applies and for which he is responsible.

(c) Supervision and coordination. The Attorney General may from

time to time assign to officials of the Department, or to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this subpart (other than responsibility for final decision as provided in Section 42.110(e)), including the achievement of the effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI of the Act and this subpart to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Attorney General.

APPENDIX A--ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE TO WHICH THIS SUBPART APPLIES

1. Assistance provided by the Law Enforcement Assistance Administration pursuant to the Law Enforcement Assistance Act of 1965, and title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Omnibus Crime Control Act of 1970, 42 U.S.C. 3711-3781.

2. Assistance provided by the Federal Bureau of Investigation through its National Academy and law enforcement training activities pursuant to title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Omnibus Crime Control Act of 1970, 42 U.S.C. 3744.

3. Assistance provided by the Bureau of Narcotics and Dangerous Drugs pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 872.

APPENDIX I

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C.

State and Local Reporting Committee
1800 G Street, N.W.
Washington, D.C. 20506

EEOC FORM 164, STATE AND LOCAL GOVERNMENT INFORMATION (EEO-4) (RCS: OMB No. 124-R0009)

INSTRUCTION BOOKLET

Under Public Law 88-352, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, all States and local governments that have 15 or more employees are required to keep records and to make such reports to the Equal Employment Opportunity Commission as are specified in the regulations of the Commission. The applicable provisions of the law, Section 709(c) of Title VII, and the regulations issued by the Commission on May 14, 1973, are printed in full in the Appendix (4) to these instructions. School systems and educational institutions are covered by other employment surveys and are excluded from EEO-4.

In the interests of consistency, uniformity and economy, State and Local Government Report EEO-4 is being utilized by Federal government agencies that have responsibilities with respect to equal employment opportunity. A joint State and Local Reporting Committee with which this report must be filed represents these various Federal agencies. In addition, this report should bring about uniformity in State and local government recordkeeping and reporting and should serve as a valuable tool for use by the political jurisdictions in evaluating their own internal programs for insuring equal employment opportunity.

As stated above, the filing of Report EEO-4 is required by law; it *is not voluntary*. Under Section 709(c) of Title VII, the Attorney General of the United States may compel a jurisdiction to file this report by obtaining an order from a United States District Court.

1. WHO MUST FILE

Those who must file this report include (1) all States; (2) all other political jurisdictions which have 100 or more employees; and (3) an annual sample of those political jurisdictions which have 15-99 employees. The sample is rotated annually, so that none of the smaller jurisdictions will be required to file in consecutive years and all will be required to file in their turn. Sampled jurisdictions will be informed by receipt of the forms that they have been selected to report in a particular year.

2. WHO MUST KEEP RECORDS

Every political jurisdiction with 15 or more employees must make and keep records and statistics which would be necessary for the completion of Report EEO-4, as set forth in these instructions. Records must be kept for a period of 3 years. See regulations 1602.30 and 1602.31 in the Appendix (4).

Although the EEO-4 report requires the combining of agency data to complete the report, separate data for each agency must be maintained either by the agency itself or by the office responsible for preparing the EEO-4 report, and should be available upon request to representatives of Federal agencies.

3. HOW TO FILE

States should file a separate form for each function performed, maximum of 15 separate forms, for each Standard Metropolitan Statistical Area (SMSA), and a maximum of 15 forms for the rest of the State, covering all employees not employed in an SMSA. State reports should cover state employees only. Where SMSA's cross State lines, the state is responsible only for that state's employment in that SMSA.

Recipients below the State level (county, city, township, special district) should file one form for each function listed on page 1 of the form (if that function is performed), for a maximum of 15 forms. Jurisdictions should report only persons working for the jurisdiction.

Where interstate, intercounty, etc., boards, agencies, commissions, or other type special district governments exist, the forms should be submitted by the headquarters of the special district.

Blank forms will be sent to a central office for the political jurisdiction. In those jurisdictions where all data are available at a single location, forms may be completed by the central office. Where data are not available centrally, figures should be obtained by the central office from all agencies and aggregated into the proper forms by functions. [In both cases, a list of *all agencies covered* should accompany the forms.]

Enclosed with the forms is a summary page on which you are requested to check those functions for which you are submitting completed reports; functions for which you are not reporting; and functions for which you will be reporting at a later date. This will facilitate our own recordkeeping, and minimize unnecessary follow-up correspondence.

The summary form also contains a provision where one official can certify as to the accuracy and completeness of the entire report from the jurisdiction. If such certification can be and is made by one official, a separate signature on every form will not be required.

The fact that a branch or agency of a government has separately elected officials, or is autonomous or semiautonomous in its operations does not affect the legal status of the jurisdictions, nor the requirement that EEO-4 cover the entire jurisdiction. To the extent feasible, the report should cover all branches of the government. In any cases where that is not feasible, and data are not available to the central office of the government, *a list of agencies and addresses not included should accompany the report.*

In all cases, the original and 1 copy of all completed forms must be returned in one package.

4. WHEN TO FILE

This annual report must be filed with the Equal Employment Opportunity Commission no later than September 30th. Employment Figures should cover the payroll period which includes June 30.

5. WHERE TO FILE

The completed reports (in duplicate) should be forwarded to the P.O. Box indicated on the EEO-4 form. All requests for additional report forms should also be directed to this address.

6. REQUESTS FOR INFORMATION AND SPECIAL PROCEDURES

An employer who claims that preparation or the filing of Report EEO-4 would create undue hardships may apply to the Commission for a special reporting procedure. In such cases, the employer should submit in writing an alternative proposal for compiling and reporting information to the EEO-4 Coordinator, Equal Employment Opportunity Commission, 1800 G Street, N.W., Washington, D.C. 20506.

Only those special procedures approved in writing by the Commission are authorized. Such authorizations remain in effect until notification of cancellation is given. All requests for information should be sent to the same address.

7. ELECTED AND APPOINTED OFFICIALS

Section 701(f) of the Equal Employment Opportunity Act of 1972 contains an exemption for elected and certain appointed officials that is set forth in definition of "employee" in Appendix 1. Based on the legislative history of Section 701(f), the General Counsel of the Commission has ruled that this exemption was intended by the Congress to be construed narrowly. This ruling concluded that only the following persons would be included in the exemption:

(1) State and local elected officials.
(2) Such official's immediate secretary, administrative, legislative, or other immediate or first-line aide.
(3) Such official's legal advisor.
(4) Appointed cabinet officials in the case of a Governor, or heads of executive departments in the case of a Mayor or County Council.

No other persons appointed by an elected official are exempt under this interpretation. In no case is any person exempt who is appointed by an appointed official, whether or not the latter is himself exempt. Furthermore, as specified in Section 701(f), the exemption does not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

8. CONFIDENTIALITY

All reports and information from individual reports are subject to the confidentiality provisions of Section 709(e) of Title VII, and may not be made public prior to the institution of any proceeding under Title VII. However, aggregate data may be made public in a manner so as not to reveal any particular jurisdiction's statistics.

INSTRUCTIONS ON HOW TO PREPARE INFORMATION REPORTS

Definitions of Terms and Categories are Located in the Appendix

SECTION A—TYPE OF GOVERNMENT

Check one box indicating type of government.

SECTION B—IDENTIFICATION

Indicate the name and central mailing address of the governmental jurisdiction if different from address label in top margin.

SECTION C—FUNCTION

The forms are mailed in sets of 15, with a different function marked on each form in a set. Please use the appropriate form for each function for which you are reporting. The data should be aggregated for all agencies performing a particular function. This also applies to unspecified functions, which are to be combined on one report marked number 15, "Other." State education agencies, both agencies covering elementary and secondary schools and those covering higher education, should be included in Function 15.

If an agency's activities cover more than one of the form's specified functions, those activities should be separated and reported under separate functions, where it is feasible to do so. Where the political jurisdiction is unable to make such separation of data, the agency should be reported under the function that represents its dominant activity. For example, if a transportation department includes among other functions streets and highways and two-thirds of the employees of the department are engaged in street-and-highway activities, those employees should be separated out and reported separately if feasible. If not, the entire department should be reported in Function 2, Streets and Highways. *In no case, should more than one function be reported on a single form.*

To each report, attach a list giving the name and address of all agencies covered. If the data for any agency or branch of the government cannot be supplied by the central office of a jurisdiction, attach a list with the name and address of each agency not included.

SECTION D—EMPLOYMENT DATA AS OF JUNE 30

For purposes of this report, a person is an employee of a political jurisdiction if he is on the payroll of that jurisdiction, regardless of the source of the funds by which he is paid.

1. FULL-TIME EMPLOYEES

(For detailed explanation of job categories and race/ethnic identification, see Appendix.)

Employment data should include total full-time employment except those elected and appointed officials specified in section 7 above of these instructions. Where employees receive separate salaries or payments from two or more jurisdictions, but work full-time for one jurisdiction, they should be counted as full-time employees by that jurisdiction, and to the extent possible their annual salary should reflect their total earnings from all jurisdictions from which they are paid. Also, where a person is a full-time employee of a jurisdiction, but is employed in more than one function, he should be reported for the function which accounts for most of his work-time. Trainees should be counted in appropriate columns by job, salary, race, and sex.

a. **Race/Sex Data**—Columns A through L should reflect employment for the categories indicated. Every employee must be accounted for in *one and only one* of the categories. Definitions are included in the Appendix (2).

b. **Occupational Data**—Employment data should be reported by annual salary within job category. Report each employee in *only one* job/salary category. In order to simplify and standardize the method of reporting, all jobs are considered as belonging in one of the broad occupations shown in the table. To assist you in determining how to place your jobs within the occupational groups, a description of job categories with examples follows in the Appendix (3). The list of examples is in no way exhaustive. *Total Line—Report *total employment for this matrix,* as well as column totals.

c. **Annual Salary**—Where employees are paid on other than an annual basis, their regular earnings in the payroll period including June 30, except for overtime pay which is not regular and recurrent, but including all special increments that are part of their annual earnings, should be expanded and expressed in terms of an annual income.

2. OTHER THAN FULL-TIME EMPLOYEES

Employment data should include all employees not included in the full-time matrix, except those specifically exempted (see Section 7, Elected and Appointed Officials). Where employees are working part-time for different jurisdictions, and are on separate payrolls of different jurisdictions, they should be reported as part-time employees of the separate jurisdictions. Persons on the payroll of the jurisdiction for a specified temporary appointment, such as the public employment program, should be included in this category.

*Total Line—Report *total employment for this matrix,* as well as column totals.

3. NEW HIRES DURING FISCAL YEAR

Statistics on new hires during the past fiscal year are required to be reported beginning with the 1974 survey. New hires data should reflect all permanent full-time employees hired from July 1 to June 30.

*Total Line—Report *total employment for this matrix,* as well as column totals.

REMARKS

Include in this section any remarks, explanations, or other pertinent information regarding this report.

NOTE: List here the National Crime Information Center (NCIC) numbers assigned by the U.S. Department of Justice to any criminal justice agencies whose data are included.

CERTIFICATION

The report must be certified and signed by an official responsible for the information, unless this report has been included in those certified and signed for on the summary page accompanying and submitted with the completed forms.

APPENDIX

1. DEFINITIONS APPLICABLE TO ALL EMPLOYERS

a. "Commission" refers to the Equal Employment Opportunity Commission established under Title VII of the Civil Rights Act of 1964.

b. "Employee" means an individual employed by a political jurisdiction, who is on the payroll of that jurisdiction, regardless of the source of the funds by which he is paid. The following is an exception from the definition, subject to the interpretation in Section 7 above of these instructions: The term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exception set forth in the preceding sentence shall *not* include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

c. "Full-time Employees"—Persons employed during this pay period to work the number of hours per week that represent regular full-time employment (excluding temporaries and intermittents).

d. "Other than Full-time Employees"—Persons employed during this pay period on a part-time basis. Include those daily or hourly employees usually engaged for less than the regular full-time work week, temporaries working on a seasonal basis (whether part-time or full-time) or hired for the duration of a particular job or operation, including public employment programs, and intermittents.

e. "New Hires During Fiscal Year"—Persons both with and without previous experience and transfers who were hired for the first time in this jurisdiction or rehired after a break in service for permanent full-time employment.

2. RACE/ETHNIC IDENTIFICATION

An employer may acquire the race/ethnic information necessary for this section either by visual surveys of the work force, or from post-employment records as to the identity of employees. An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging.

Since visual surveys are permitted, the fact that race/ethnic identifications are not present on agency records is not an excuse for failure to provide the data called for. However, although the Commission does not encourage direct inquiry as a method of determining racial or ethnic identity, this method is not prohibited in cases where it has been used in the past, or where other methods are not practical, provided it is not used for purposes of discrimination.

Moreover, the fact that employees may be located at different addresses does not provide an acceptable reason for failure to comply with the reporting requirements. In such cases, it is recommended that visual surveys be conducted for the employer by persons such as supervisors who are responsible for the work of the employees or to whom the employees report for instructions or otherwise.

Please note that the General Counsel of the Commission has ruled, on the basis of court decisions, that the Commission has the authority to require the racial and ethnic identification of employees, regardless of any possibly conflicting state or local laws.

The concept of race as used by the Equal Employment Opportunity Commission does *not* denote clearcut scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than *one* race/ethnic category.

NOTE: The category "Spanish Surnamed", while not a race identification, is included as a separate ethnic category because of the employment discrimination often encountered by this group; for this reason do not include Spanish Surnamed under either "white" or "black".

For the purposes of this report, the following group categories will be used:

a. The category "White": include persons of Indo-European descent, including Pakistani and East Indian.
b. The category "Black": include persons of African descent as well as those identified as Jamaican, Trinidadian, and West Indian.
c. The category "Spanish Surnamed": include all persons of Mexican, Puerto Rican, Cuban, Latin American or Spanish descent.
d. The category "American Indian": include persons who identify themselves or are known as such by virtue of tribal association.
e. The category "Asian American": include persons of Japanese, Chinese, Korean or Filipino descent.
f. The category "Other": include Aleuts, Eskimos, Malayans, Thais and others not covered by the specific categories on the form.

3. DESCRIPTION OF JOB CATEGORIES

a. **Officials and Administrators:** Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy directors, controllers, examiners, wardens, superintendents, sheriffs, police and fire chiefs and inspectors and kindred workers.

b. **Professionals:** Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dieticians, lawyers, system analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, police and fire captains and lieutenants and kindred workers.

c. **Technicians:** Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, draftsmen, surveyors, licensed practical nurses,

photographers, radio operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences), assessors, inspectors, police and fire sergeants and kindred workers.

d. **Protective Service Workers:** Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police patrol officers, fire fighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers and kindred workers.

e. **Paraprofessionals:** Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of staff development and promotion under a "New Careers" concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemakers aides, home health aides, and kindred workers.

f. **Office and Clerical:** Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks and kindred workers.

g. **Skilled Craft Workers:** Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairmen, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters and kindred workers.

h. **Service-Maintenance:** Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundkeepers, refuse collectors, construction laborers.

4. LEGAL BASIS FOR REQUIREMENTS

Section 709(c), Title VII, Civil Rights Act of 1964

(As Amended by the Equal Employment Opportunity Act of 1972)

Recordkeeping; reports

Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with

the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

Title 29, Chapter XIV, Code of Federal Regulations

Subpart I—State and Local Governments Recordkeeping

§1602.30 Records to be made or kept.

On or before July 30, 1973, and annually thereafter, every political jurisdiction with 15 or more employees is required to make or keep records and the information therefrom which are or would be necessary for the completion of report EEO–4 under the circumstances set forth in the instructions thereto, whether or not the political jurisdiction is required to file such report under § 1602.32 of the regulations in this part. The instructions are specifically incorporated herein by reference and have the same force and effect as other sections of this part.[1] Such records and the information therefrom shall be retained at all times for a period of 3 years at the central office of the political jurisdiction and shall be made available if requested by an officer, agent, or employee of the Commission under Section 710 of Title VII, as amended. Although agency data are aggregated by functions for purposes of reporting, separate data for each agency must be maintained either by the agency itself or by the office of the political jurisdiction responsible for preparing the EEO–4 form. It is the responsibility of every political jurisdiction to obtain from the Commission or its delegate necessary instructions in order to comply with the requirements of this section.

§1602.31 Preservation of records made or kept.

(a) Any personnel or employment record made or kept by a political jurisdiction (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the political jurisdiction for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 years from the date of termination. Where a charge of discrimination has been filed, or an action brought by the Attorney General against a political jurisdiction under title VII, the respondent political jurisdiction shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action. The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of final disposition of the charge or the action means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in a U.S. district court or, where an action is brought against a political jurisdiction either by a person claiming to be aggrieved or by the Attorney General, the date on which such litigation is terminated.

(b) The requirements of this section shall not apply to application forms and other preemployment records of applicants for positions known to applicants to be of a temporary or seasonal nature.

Subpart J—State and Local Government Information Report

§1602.32 Requirement for filing and preserving copy of report.

(a) On or before July 30, 1974 and annually thereafter, certain political jurisdictions subject to title VII of the Civil Rights Act of 1964, as amended, shall file with the Commission or its delegate executed copies of "State and Local Government Information Report EEO–4" in conformity with the directions set forth in the form and accompanying instructions. The political jurisdictions covered by this regulation are (1) those which have 100 or more employees, and (2) those other political jurisdictions which have 15 or more employees from whom the Commission requests the filing of reports. Every such political jurisdiction shall retain at all times a copy of the most recently filed EEO–4 at the central office of the political jurisdiction for a period of 3 years and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of Section 710 of Title VII, as amended.

(b) For calendar year 1973, the requirements of paragraph (a) of this section shall be carried out on or before October 31, 1973.

§ 1602.33 Penalty for making of willfully false statements on report.

The making of willfully false statements on report EEO–4, is a violation of the United States Code, Title 18, Section 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.34 Commission's remedy for political jurisdiction's failure to file report.

Any political jurisdiction failing or refusing to file report EEO–4 when required to do so may be compelled to file by order of a U.S. district court, upon application of the Attorney General.

§ 1602.35 Political jurisdiction's exemption from reporting requirements.

If it is claimed the preparation or filing of the report would create undue hardship, the political jurisdiction may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system prior to the date on which the report is due.

§ 1602.36 Schools exemption.

The recordkeeping and report-filing requirements of subparts I and J shall not apply to State or local educational institutions or to school districts or school systems or any other educational functions. The previous sentence of this section shall not act to bar jurisdiction which otherwise would attach under § 1602.30.

§ 1602.37 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the "State and Local Government Information Report EEO–4," about the employment practices of individual political jurisdictions or group of political jurisdictions whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of Title VII. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of Title VII and as otherwise prescribed by law.

Subpart K—Records and Inquiries as to Race, Color, National Origin, or Sex

§ 1602.38 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts I and J, supersede any provisions of State or local law which may conflict with them.

[1] NOTE.—Instructions were published as an appendix to the proposed regulations on Mar. 2, 1973 (38 FR 5662).

APPENDIX I Attachment

Conversion of Criminal Justice Agency Job Titles

to EEO-4 Form Job Catagories

Officials and Managers:

Wardens
Superintendents
Sheriffs
Police Chiefs

Professionals:

Police Captains
Police Lieutenants

Technicians:

Police Sergeants

Protective Service Workers:

Patrolmen
Detectives
Guards
Deputy Sheriffs
Bailiffs
Correctional Officers
Marshals

Paraprofessionals:

Dispatchers (unsworn)
Research Assistants
Police Auxiliary
Recreation Assistants

Office and Clerical:

Bookkeepers
Office Machine Operators
Clerk Typists
Stenographers
Court Transcribers
Hearing Reporters
Statistical Clerks
Payroll Clerks
License Distributors

Skilled Craft Workers:

Mechanics
Repairmen

Service/Maintenance:

Machine Operators
Chauffeurs
Truck or Bus Drivers
Garage Laborers
Janitorial Personnel
Gardeners
Groundkeepers

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

STATE AND LOCAL GOVERNMENT INFORMATION (EEO-4)

EXCLUDE SCHOOL SYSTEMS AND EDUCATIONAL INSTITUTIONS
(Read attached instructions prior to completing this form)

FORM APPROVED OMB NO. 124-R0009

MAIL COMPLETED FORM TO:

A. TYPE OF GOVERNMENT (Check one box only)

☐ 1. State ☐ 2. County ☐ 3. City ☐ 4. Township ☐ 5. Special district

☐ 6. Other (Specify)_____

B. IDENTIFICATION

1. NAME OF POLITICAL JURISDICTION (If same as label, skip to item C)

EEOC USE ONLY A

2. Address - Number and Street	CITY/TOWN	COUNTY	STATE/ZIP	B

C. FUNCTION

(Check one box to indicate the function for which this form is being submitted. Data should be reported for all departments and agencies in your government covered by the function indicated. If you cannot supply the data for every agency within the function, please attach a list showing name and address of agencies whose data are not included.)

1. FINANCIAL ADMINISTRATION. Tax assessing, tax billing and collection, budgeting purchasing, central accounting and similar financial administration carried on by a treasurer's, auditor's or comptroller's office and

GENERAL CONTROL. Duties usually performed by boards of supervisors or commissioners, central administrative offices and agencies, central personnel or planning agencies, all judicial offices and employees (judges, magistrates, bailiffs, etc.)

2. STREETS AND HIGHWAYS. Maintenance, repair, construction and administration of streets, alleys, sidewalks, roads, highways and bridges.

3. PUBLIC WELFARE. Maintenance of homes and other institutions for the needy; administration of public assistance. (Hospitals and sanatoriums should be reported as item 7.)

4. POLICE PROTECTION. Duties of a police department, sheriff's, constable's, coroner's office, etc., including technical and clerical employees engaged in police activities.

5. FIRE PROTECTION. Duties of the uniformed fire force and clerical employees. (Report any forest fire protection activities as item 6.)

6. NATURAL RESOURCES. Agriculture, forestry, forest fire protection, irrigation drainage, flood control, etc., and
PARKS AND RECREATION. Provision, maintenance and operation of parks, playgrounds, swimming pools, auditoriums, museums, marinas, zoo, etc.

7. HOSPITALS AND SANATORIUMS. Operation and maintenance of institutions for inpatient medical care.

8. HEALTH. Provision of public health services, out-patient clinics, visiting nurses, food and sanitary inspections, mental health, etc.

9. HOUSING. Code enforcement, low rent public housing, fair housing ordinance enforcement, housing for elderly, housing rehabilitation, rent control.

10. COMMUNITY DEVELOPMENT. Planning, zoning, land development, open space, beautification, preservation.

11. CORRECTIONS. Jails, reformatories, detention homes, half-way houses, prisons, parole and probation activities.

12. UTILITIES AND TRANSPORTATION. Includes water supply, electric power, transit, gas, airports, water transportation and terminals.

13. SANITATION AND SEWAGE. Street cleaning, garbage and refuse collection and disposal. Provision, maintenance and operation of sanitary and storm sewer systems and sewage disposal plants.

14. EMPLOYMENT SECURITY

15. OTHER *(Specify)*

D. EMPLOYMENT DATA AS OF JUNE 30

(Do not include elected/appointed officials. Blanks will be counted as zero)

1. FULL TIME EMPLOYEES (Temporary employees not included)

JOB CATEGORIES	ANNUAL SALARY (In Thousands) (000)	MALE						FEMALE					
		WHITE A	BLACK B	SPAN. SURNAME AMER. C	ASIAN AMER. D	AMER. IND. E	OTHER F	WHITE G	BLACK H	SPAN. SURNAME AMER. I	ASIAN AMER. J	AMER. IND. K	OTHER L
OFFICIALS/ ADMINISTRATORS	1. $ 0.1-3.9												
	2. 4.0-5.9												
	3. 6.0-7.9												
	4. 8.0-9.9												
	5. 10.0-12.9												
	6. 13.0-15.9												
	7. 16.0-24.9												
	8. 25.0 PLUS												
PROFESSIONALS	9. 0.1-3.9												
	10. 4.0-5.9												
	11. 6.0-7.9												
	12. 8.0-9.9												
	13. 10.0-12.9												
	14. 13.0-15.9												
	15. 16.0-24.9												
	16. 25.0 PLUS												
TECHNICIANS	17. 0.1-3.9												
	18. 4.0-5.9												
	19. 6.0-7.9												
	20. 8.0-9.9												
	21. 10.0-12.9												
	22. 13.0-15.9												
	23. 16.0-24.9												
	24. 25.0 PLUS												
PROTECTIVE SERVICE	25. 0.1-3.9												
	26. 4.0-5.9												
	27. 6.0-7.9												
	28. 8.0-9.9												
	29. 10.0-12.9												
	30. 13.0-15.9												
	31. 16.0-24.9												
	32. 25.0 PLUS												
PARA-PROFESSIONALS	33. 0.1-3.9												
	34. 4.0-5.9												
	35. 6.0-7.9												
	36. 8.0-9.9												
	37. 10.0-12.9												
	38. 13.0-15.9												
	39. 16.0-24.9												
	40. 25.0 PLUS												
OFFICE/ CLERICAL	41. 0.1-3.9												
	42. 4.0-5.9												
	43. 6.0-7.9												
	44. 8.0-9.9												
	45. 10.0-12.9												
	46. 13.0-15.9												
	47. 16.0-24.9												
	48. $ 25.0 PLUS												

D. EMPLOYMENT DATA AS OF JUNE 30 (Cont.)

(Do not include elected/appointed officials. Blanks will be counted as zero)

1. FULL TIME EMPLOYEES (Temporary employees not included)

JOB CATEGORIES	ANNUAL SALARY (In thousands 000)	MALE						FEMALE					
		WHITE A	BLACK B	SPAN. SURNAME AMER. C	ASIAN AMER. D	AMER IND. E	OTHER F	WHITE G	BLACK H	SPAN. SURNAME AMER. I	ASIAN AMER. J	AMER. IND. K	OTHER L
SKILLED CRAFT	49. $ 0.1-3.9												
	50. 4.0-5.9												
	51. 6.0-7.9												
	52. 8.0-9.9												
	53. 10.0-12.9												
	54. 13.0-15.9												
	55. 16.0-24.9												
	56. 25.0 PLUS												
SERVICE/ MAINTENANCE	57. 0.1-3.9												
	58. 4.0-5.9												
	59. 6.0-7.9												
	60. 8.0-9.9												
	61. 10.0-12.9												
	62. 13.0-15.9												
	63. 16.0-24.9												
	64. $ 25.0 PLUS												
TOT. FULL TIME	COL. TOTALS →												

2. OTHER THAN FULL TIME EMPLOYEES (Include temporary employees)

1. OFFICIALS / ADMIN.												
2. PROFESSIONALS												
3. TECHNICIANS												
4. PROTECTIVE SERV.												
5. PARA-PROFESSIONAL												
6. OFFICE / CLERICAL												
7. SKILLED CRAFT												
8. SERV. / MAINT.												
TOTAL OTHER	COL. TOTALS →											

3. NEW HIRES DURING FISCAL YEAR - Permanent full time only

(Omit this section in 1973)

1. OFFICIALS / ADMIN.												
2. PROFESSIONALS												
3. TECHNICIANS												
4. PROTECTIVE SERV.												
5. PARA-PROFESSIONAL												
6. OFFICE / CLERICAL												
7. SKILLED CRAFT												
8. SERV. / MAINT.												
TOT. NEW HIRES	COL. TOTALS →											

REMARKS (List National Crime Information Center (NCIC) numbers assigned to any Criminal Justice Agencies whose data are included in this report.)

CERTIFICATION. I certify that the information given in this report is correct and true to the best of my knowledge and was reported in accordance with accompanying instructions. (Wilfully false statements on this report are punishable by law, U.S. Code, Title 18, Section 1001.)

NAME OF PERSON TO CONTACT REGARDING THIS FORM	TITLE
ADDRESS (Number and Street, City, State, Zip Code)	TELEPHONE NUMBER AREA CODE

DATE	TYPED NAME / TITLE OF AUTHORIZED OFFICIAL	SIGNATURE

APPENDIX J

EEOC: GUIDELINES FOR EMPLOYMENT SELECTION PROCEDURES

PART 1607—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Sec.

AUTHORITY: The provisions of this Part 1607 issued under sec. 713(a), 78 Stat. 265; 42 U.S.C. 2000e–12.

SOURCE: The provisions of this Part 1607 appear at 35 F.R. 12333, Aug. 1, 1970, unless otherwise noted.

§ 1607.1 Statement of purpose.

(a) The guidelines in this part are based on the belief that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by title VII. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may significantly aid in the development and maintenance of an efficient work force and, indeed, aid in the utilization and conservation of human resources generally.

(b) An examination of charges of discrimination filed with the Commission and an evaluation of the results of the Commission's compliance activities has revealed a decided increase in total test usage and a marked increase in doubtful testing practices which, based on our experience, tend to have discriminatory effects. In many cases, persons have come to rely almost exclusively on tests as the basis for making the decision to hire, transfer, promote, grant membership, train, refer or retain, with the result that candidates are selected or rejected on the basis of a single test score. Where tests are so used, minority candidates frequently experience disproportionately high rates of rejection by failing to attain score levels that have been established as minimum standards for qualification.

It has also become clear that in many instances persons are using tests as the basis for employment decisions without evidence that they are valid predictors of employee job performance. Where evidence in support of presumed relationships between test performance and job behavior is lacking, the possibility of discrimination in the application of test results must be recognized. A test lacking demonstrated validity (i.e., having no known significant relationship to job behavior) and yielding lower scores for classes protected by title VII may result in the rejection of many who have necessary qualifications for successful work performance.

(c) The guidelines in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their selection procedures conform with the obligations contained in title VII of the Civil Rights Act of 1964. Section 703 of title VII places an affirmative obligation upon employers, labor unions, and employment agencies, as defined in section 701 of the Act, not to discriminate because of race, color, religion, sex, or national origin Subsection (h) of section 703 allows such persons "* * * to give and to act upon the results 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 because of race, color, religion, sex or national origin."

§.1607.2 "Test" defined.

For the purpose of the guidelines in this part, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc.

§ 1607.3 Discrimination defined.

The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by title VII constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility as hereinafter described, and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

§ 1607.4 Evidence of validity.

(a) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate § 1607.3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(b) The term "technically feasible" as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(c) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that 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 shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: *Provided,* That no significant

differences exist between units, jobs, and applicant populations.

§ 1607.5 Minimum standards for validation.

(a) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street NW., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

(b) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and/or are not available through normal commercial channels must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisor's prejudice, as when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (See § 1607.9). A test which is differentially

valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(c) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

(i) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available;

(ii) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

(iii) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

§ 1607.6 Presentation of validity evidence.

The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See § 1607.5(c) concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

§ 1607.7 Use of other validity studies.

In cases where the validity of a test cannot be determined pursuant to § 1607.4 and § 1607.5 (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when: (a) The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and (b) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in paragraphs (a) and (b) of this section.

§ 1607.8 Assumption of validity.

(a) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on test names

or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

(b) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity.

§ 1607.9 Continued use of tests.

Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: *Provided:* (a) The person can cite substantial evidence of validity as described in § 1607.7 (a) and (b); and (b) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

§ 1607.10 Employment agencies and employment services.

(a) An employment service, including private employment agencies, State employment agencies, and the U.S. Training and Employment Service, as defined in section 701(c), shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with these guidelines.

(b) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these guidelines.

(c) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the guidelines in this part, before it administers the testing program and/or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity (see § 1607.8(a)). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in § 1607.7.

§ 1607.11 Disparate treatment.

The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon any individual or class protected by title VII where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been made 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, no new test or other employee selection standard can be imposed upon a class of individuals protected by title VII who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

§ 1607.12 Retesting.

Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier "failure" candidates who have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested.

§ 1607.13 Other selection techniques.

Selection techniques other than tests, as defined in § 1607.2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in §§ 1607.4 and 1607.5. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority or sex groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority or sex groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

§ 1607.14 Affirmative action.

Nothing in these guidelines shall be interpreted as diminishing a person's obligation under both title VII and Executive Order 11246 as amended by Executive Order 11375 to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by title VII.

APPENDIX K

EEOC: GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

Sec.

AUTHORITY: The provisions of this Part 1604 issued under sec. 713(b), 78 Stat. 265, 42 U.S.C. sec. 2000e-12.

SOURCE: 37 FR 6836, April 5, 1972, unless otherwise noted.

§ 1604.1 General principles.

(a) References to "employer" or "employers" in this Part 1604 state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

§ 1604.2 Sex as a bona fide occupational qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels—"Men's jobs" and "Women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on sterotyped characterizations of the sexes. Such steretoypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented State employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that State laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of States require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by State law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented State employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the State law is in conflict with and superseded by tile VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some States require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

§ 1604.3 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A Seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

§ 1604.4 Discrimination against married women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of section 703 (e)(1) of title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

§ 1604.5 Job opportunities advertising.

It is a violation of title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 1604.6 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

§ 1604.7 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male _____, Female _____"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

§ 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in title VII is coextensive with that of the other prohibitions contained in title VII and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

§ 1604.9 Fringe benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under title VIII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

§ 1604.10 Employment policies relating to pregnancy and childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

APPENDIX L

EEOC: GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN

PART 1606—GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN

§ 1606.1 Guidelines on discrimination because of national origin.

(a) The Commission is aware of the widespread practices of discrimination on the basis of national origin, and intends to apply the full force of law to eliminate such discrimination. The bona fide occupational qualification exception as it pertains to national origin cases shall be strictly construed.

(b) Title VII is intended to eliminate covert as well as the overt practices of discrimination, and the Commission will, therefore, examine with particular concern cases where persons within the jurisdiction of the Commission have been denied equal employment opportunity for reasons which are grounded in national origin considerations. Examples of cases of this character which have come to the attention of the Commission include: The use of tests in the English language where the individual tested came from circumstances where English was not that person's first language or mother tongue, and where English language skill is not a requirement of the work to be performed; denial of equal opportunity to persons married to or associated with persons of a specific national origin; denial of equal opportunity because of membership in lawful organizations identified with or seeking to promote the interests of national groups; denial of equal opportunity because of attendance at schools or churches commonly utilized by persons of a given national origin; denial of equal opportunity because their name or that of their spouse reflects a certain national origin, and denial of equal opportunity to persons who as a class of persons tend to fall outside national norms for height and weight where such height and weight specifications are not necessary for the performance of the work involved.

(c) Title VII of the Civil Rights Act of 1964 protects all individuals, both citizen and noncitizens, domiciled or residing in the United States, against discrimination on the basis of race, color, religion, sex, or national origin.

(d) Because discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in this country may not be discriminated against on the basis of his citizenship, except that it is not an unlawful employment practice for an employer, pursuant to section 703(g), to refuse to employ any person who does not fulfill the requirements imposed in the interests of national security pursuant to any statute of the United States or any Executive order of the President respecting the particular position or the particular premises in question.

(e) In addition, some States have enacted laws prohibiting the employment of noncitizens. For the reasons stated above such laws are in conflict with and are, therefore, superseded by Title VII of the Civil Rights Act of 1964.

(Sec. 713(a), 78 Stat. 265; 42 U.S.C. 2000e–12)
[35 F.R. 421, Jan. 13, 1970]

APPENDIX M

OFCC: SECTIONS OF REVISED ORDER NO. 4 REFERENCED IN LEAA'S EQUAL EMPLOYMENT OPPORTUNITY GUIDELINES

§ 60–2.20 Development or reaffirmation of the equal employment opportunity policy.

(a) The contractor's policy statement should indicate the chief executive officers' attitude on the subject matter, assign overall responsibility and provide for a reporting and monitoring procedure. Specific items to be mentioned should include, but not limited to:

(1) Recruit, hire, train, and promote persons in all job classifications, without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. (The term "bona fide occupational qualification" has been construed very narrowly under the Civil Rights Act of 1964 Under Executive Order 11246 as amended and this part, this term will be construed in the same manner.)

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.

(4) Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin.

§ 60–2.21 Dissemination of the policy.

(a) The contractor should disseminate his policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions, etc., of minority and female employees, in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, employee handbooks or similar publications both minority and nonminority, men and women should be pictured.

(11) Communicate to employees the existence of the contractors affirmative action program and make available such elements of his program as will enable

such employees to know of and avail themselves of its benefits.

(b) The contractor should disseminate his policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

(2) Incorporate the Equal Opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority and women's organizations, community agencies, community leaders, secondary schools and colleges, of company policy, preferably in writing.

(4) Communicate to prospective employees the existence of the contractor's affirmative action program and make available such elements of his program as will enable such prospective employees to know of and avail themselves of its benefits.

(5) When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women should be shown.

(6) Send written notification of company policy to all subcontractors, vendors and suppliers requesting appropriate action on their part.

§ 60–2.22 Responsibility for implementation.

(a) An executive of the contractor should be appointed as director or manager of company Equal Opportunity Programs. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. He or she should be given the necessary top management support and staffing to execute the assignment. His or her identity should appear on all internal and external communications on the company's Equal Opportunity Programs. His or her responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies.

(6) Serve as liaison between the contractor and minority organizations, women's organizations and community action groups concerned with employment opportunities of minorities and women.

(7) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to, the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations, women's organizations, community action groups and community service programs.

(3) Periodic audit of training programs, hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure that minorities and women are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in area such as:

(i) Posters are properly displayed.

(ii) All facilities, including company housing, which the contractor maintains for the use and benefit of his employees, are in fact desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms and rest rooms, they must be comparable for both sexes.

(iii) Minority and female employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational and social activities.

(8) Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

(9) It shall be a responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

§ 60–2.23 Identification of problem areas by organizational units and job classifications.

(a) An in-depth analysis of the following should be made, paying particular attention to trainees and those categories listed in § 60–2.11(d).

(1) Composition of the work force by minority group status and sex.

(2) Composition of applicant flow by minority group status and sex.

(3) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities or women in specific work classifications.

(2) Lateral and/or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees.

(3) The selection process eliminates a significantly higher percentage of minorities or women than nonminorities or men.

(4) Application and related preemployment forms not in compliance with Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Tests and other selection techniques not validated as required by the OFCC Order on Employee Testing and other Selection Procedures.

(7) Test forms not validated by location, work performance and inclusion of minorities and women in sample.

(8) Referral ratio of minorities or women to the hiring supervisor or manager indicates a significantly higher percentage are being rejected as compared to nonminority and male applicants.

(9) Minorities or women are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a disparity by minority group status or sex exists between length of service and types of job held.

(12) Nonsupport of company policy by managers, supervisors or employees.

(13) Minorities or women underutilized or significantly underrepresented in training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities.

(16) Lack of suitable transportation (public or private) to the work place inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

§ 60–2.24 Development and execution of programs.

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate worker specifications by division, department, location or other organizational unit and by job category using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job classification in all locations and should be free from bias as regards to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women such requirements should be professionally validated to job performance.

(c) Approved position descriptions and worker specifications, when used by

the contractor, should be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies should also be distributed to all recruiting sources.

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to insure elimination of bias in all personnel actions.

(2) The contractor shall observe the requirements of the OFCC Order pertaining to the validation of employee tests and other selection procedures.

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include but are not restricted to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where there exist data suggesting that such unfair discrimination or exclusion of minorities or women exists, the contractor should analyze his unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority or female applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment Programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, Welfare Rights Organizations, Women's Equity Action League, Talent Bank from Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro Women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish Women's Groups, Catholic Women's Groups and Protestant Women's Groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, followup with sources, and feedback on disposition of applicants.

(3) Minority and female employees, using procedures similar to subparagraph (2) of this paragraph, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities and women on the Personnel Relations staff.

(5) Minority and female employees should be made available for participation in Career Days, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representatives so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

(8) Recruiting efforts at all schools should incorporate special efforts to reach minorities and women.

(9) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical co-op programs with predominately Negro and women's colleges.

(ii) "After school" and/or work-study jobs for minority youths, male and females.

(iii) Summer jobs for underprivileged youth, male and female.

(iv) Summer work-study programs for male and female faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hard-core unemployed, male and female.

(10) When recruiting brochures pictorially present work situations, the minority and female members of the work force should be included, especially when such brochures are used in school and career programs.

(11) Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

(f) The contractor should insure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) Post or otherwise announce promotional opportunities.

(2) Make an inventory of current minority and female employees to determine academic, skill and experience level of individual employees.

(3) Initiate necessary remedial, job training and workstudy programs.

(4) Develop and implement formal employee evaluation programs.

(5) Make certain "worker specifications" have been validated on job performance related criteria. (Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.)

(6) When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

(7) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system and similar programs.

(8) Review seniority practices and seniority clauses in union contracts to insure such practices or clauses are nondiscriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

(h) Encourage child care, housing and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

§ 60–2.25 Internal audit and reporting systems.

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to insure nondiscriminatory policy is carried out.

(b) The contractor should require formal reports from unit managers on a schedule basis as to degree to which corporate or unit goals are attained and timetables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60–2.26 Support of action programs.

(a) The contractor should appoint key members of management to serve on Merit Employment Councils, Community Relations Boards and similar organizations.

(b) The contractor should encourage minority and female employees to participate actively in National Alliance of Businessmen programs for youth motivation.

(c) The contractor should support Vocational Guidance Institutes, Vestibule Training Programs and similar activities.

(d) The contractor should assist secondary schools and colleges in programs designed to enable minority and female graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority and female employees in local and minority news media.

(f) The contractor should support programs developed by such organizations as National Alliance of Businessmen, the Urban Coalition and other organizations concerned with employment opportunities for minorities or women.

Subpart D—Miscellaneous

§ 60–2.30 Use of goals.

The purpose of a contractor's establishment and use of goals is to insure that he meet his affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin.

§ 60–2.31 Preemption.

To the extent that any State or local laws, regulations or ordinances, including those which grant special benefits to persons on account of sex, are in conflict with Executive Order 11246, as amended, or with the requirements of this part, we will regard them as preempted under the Executive order.

APPENDIX N

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT ASSISTANCE
ADMINISTRATION

Instruction

I 7330.1

July 19, 1974

EQUAL EMPLOYMENT OPPORTUNITY - GOALS AND TIMETABLES
Subject: UNDER SECTION 518(b) OF THE CRIME CONTROL ACT OF 1973

1. PURPOSE. The purpose of this instruction is to set forth methods by which LEAA may lawfully measure, by the application of numerical standards, progress of a recipient of LEAA funds in overcoming the effects of past discrimination.

2. SCOPE. This instruction is of interest to all LEAA regional offices and SPA's.

3. INFORMATION.

   a. On March 23, 1973, the attached memorandum signed by the administrative heads of the U.S. Civil Service Commission, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, and the Civil Rights Division, was issued. This memorandum details a permissible method of overcoming the effects of past discrimination through the use of numerical standards to measure more adequate utilization of persons represented in the minority and female workforce.

   b. Using this approach, suggested in the March 23, 1973, memorandum, the agency, against which a finding of discrimination is made, is required to establish realistic numerical goals for the employment of minorities and females into specific crafts and trades, and, further, to establish realistic timetables within which these goals are sought to be reached.

   c. Unlike the case where a quota is imposed, but not reached, a failure to meet a specific goal within the established time frame may be explained. For instance, an agency might show that it conducted a vigorous recruitment drive which failed to reach the goal desired. It may also be able to establish that the goal as originally imposed was unrealistic, given the available minority or female workforce.

Distribution: Central & Regional Office Heads
Division Directors
(SPA's, info only)

Initiated By: Office of Civil Rights Compliance

   d. The legal issue considered in this instruction is the right of LEAA, either as a matter of voluntary compliance, or as the result of a judicial or administrative ruling on the issue of discriminatory hiring and promotional practices, to seek the imposition of goals and timetables. The specific legal question discussed in this instruction is the consistency of 518(b) of the Crime Control Act of 1973 with the "goals and timetables" approach of the March 23 memorandum.

   e. A subsidiary question relates to the meaning of a "finding" of discrimination necessary to predicate the imposition of "goals and timetables" to overcome the effects of past discrimination.

   f. Section 518(b) of the Crime Control Act of 1973 provides:

   Notwithstanding any other provision of law nothing contained in this chapter shall be construed to authorize the Administration (1) to require, or condition the availability or amount of a grant upon, the adoption by an applicant or grantee under this chapter of a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance in any law enforcement agency, or (2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this chapter to adopt such a ratio, system, or other program.

4. FINDINGS. LEAA finds that the March 23 memorandum and 518(b) are consistent. In seeking to remedy the effects of discrimination either through judicial or administrative processes LEAA may appropriately follow the guidelines set forth in the March 23 memorandum and not run counter to 518(b). In LEAA's view the setting of goals as contemplated by the March 23 memorandum specifically does not involve the adoption of a "quota system" or a percentage ratio system prohibited by Section 518(b) for the reasons set forth in that memorandum. Further, Section 518(b) involves situations where racial balance is sought, not circumstances where there have been discriminatory and unlawful practices.

5. CONCLUSIONS.

a. The imposition of "goals and timetables" approach as outlined in the March 23, 1973, memorandum represents a permissible method of overcoming the effects of past discrimination found to exist within the hiring and promotional practices of a recipient LEAA agency, and that the imposition of "goals and timetables" is consistent with 518(b) of the Crime Control Act of 1973.

b. LEAA may seek, in an effort to overcome the effects of past discrimination believed to exist in the employment practices of a recipient agency, the imposition of "goals and timetables", in order to achieve voluntary compliance with the civil rights laws, statutes, and regulations, affecting LEAA's operations.

Charles R. Work

CHARLES R. WORK
Deputy Administrator
for Administration

March 23, 1973

MEMORANDUM FOR

U.S. Attorneys
Field Representatives of the Civil Service Commission
Field Representatives of the Equal Employment Opportunity Commission
Field Representatives of the Office of Federal Contract Compliance

SUBJECT: Federal Policy on Remedies Concerning Equal Employment Opportunity in State and Local Government Personnel Systems

Under a number of statutes and an Executive Order, the Equal Employment Opportunity Commission, the Department of Justice, the Civil Service Commission and the Department of Labor's Office of Federal Contract Compliance have similar and related responsibilities for working with State and local governments in ensuring that their various personnel systems are free from discrimination on the basis of race, color, national origin, religion or sex.

Questions often arise of remedies to be employed in cases where there has been a finding of unlawful discrimination.

Since it is important that State and local governments have the benefit of a consistent set of federal standards and requirements, these four agencies have jointly developed a statement of policy by which to guide themselves and their personnel in dealing with State and local governments on this matter. The points contained in the attached memorandum

are consistent with the President's announced views and each of the signatories is of the view that they are consistent with the previous policies of his agency.

Differences of view may still arise with respect to the interpretation of parts of this position statement; in such cases we will expect federal field representatives to discuss them with each other and with us if necessary in order to continue to resolve any issues through dialogue and coordination.

The Hon. Leonard Garment, Special Consultant to the President, recently gave an address on this subject in Washington and we are also appending the text of his remarks.

We are sending information copies of this memorandum and its attachments to State and Local Governments and to the State Fair Employment Commissions.

Robert Hampton, Chairman,
U.S. Civil Service Commission

Stanley Pottinger, Assistant Attorney General

William Brown, Chairman, Equal Employment Opportunity Commission

Philip Davis, Acting Director
OFCC

MEMORANDUM -- PERMISSIBLE GOALS AND TIMETABLES IN STATE AND LOCAL GOVERNMENT EMPLOYMENT PRACTICES

This Administration has, since September 1969, recognized that goals and timetables are in appropriate circumstances a proper means for helping to implement the nation's commitments to equal employment opportunities through affirmative action programs. On the other hand, the concepts of quotas and preferential treatment based on race, color, national origin, religion and sex are contrary to the principles of our laws, and have been expressly rejected by this Administration.

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, conferred on the Justice Department and the Equal Employment Opportunity Commission enforcement responsibilities for eliminating discriminatory employment practices based upon race, color, national origin, religion, and sex by state and local government employers as set forth in that Act. In addition, under the Intergovernmental Personnel Act and the merit standards statutes, the Civil Service Commission has an obligation to attempt to move state and local governments toward personnel practices which operate on a merit basis. The Department of Labor and other Executive Branch agencies have responsibilities in the area of equal employment opportunities as it affects state and local government employers. This memorandum addresses the question of how the agencies in the Executive Branch (e.g., CSC, EEOC, Justice, Labor and other Federal agencies having equal employment opportunity responsibilities) should act to implement the distinction between proper goals and timetables on the one hand, and impermissible quotas and preferences on the other, with due regard for

the merit selection principles which many state and local governments are obliged to follow, and which some state and local government employers do not properly follow with regard to equal employment opportunities.

All of the agencies agree that there is no conflict between a true merit selection system and equal employment opportunities laws -- because each requires nondiscrimination in selection, hiring, promotion, transfer and layoff, and each requires that such decisions be based upon the person's ability and merit, not on the basis of race, color, national origin, religion or sex. The problems arise when an employer pays only lip service to the concept of merit selection, but in fact follows employment practices which discriminate on the basis of race, color, etc.

All of the agencies recognize that goals and timetables are appropriate as a device to help measure progress in remedying discrimination. All agencies recognize that where an individual person has been found to be the victim of an unlawful employment practice as defined in the Act he or she should be given "priority consideration" for the next expected vacancy, regardless of his relative "ability ranking" at the time the new hire is made -- this because absent the act of discrimination, he or she would be on the job. All agencies also recognize that it may be appropriate for a court to order an employer to make a good faith, nondiscriminatory effort to meet goals and timetables where a pattern of discriminatory employment practices has been found.

All agencies recognize the basic distinctions between permissible goals on the one hand and impermissible quotas on the other. Quota systems in the past

have been used in other contexts as a quantified limitation, the purpose of which is exclusion, but this is not its sole definition. A quota system, applied in the employment context, would impose a fixed number or percentage which must be attained, or which cannot be exceeded; the crucial consideration would be whether the mandatory numbers of persons have been hired or promoted. Under such a quota system, that number would be fixed to reflect the population in the area, or some other numerical base, regardless of the number of potential applicants who meet necessary qualifications. If the employer failed, he would be subject to sanction. It would be no defense that the quota may have been unrealistic to start with, that he had insufficient vacancies, or that there were not enough qualified applicants, although he tried in good faith to obtain them through appropriate recruitment methods.

Any system which requires that considerations of relative abilities and qualifications be subordinated to considerations of race, religion, sex or national origin in determining who is to be hired, promoted, etc., in order to achieve a certain numerical position has the attributes of a quota system which is deemed to be impermissible under the standards set forth herein.

A goal, on the other hand, is a numerical objective, fixed realistically in terms of the number of vacancies expected, and the number of qualified applicants available in the relevant job market. Thus, if through no fault of the employer, he has fewer vacancies than expected, he is not subject to sanction, because he is not expected to displace existing employees or to hire unneeded employees to meet his goal. Similarly, if he has demonstrated every good faith effort to include persons from the group which was the object of discrimination into the group being considered

for selection, but has been unable to do so in sufficient numbers to meet his goal, he is not subject to sanction.

Under a system of goals, therefore, an employer is never required to hire a person who does not have qualifications needed to perform the job successfully; and an employer is never required to hire such an unqualified person in preference to another applicant who is qualified; nor is an employer required to hire a less qualified person in preference to a better qualified person, provided that the qualifications used to make such relative judgments realistically measure the person's ability to do the job in question, or other jobs to which he is likely to progress. The terms "less qualified" and "better qualified" as used in this memorandum are not intended to distinguish among persons who are substantially equally well qualified in terms of being able to perform the job successfully. Unlike quotas, therefore, which may call for a preference for the unqualified over the qualified, or of the less qualified over the better qualified to meet the numerical requirement, a goal recognizes that persons are to be judged on individual ability, and therefore is consistent with the principles of merit hiring.

In some job classifications, in which the newly hired person learns on the job the skills required, and where there is no extensive education, experience or training required as prerequisite to successful job performance, many applicants will possess the necessary basic qualifications to perform the job. While determinations of relative ability should be made to accord with required merit principles, where there has been a history of unlawful discrimination, if goals are set on the basis of expected vacancies and anticipated availability of skills in the market place, an employer should be expected to meet the goals if there is an adequate pool of qualified applicants from the discriminated against group from which

to make selections; and if the employer does not meet the goal, he has the obligation to justify his failure.

Similarly, where an employer has purported to follow merit principles, but has utilized selection procedures which are in fact discriminatory and have not been shown validly to measure or to predict job success (see, Griggs v. Duke Power Co., 401 U.S. 424), there frequently is no valid basis presently available for ranking applicants objectively in order of the probabilities of success on the job. In such circumstances, all agencies agree that a public employer will be expected to devise or borrow a selection procedure which is as objective as possible and is likely to be proved valid and is not likely to perpetuate the effects of past discrimination; and to meet those goals which have been set on a vacancy basis. The selection procedure should be as objective and job related as possible, but until it has been shown to be valid for that specific purpose, it must be recognized that rank ordering does not necessarily indicate who will in fact do better on the job. Accordingly, if the goal is not being met because of the interim selection procedure, the procedure and other aspects of the affirmative action program may have to be revised. All agencies agree that use of such goals does not and should not require an employer to select on the basis of race, national origin, or sex a less qualified person over a person who is better qualified by objective and valid procedures. Where such procedures are not being utilized, valid selection procedures to determine who will in fact do better on the job should be established as soon as feasible in accordance with the principles set forth in paragraphs 2 and 5 below.

With the foregoing in mind, the agencies agree that the following principles should be followed:

1. Whenever it is appropriate to establish goals, the goals and timetables should take into account anticipated vacancies and the availability of skills in the market place from which employees should be drawn. In addition, where unlawful discrimination by the employer has been established, the corrective action program, including the recruiting and advertising obligations and the short range hiring goals, should also take into account the need to correct the present effects of the employer's past discriminatory practices.

2. The goals should be reached through such recruiting and advertising efforts as are necessary and appropriate, and the selection of persons only from amongst those who are qualified. A goal, unlike a quota, does not require the hiring of persons when there are no vacancies, nor does it require the hiring of a person who is less likely to do well on the job ("less qualified") over a person more likely to do well on the job ("better qualified"), under valid selection procedures. When the standards for determining qualifications are invalid and not predictive of job success, valid selection procedures should be developed as soon as feasible. Where an employer has followed exclusionary practices, however, and has made little or no progress in eliminating the effects of its past discriminatory practices, the selection standards it proposes to utilize in determining who is "qualified," or "better qualified" will be examined with care to assure that they are in fact valid for such purposes and do not perpetuate the effects of the employer's past discrimination (i.e., which have as little discriminatory impact as

possible under the circumstances) and do not raise artificial or unnecessary barriers.

3. In no event does a goal require that an employer must in all circumstances hire a specified number of persons, because such a goal would in fact be a quota. It is, however, appropriate to ask a court to impose goals and timetables, including hiring goals, on an employer who has engaged in racial or ethnic exclusion, or other unconstitutional or unlawful employment practices. The goals we seek in court, like those accepted voluntarily by employers, are subject to the limitations set forth in this memorandum.

4. As a general matter, relief should be provided to those persons who have been adversely affected as a consequence of the employer's unlawfully discriminatory practices. All agencies will continue to seek insofar as feasible to have persons who can show that they were injured by such practices restored to the position they would be in but for the unlawful conduct. In addition, all agencies will seek to have those persons who have been excluded from consideration or employment because of such discriminatory practices allowed to compete for future vacancies on the basis of qualifications and standards no more severe than those utilized by the employer in selecting from the advantaged groups, unless the increased standards are required by business necessity. Such relief will be sought to prevent the erection of unnecessary barriers to equal employment opportunities. Such relief will not preclude a public employer from adopting merit standards; nor will it preclude such an employer who has previously used invalid selection standards or procedures from developing and using valid, job related selection standards and procedures as contemplated by paragraphs 2 and 5 of this memorandum.

5. Where an employer has utilized a selection device which is itself unlawfully discriminatory, relief should be sought to prohibit the use of that and similar selection devices (i.e., devices which measure the same kinds of things) together with the development of an appropriate affirmative action plan which may include goals and timetables in accord with the principles set forth in this paper. In addition, we will ask the courts to permit the employer to select (or develop) and validate a job related selection procedure which will facilitate selections on the basis of relative ability to do the job. The speed with which such new selection devices can and should be developed and validated depends upon the facts and circumstances of each case.

Agencies with equal employment opportunity responsibilities should take actions in accordance with the principles outlined in this memorandum in order to assure a coordinated approach within the Executive Branch to eliminate discriminatory employment practices and their consequences.

APPENDIX O

401 U.S. 424

Willie S. GRIGGS et al., Petitioners,

v.

DUKE POWER COMPANY.

No. 124.

Argued Dec. 14, 1970.

Decided March 8, 1971.

Class action by Negro employees against employer alleging that employment practices violated Civil Rights Act. The United States District Court for the Middle District of North Carolina, at Greensboro, 292 F.Supp. 243, dismissed complaint, and plaintiffs appealed. The Court of Appeals, 420 F.2d 1225, affirmed in part, reversed in part, and remanded, holding that in absence of a discriminatory purpose, requirement of high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs was permitted by the Civil Rights Act, and rejecting claim that because such requirements operated to render ineligible a markedly disproportionate number of Negroes, they were unlawful under the Act unless shown to be job-related. Certiorari was granted. The Supreme Court, Mr. Chief Justice Burger, held that employer was prohibited by provisions of Act pertaining to employment opportunities from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs, where neither standard was shown to be significantly related to successful job performance, both requirements operated to disqualify Negroes at a substantially higher rate than white applicants, and jobs in question formerly had been filled only by white employees as part of a long-standing practice of giving preference to whites.

Reversed.

Mr. Justice Brennan took no part in consideration or decision of case.

1. Civil Rights ⇐2

Objective of Congress in enacting provisions of Civil Rights Act pertaining to employment opportunities was to achieve equality of employment opportunities and remove barriers that operated in the past to favor an identifiable group of white employees over other employees. Civil Rights Act of 1964, §§ 701 et seq., 703(a) (2), (h), 42 U.S.C.A. §§ 2000e et seq., 2000e–2 (a) (2), (h).

2. Civil Rights ⇦1

Under provisions of Civil Rights Act pertaining to employment opportunities, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices. Civil Rights Act of 1964, §§ 701 et seq., 703(a) (2), (h), 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a) (2), (h).

3. Civil Rights ⇦2

Congress did not intend by provisions of Civil Rights Act pertaining to employment opportunities to guarantee a job to every person regardless of qualifications; the Act does not command that any person be hired simply because he was formerly subject of discrimination, or because he is a member of a minority group; discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed; what is required by Congress is removal of artificial, arbitrary, and unnecessary barriers to employment when barriers operate invidiously to discriminate on basis of race or other impermissible classification. Civil Rights Act of 1964, §§ 701 et seq., 703(a) (2), (h), 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a) (2), (h).

4. Civil Rights ⇦1

Provisions of Civil Rights Act pertaining to employment opportunities proscribe not only overt discrimination but also practices that are fair in form, but discriminatory in operation. Civil Rights Act of 1964, §§ 701 et seq., 703 (a) (2), (h), 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a) (2), (h).

5. Civil Rights ⇦1

If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited by provisions of Civil Rights Act pertaining to employment opportunities. Civil Rights Act of 1964, §§ 701 et seq., 703(a) (2), (h), 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a) (2), (h).

6. Civil Rights ⇦1

Good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability. Civil Rights Act of 1964, §§ 701 et seq., 703(a) (2), (h), 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a) (2), (h).

7. Statutes ⇦219

Administrative interpretation of Civil Rights Act by enforcing agency is entitled to great deference. Civil Rights Act of 1964, §§ 701 et seq., 703(a) (2), (h), 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a) (2), (h).

8. Civil Rights ⇦2

Equal Employment Opportunity Commission's construction of section of Civil Rights Act authorizing use of any professionally developed ability test that is not designed, intended, or used to discriminate because of race to require that employment tests be job-related comports with congressional intent. Civil Rights Act of 1964, § 703(h), 42 U.S.C.A. § 2000e-2(h).

9. Civil Rights ⇦1

Employer was prohibited, by provisions of Civil Rights Act pertaining to employment opportunities, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs, where neither standard was shown to be significantly related to successful job performance, both requirements operated to disqualify Negroes at a substantially higher rate than white applicants, and the jobs in question formerly had been filled only by white employees as part of a long-standing practice of giving preference to whites. Civil Rights Act of 1964, §§ 701 et seq., 703(a) (2), (h), 42 U.S.C.A. §§ 2000e et seq., 2000e-2(a) (2), (h).

Jack Greenberg, New York City, for petitioners.

George W. Ferguson, Jr., for respondent.

Lawrence M. Cohen for the Chamber of Commerce of the United States, as amicus curiae.

Mr. Chief Justice BURGER delivered the opinion of the Court.

We granted the writ in this case to resolve the question whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a 1126 standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving preference to whites.[1]

Congress provided, in Title VII of the Civil Rights Act of 1964, for class actions for enforcement of provisions of the Act and this proceeding was brought by a group of incumbent Negro employees against Duke Power Company. All the petitioners are employed at the Company's Dan River Steam Station, a power generating facility located at Draper, North Carolina. At the time this action was instituted, the Company had 95 employees at the Dan River Station, 14 of whom were Negroes; 13 of these are petitioners here.

The District Court found that prior to July 2, 1965, the effective date of the Civil Rights Act of 1964, the Company openly discriminated on the basis 1127 of race in the hiring and assigning of employees at its Dan River plant. The plant was organized into five operating departments: (1) Labor, (2) Coal Handling, (3) Operations, (4) Maintenance, and (5) Laboratory and Test. Negroes were employed only in the Labor Department where the highest paying jobs paid less than the lowest paying jobs in the other four "operating" departments in which only whites were employed.[2] Promotions were normally made within each department on the basis of job seniority. Transferees into a department usually began in the lowest position.

In 1955 the Company instituted a policy of requiring a high school education for initial assignment to any department except Labor, and for transfer from the Coal Handling to any "inside" department (Operations, Maintenance, or Laboratory). When the Company abandoned its policy of restricting Negroes to the Labor Department in 1965, completion of high school also was made a prerequisite to transfer from Labor to any other department. From the time the high school requirement was instituted to the time of trial, however, white employees hired before the time of the high school education requirement continued to perform satisfactorily and achieve promotions in the "operating"

1. The Act provides:

"Sec. 703. (a) It shall be an unlawful employment practice for an employer—

* * * * *

"(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

* * * * *

"(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer * * * to give and to act upon the results 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 because of race, color, religion, sex or national origin. * *" 78 Stat. 255, 42 U.S.C. § 2000e-2.

2. A Negro was first assigned to a job in an operating department in August 1966, five months after charges had been filed with the Equal Employment Opportunity Commission. The employee, a high school graduate who had begun in the Labor Department in 1953, was promoted to a job in the Coal Handling Department.

departments. Findings on this score are not challenged.

The Company added a further requirement for new employees on July 2, 1965, the date on which Title VII became effective. To qualify for placement in any but the Labor Department it became necessary to register satisfactory scores on
[428] two professionally prepared aptitude tests, as well as to have a high school education. Completion of high school alone continued to render employees eligible for transfer to the four desirable departments from which Negroes had been excluded if the incumbent had been employed prior to the time of the new requirement. In September 1965 the Company began to permit incumbent employees who lacked a high school education to qualify for transfer from Labor or Coal Handling to an "inside" job by passing two tests—the Wonderlic Personnel Test, which purports to measure general intelligence, and the Bennett Mechanical Comprehension Test. Neither was directed or intended to measure the ability to learn to perform a particular job or category of jobs. The requisite scores used for both initial hiring and transfer approximated the national median for high school graduates.[3]

The District Court had found that while the Company previously followed a policy of overt racial discrimination in a period prior to the Act, such conduct had ceased. The District Court also concluded that Title VII was intended to be prospective only and, consequently, the impact of prior inequities was beyond the reach of corrective action authorized by the Act.

The Court of Appeals was confronted with a question of first impression, as are we, concerning the meaning of Title VII. After careful analysis a majority of that court concluded that a subjective test of the employer's intent should govern, particularly in a close case, and that in this case there was no showing of a discriminatory purpose in the adoption of the diploma and test requirements. On this basis, the Court of Appeals concluded there was no violation of the Act.

[429] The Court of Appeals reversed the District Court in part, rejecting the holding that residual discrimination arising from prior employment practices was insulated from remedial action.[4] The Court of Appeals noted, however, that the District Court was correct in its conclusion that there was no showing of a racial purpose or invidious intent in the adoption of the high school diploma requirement or general intelligence test and that these standards had been applied fairly to whites and Negroes alike. It held that, in the absence of a discriminatory purpose, use of such requirements was permitted by the Act. In so doing, the Court of Appeals rejected the claim that because these two requirements operated to render ineligible a markedly disproportionate number of Negroes, they were unlawful under Title VII unless shown to be job related.[5] We granted the writ on these claims. 399 U.S. 926, 90 S.Ct. 2238, 26 L.Ed.2d 791.

[1, 2] The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have
[430] operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices.

[3] The Court of Appeals' opinion, and the partial dissent, agreed that, on the record in the present case, "whites register far better on the Company's alternative requirements" than Negroes.[6] 420 F.2d 1225, 1239 n. 6. This consequence would appear to be directly traceable to race. Basic intelligence must have the means of articulation to manifest itself fairly in a testing process. Because they are Negroes, petitioners have long received inferior education in segregated schools and this Court expressly recognized these differences in Gaston County v. United States, 395 U.S. 285, 89 S.Ct. 1720, 23 L.Ed.2d 309 (1969). There, because of the inferior education received by Negroes in North Carolina, this Court barred the institution of a literacy test for voter registration on the ground that the test would abridge the right to vote indirectly on account of race. Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act
[431] does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.

[4, 5] Congress has now provided that tests or criteria for employment or promotion may not provide equality of opportunity merely in the sense of the fabled offer of milk to the stork and the fox. On the contrary, Congress has now required that the posture and condition of the job-seeker be taken into account. It has—to resort again to the fable—provided that the vessel in which the milk is proffered be one all seekers can use. The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.

On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the jobs for which it was used. Both were adopted, as the Court of Appeals noted, without meaningful study of their relationship to job-performance ability. Rather, a vice president of the Company testified, the requirements were instituted on the Company's judgment that they generally would improve the overall quality of the work force.

3. The test standards are thus more stringent than the high school requirement, since they would screen out approximately half of all high school graduates.

4. The Court of Appeals ruled that Negroes employed in the Labor Department at a time when there was no high school or test requirement for entrance into the higher paying departments could not now be made subject to those requirements, since whites hired contemporaneously into those departments were never subject to them. The Court of Appeals also required that the seniority rights of those Negroes be measured on a plantwide, rather than a departmental, basis. However, the Court of Appeals denied relief to the Negro employees without a high school education or its equivalent who were hired into the Labor Department after institution of the educational requirement.

5. One member of that court disagreed with this aspect of the decision, maintaining, as do the petitioners in this Court, that Title VII prohibits the use of employment criteria that operate in a racially exclusionary fashion and do not measure skills or abilities necessary to performance of the jobs for which those criteria are used.

6. In North Carolina, 1960 census statistics show that, while 34% of white males had completed high school, only 12% of Negro males had done so. U. S. Bureau of the Census, U. S. Census of Population: 1960, Vol. 1, Characteristics of the Population, pt. 35, Table 47.

Similarly, with respect to standardized tests, the EEOC in one case found that use of a battery of tests, including the Wonderlic and Bennett tests used by the Company in the instant case, resulted in 58% of whites passing the tests, as compared with only 6% of the blacks. Decision of EEOC, CCH Empl.Prac. Guide, ¶ 17,304.53 (Dec. 2, 1966). See also Decision of EEOC 70-552, CCH Empl. Prac. Guide, ¶ 6139 (Feb. 19, 1970).

The evidence, however, shows that employees who have not completed high school or taken the tests have continued to perform satisfactorily and make progress in departments for which the high school and test criteria are now used.[7] The promotion record of present employees who would not be able to meet the new criteria thus suggests the possibility that the requirements may not be needed even for the limited purpose of preserving the avowed policy of advancement within the Company. In the context of this case, it is unnecessary to reach the question whether testing requirements that take into account capability for the next succeeding position or related future promotion might be utilized upon a showing that such long-range requirements fulfill a genuine business need. In the present case the Company has made no such showing.

[6] The Court of Appeals held that the Company had adopted the diploma and test requirements without any "intention to discriminate against Negro employees." 420 F.2d, at 1232. We do not suggest that either the District Court or the Court of Appeals erred in examining the employer's intent; but good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability.

The Company's lack of discriminatory intent is suggested by special efforts to help the undereducated employees through Company financing of two-thirds the cost of tuition for high school training. But Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation. More than that, Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question.

The facts of this case demonstrate the 431
inadequacy of broad and general testing devices as well as the infirmity of using diplomas or degrees as fixed measures of capability. History is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees. Diplomas and tests are useful servants, but Congress has mandated the commonsense proposition that they are not to become masters of reality.

The Company contends that its general intelligence tests are specifically permitted by § 703(h) of the Act.[8] That section authorizes the use of "any professionally developed ability test" that is not "designed, intended *or used* to discriminate because of race * * *." (Emphasis added.)

[7] The Equal Employment Opportunity Commission, having enforcement responsibility, has issued guidelines interpreting § 703(h) to permit only the use of job-related tests.[9] The administrative interpretation of the Act by the enforcing agency is entitled to great deference. See, *e. g.*, United States v. City of Chicago, 400 U.S. 8, 91 S.Ct. 18, 27 L.Ed.2d 9 (1970); Udall v. Tallman, 380 U.S. 1, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965); Power Reactor Development Co. v. Electricians, 367 U.S. 396, 81 S.Ct. 1529, 6 L.Ed.2d 924 (1961). Since the Act and its legislative history support the Commission's construction, this affords good reason to treat the guidelines as expressing the will of Congress.

Section 703(h) was not contained in the House version of the Civil Rights Act but was added in the Senate during extended debate. For a period, debate revolved around claims that the bill as proposed would prohibit all testing and force employers to hire unqualified persons simply because they were part of a group formerly subject to job discrimination.[10] Proponents of Title VII sought throughout the debate to assure the critics that the Act would have no effect on job-related tests. Senators Case of New Jersey and Clark of Pennsylvania, comanagers of the bill on the Senate floor, issued a memorandum explaining that the proposed Title VII "expressly protects the employer's right to insist that any prospective applicant, Negro or white, *must meet the applicable job qualifications*. Indeed, the very purpose of title VII is to promote hiring on the basis of job qualifications, rather than on the basis of race or color." 110 Cong.Rec. 7247.[11] (Emphasis added.) Despite these assurances, Sen- 435
ator Tower of Texas introduced an amendment authorizing "professionally developed ability tests." Proponents of Title VII opposed the amendment because, as written, it would permit an employer to give any test, "whether it was a good test or not, so long as it was professionally designed. Discrimination could actually exist under the

7. For example, between July 2, 1965, and November 14, 1966, the percentage of white employees who were promoted but who were not high school graduates was nearly identical to the percentage of non-graduates in the entire white work force.

8. Section 703(h) applies only to tests. It has no applicability to the high school diploma requirement.

9. EEOC Guidelines on Employment Testing Procedures, issued August 24, 1966, provide:

"The Commission accordingly interprets 'professionally developed ability test' to mean a test which fairly measures the knowledge or skills required by the particular job or class of jobs which the applicant seeks, or which fairly affords the employer a chance to measure the applicant's ability to perform a particular job or class of jobs. The fact that a test was prepared by an individual or organization claiming expertise in test preparation does not, without more, justify its use within the meaning of Title VII."

The EEOC position has been elaborated in the new Guidelines on Employee Selection Procedures, 29 CFR § 1607, 35 Fed. Reg. 12333 (Aug. 1, 1970). These guidelines demand that employers using tests have available "data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated." *Id.*, at § 1607.4(c).

10. The congressional discussion was prompted by the decision of a hearing examiner for the Illinois Fair Employment Commission in Myart v. Motorola Co. (The decision is reprinted at 110 Cong.Rec. 5662.) That case suggested that standardized tests on which whites performed better than Negroes could never be used. The decision was taken to mean that such tests could never be justified even if the needs of the business required them. A number of Senators feared that Title VII might produce a similar result. See remarks of Senators Ervin, 110 Cong.Rec. 5614–5616; Smathers, *id.*, at 5999–6000; Holland, *id.*, at 7012–7013; Hill, *id.*, at 8447; Tower, *id.*, at 9024; Talmadge, *id.*, at 9025–9026; Fulbright, *id.*, at 9599–9600; and Ellender, *id.*, at 9600.

11. The Court of Appeals *majority*, in finding no requirement in Title VII that employment tests be job related, relied in part on a quotation from an earlier Clark-Case interpretative memorandum addressed to the question of the constitutionality of Title VII. The Senators said in that memorandum:

"There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer *may set his* qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance." 110 Cong.Rec. 7213.

However, nothing there stated conflicts with the later memorandum dealing specifically with the debate over employer testing, 110 Cong.Rec. 7247 (quoted from in the text above), in which Senators Clark and Case explained that tests which measure "*applicable job qualifications*" are permissible under Title VII. In the earlier memorandum Clark and Case assured the Senate that employers were *not to be prohibited from using* tests that determine *qualifications*. Certainly a reasonable interpretation of what the Senators meant, in light of the subsequent memorandum directed specifically at employer testing, was that nothing in the Act prevents employers from requiring that applicants be fit for the job.

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2 OF 3

guise of compliance with the statute." 110 Cong.Rec. 13504 (remarks of Sen. Case).

[8] The amendment was defeated and two days later Senator Tower offered a substitute amendment which was adopted verbatim and is now the testing provision of § 703(h). Speaking for the supporters of Title VII, Senator Humphrey, who had vigorously opposed the first amendment, endorsed the substitute amendment, stating: "Senators on both sides of the aisle who were deeply interested in title VII have examined
436 the text of this amendment and have found it to be in accord with the intent and purpose of that title." 110 Cong. Rec. 13724. The amendment was then adopted.[12] From the sum of the legislative history relevant in this case, the conclusion is inescapable that the EEOC's construction of § 703(h) to require that employment tests be job related comports with congressional intent.

[9] Nothing in the Act precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract.

12. Senator Tower's original amendment provided in part that a test would be permissible "if * * * in the case of any individual who is seeking employment with such employer, such test is designed to determine or predict whether such individual is suitable or trainable with respect to his employment in the particular business or enterprise involved * * *." 110 Cong.Rec. 13492. This language in-

The judgment of the Court of Appeals is, as to that portion of the judgment appealed from, reversed.

Mr. Justice BRENNAN took no part in the consideration or decision of this case.

APPENDIX P

AN OUTLINE OF SUBSTANTIVE CASE LAW INTERPRETING THE LEGAL AUTHORITIES PROHIBITING EMPLOYMENT DISCRIMINATION

(Prepared by IAOHRA for LEAA Training Conferences)

A. What are the legal consequences of statistical disparity in a public employer's work force?

B. Can an act be considered discriminatory even though the employer did not so intend, or will, or was not motivated by bad faith?

C. Is the employer under a duty of fair recruitment?

D. Under what circumstances are employment practices considered discriminatory?

E. How may an employer demonstrate that there is a valid relationship between the employment practice and successful job performance?

F. What are some of the types of public employment practices that have been ruled discriminatory by the courts and administrative agencies responsible for enforcing laws prohibiting employment discrimination?

G. What are the obligations of a public employer to make job assignments and maintain lines of progression without regard to race, sex, religion, or national origin?

H. What types of practices violate the prohibition not to discriminate in terms and conditions of employment?

I. What types of seniority and promotional systems have been adjudged discriminatory?

J. What are the statutory and judge-made exceptions or defenses to a charge of employment discrimination under Title VII?

K. Have veteran's preference and the so-called "rule of three" been challenged as discriminatory?

L. What remedial steps have been ordered by courts and administrative bodies to eliminate discrimination?

M. What are the limits of the discretion of a federal agency to secure voluntary compliance with Title VI?

N. Are state agencies under any special obligation to ensure non-discrimination?

AN OUTLINE OF SUBSTANTIVE CASE LAW INTERPRETING THE LEGAL AUTHORITIES PROHIBITING EMPLOYMENT DISCRIMINATION

A. What are the legal consequences of statistical disparity in a public employer's work force?

1. A prima facie case of discrimination is created. Morrow v. Crisler, ___ F. Supp. ___ (D. C. Miss. 1971); Chance v. Board of Examiners, 458 F. 2d 1167 (2nd Cir. 1972), aff'g. 330 F. Supp. 203 (S.D. N.Y. 1973); Carter v. Gallagher, 452 F. 2d 315 (8th Cir. 1971) Cert. den'd, 406 U.S. 950 (1972); Western Addition Community Organization v. Alioto, 340 F. Supp. 1351 (N.D. Cal. 1972).

2. A violation of the law is established. NAACP v. Allen, 340 F. Supp. 703 (M.D. Ala. 1972); Parham v. Southwestern Bell Telephone Co., 433 F. 2d 421 (8th Cir. 1970); Rios v. Enterprise Ass'n. Steamfitters, 326 F. Supp. 198 (D.C. N.Y. 1971).

3. It is used as evidence of discrimination and will be weighed along with other facts tending to prove or disprove a violation. Penn v. Stumpf, 308 F. Supp. 1238 (D.C. Cal. 1970); Arrington v. MBTA, 306 F. Supp. 1355 (D. Mass. 1969); Baker v. Columbus Municipal Separate School Dist., 329 F. Supp. 706 (N.D. Miss. 1971), aff'd., 462 F. 2d 276 (5th Cir. 1972); Castro v. Beecher, 334 F. Supp. 930 (D. Mass. 1971), modified, 959 F. 2d 725 (1st Cir. 1972).

B. Can an act be considered discriminatory even though the employer did not so intend, or will, or was not motivated by bad faith?

1. exclude, diminish or otherwise adversely affect the employment opportunities of minority individuals;
2. subject minority individuals to inferior or a diminished number of programs, services, and activities; or
3. make minority employment or participation difficult because of the lack of adequate public transportation or local housing or both.

If the proposed location will produce any of the abovementioned results, the correctional agency "must take steps to secure actual employment of minority individuals" including such steps as ensuring that there is an adequate housing supply available and providing transportation to the facility.

1. Yes. e.g.,
   (a) in Shield Club v. City of Cleveland ___ F. Supp. ___ (N.D. Ohio 1972), even though the Civil Service Commission testified that it attempted to design an unbiased test for police officer applicants, the court ordered the test eliminated because of its discriminatory effect;
   (b) in Holliman v. Price, ___ F. Supp. ___ (E.D. Mich. 1973), the court praised the Civil Service Commission's efforts to validate its patrolman's exam but went on to order the test eliminated because the validation results were inadequate and the test adversely affected minorities;
   (c) in Bridgeport Guardians v. Bridgeport Civil Service Commission, ___ F. 2d ___ (2d Cir. 1973) aff'g. 354 F. Supp. 778 (D.C. Conn. 1973), the circuit court affirmed the lower court's imposition of a hiring goal of 15% black and SSA even though the civil service commission had not intended the discriminatory results of its employment policies;
   (d) the U. S. Supreme Court, in Griggs v. Duke Power Co., 401 U. S. 424 (1971) said:

> "[G]ood intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability."

C. Is the employer under a duty of fair recruitment?

1. A recruitment system which relies on referrals from friends and relatives of present employees is discriminatory if the present work force is predominantly white or male, e.g.,

   (a) in Morrow v. Crisler, supra, the use of such a recruitment system by the Mississippi Highway Safety Patrol was enjoined because it was tainted with nepotism and favoritism to the disadvantage of blacks;

2. Pictorial advertisements used for recruitment purposes must depict members of all races and both sexes in the labor market:

   (a) in Morrow v. Crisler, supra, the use of a film which depicted only white officers was enjoined because it implied that responsible positions were open to whites only;

   (b) in Allen v. City of Mobile, 331 F. Supp. 1134 (S.D. Ala. 1971), aff'd., 466 F. 2d 122 (5th Cir. 1972), the Mobile Police Department was ordered to consult with black leaders to determine the most effective means of generating black applicants and to utilize advertisements depicting both black and white police officers.

D. Under what circumstances are employment practices considered discriminatory?

1. When an employment practice screens out a disproportionate number of members of a protected class and it has not been shown to be related to successful job performance. The U. S. Supreme Court in the most important Title VII case to date said unanimously:

> "If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited." Griggs v. Duke Power Co., supra.

2. Procedurally, once it is determined that an employment practice operated to the disadvantage of a protected class, the burden is shifted to the employer to demonstrate that there is a valid relationship between the qualification or practice and the job. Griggs v. Duke Power Co., supra.; Carter v. Gallagher, supra; Castro v. Beecher, 459 F. 2d 725 (1st Cir. 1972).

E. How many an employer demonstrate that there is a valid relationship between the employment practice and successful job performance?

1. If the employer has validated its employment practices, it has then adequately proven the relationship. Griggs. v. Duke Power Co., supra.

2. The decisions involving public employers which arose out of 42 U.S.C par. 1983, have held, with respect to validation procedures, that:

   (a) professional validation procedures must be followed in order to demonstrate a meaningful relationship between the use of the employment practice and job performance. Pennsylvania v. O'Neill, 348 F. Supp. 1084 (E.D. Pa.), modified en banc, ___ F. 2d ___ 5 EPD par. 8448 (3rd Cir. 1973); Castro v. Beecher, supra; Chance v. Board of Examiners, supra; Bridgeport Guardians v. Bridgeport Civil Service Commission, supra; Holliman v. Price, supra; Morrow v. Crisler, supra.

(b) the validation procedures specifically set forth in EEOC's Guidelines on Employee Selection Procedures must be followed by public employers (and now that public employers are covered by Title VII, this is no longer an issue). Carter v. Gallagher, supra; Fowler v. Schwarzwalder, ___ F. Supp. ___ (D. Minn. 1972); Western Addition Community Organization v. Alioto, supra; Coffey v. Braddy, ___ F. Supp. ___ (M.D. Fla. 1971).

F. What are some of the types of public employment practices that have been ruled discriminatory by the courts and administrative agencies responsible for enforcing laws prohibiting employment discrimination?

1. Written tests, including:

- state civil service commission test administered to all applicants for Boston Police Department, Metropolitan District Commission, Massachusetts, Bay Transportation Authority, Capitol Police and police forces in several other towns and cities of Massachusetts ("On their face the questions seem no better suited to testing ability to perform a policeman's job than would be crossword puzzles.") Castro v. Beecher, supra;

- entry level hiring and promotional exam administered by Philadelphia City Police Department held discriminatory; even though the defendants demonstrated a correlation between test score and successful academic performance in the police training academy, the court held that this does not meet EEOC standards requiring

correlation between test scores and successful on-the-job performance, Pennsylvania v. O'Neill, supra;

- the Otis Quick Scoring Mental Test used by the Mississippi State Highway Patrol, Morrow v. Crisler, supra;

- Public Personnel Association's four-exam series held discriminatory: the court noted that this series is currently used by several hundred jurisdictions and between 15,000 and 20,000 copies are sold annually, Bridgeport Guardians v. Bridgeport Civil Service Commission, supra;

- a qualifying score on the National Teacher's Exam was struck as a requirement for teaching positions because while the exam was designed to measure college training, it was not a predictor of teaching ability or "classroom effectiveness." Baker v. Columbus Municipal Separate School District, supra.

2. Minimum educational requirements, including:

- high school diploma or its equivalency: "History is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees," Griggs v. Duke Power Co. supra;

- a recently instituted requirement that all police officer applicants possess 2 years of college credit was ordered eliminated because it produced an adverse

effect on minorities and a study showed no significant difference in job performance between those officers who had earned the credit and those who had not, Holliman v. Price, supra;

- a G.E.D. or high school diploma is not a necessary requirement for fire fighter applicants but Minneapolis may require that the new hire obtain the educational minimum within 2 years after his/her appointment. Carter v. Gallagher; supra;

- in Castro v. Beecher, however, the appeals court affirmed the finding that the high school diploma requirement of the Boston Police Department was "supported by a meaningful study of its relationship to job performance ability."

3. Arrest and/or Conviction Records:

- arrest and conviction information were 2 of 26 factors considered discriminatory in a general background investigation conducted of police officer applicants by the city of Philadelphia. Pennsylvania v. O'Neill, supra;

- a rejection due to a disorderly conduct arrest and an Army desertion record was ruled illegal by the Illinois Fair Employment Practices Commission because these criteria were not shown to be job-related. Oats v. City of Cairo;

- all fire fighter applicants were required to list their arrest/conviction histories; the court ordered the arrest inquiry eliminated entirely and restricted conviction inquiries to felonies committed within 5 years prior to the date of application, Carter v. Gallagher; supra.

4. Garnishments:

- firing of minority employee ruled illegal because a disproportionately higher number of minorities are subject to garnishment procedures, Johnson v. Pike, 332 F. Supp. 490 (D.C. Calif. 1971);

5. Credit references, stable work record:

- the general background investigation conducted by Philadelphia of all police applicants which was declared illegal included this information, also, Pennsylvania v. O'Neill;

6. Illegitimate children:

- in an advisory opinion the Washington, D. C. Office of Human Rights decided that the fathering of childred out of wedlock as a bar to employment as a police officer had a discriminatory impact on black applicants, Office of Human Rights Opinion No. 1, Sept. 11, 1972;

7. Minimum height-weight requirements:

- a female applicant for the position of Park Police Officer was rejected by the U. S. Civil Service Commission

because she failed to meet the height and weight requirements (between 5'8" and 6'5" and a minimum weight of 145 lbs.). The U. S. Civil Service Commission Board of Appeals and Review ruled that the height/weight requirement was not based on a job analysis and bore no "rational or relevant relationship to successful performance in the position in question." As a result of this decision, the requirement was eliminated for all police functions under the U. S. Civil Service's jurisdiction, including Park Police, U. S. Marshals, Special Agents, U. S. Border Patrol, and FAA Airport Police, In re Shirley Long, November 13, 1972.

- the N. Y. Supreme Court, Appellate Division, in Callery v. NYC Department of Parks & Recreation, 1971, held the minimum height/weight requirements illegal because "the statistics show the standards imposed exclude virtually all women and that those standards serve no job related purpose;" the court cited as authority N. Y. State Division of Human Rights v. N.Y. - Pa. Professional Baseball League, 36 App. Div. 2d 364 (1971), which affirmed a lower court's ruling striking minimum height/weight standards for positions as umpires because they were discriminatory as to females;

- the Iowa Civil Rights Commission recently ordered the Des Moines Police Department to drop its minimum height/weight requirement, Moore v. City of Des Moines Police Department and Civil Service Commission;

- the Waterbury, Connecticut Police Department dropped its height requirement after a public hearing based on a complaint of national origin discrimination filed by a Puerto Rican with the Connecticut Commission on Human Rights and Opportunities, Mendez v. Waterbury Police Dept., FEP-281-3;

- in Castro v. Beecher, the SSA plaintiffs alleged that the Boston Police Department's height requirement is discriminatory on account of national origin, but the court found that plaintiffs had not met their burden of proof because they had failed to offer statistics showing a disparate effect on SSA's;

- a lower state court eliminated the requirement that all Oakland police applicants be male, but retained the height/weight requirement, Hardy v. Stumpf, Cal Super. Ct. (1972);

8. Minimum and maximum age requirement:

the minimum age requirement of 20 was found to affect adversely the recruitment of young blacks and the court ordered it lowered to 18; the maximum age limit of 30 was found to carry forward the effects of prior exclusionary

practices and the court ordered it raised to 35 until such time as a representational number of blacks are hired as fire fighters, Carter v. Gallagher;

9. U. S. Citizenship requirement:

   - the U. S. Supreme Court has declared U. S. citizenship as a requirement for appointment to public employment positions invalid under theEqual Protection clause of the U. S. Constitution; exceptions may be made only with respect to positions involving formulation or review of broad public policy, Sugarman v. Dougall, ___ U.S ___ (1973);

10. Refusal to hire females because*:

   - of marital status, Sprogis v. United Airlines, 444 F. 2d 1194 (7th Cir. 1971);

   - of pre-school age children, Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971);

   - of customer or client preference for males, Diaz v. Pan American Airways, Inc., 442 F. 2d 385 (5th Cir. 1971);

   - some females may not be able to perform the job; the employer has the burden of proving that "all or substantially all women would be unable to perform safely and efficiently the duties of the job involved," Weeks v.

* Case law based on sex discrimination primarily involves private employers because (a) EEOC did not have jurisdiction over public employers until March, 1972 and (b) the Equal Protection Clause of the U. S. Constitution was not conclusively interpreted so as to include females until the U. S. Supreme Court decided, Reed v. Reed 401 U.S. 71 (1971).

Southern Bell Telephone & Telegraph, 408 F. 2d 228 (5th Cir. 1969);

G. What are the obligations of a public employer to make job assignments and maintain lines of progression without regard to race, sex, religion, or national origin?

   1. Black police may not be exclusively assigned to patrol black neighborhoods, Baker v. City of Petersburg, 400 F. 2d 294 (5th Cir. 1968).

   2. All officers must be assigned duties on an integrated basis, including 2-person patrol cars, Allen v. City of Mobile, 331 F. Supp. 1134 (S.D. Ala. 1971), aff'd 466 F. 2d 122 (5th Cir. 1972).

   3. The N.Y.C. and Allen Park, Michigan policies of refusing women the same opportunity for promotion as men because of sex-segregated lines of progression were declared illegal, Shpritzer v. Lang, 234 NY.S. 2nd 285; Michigan Civil Rights Commission v. City of Allen Park, #2734-S, 2735-S, Nov. 23 and 24, 1972.

   4. So-called state "protective laws" are contrary to Title VII and hence invalid under the Supremacy Clause of the U.S. Constitution when they limit equal opportunities for females. Rosenfield v. Southern Pacific 293 F. Supp. 1219 (C.D. Calif. 1968) aff'd. 444 F. 2d 1219 (9th Cir. 1971); Bowe v. Colgate-Palmolive, 416 F. 2d 711 (7th Cir. 1969),

H. What types of practices violate the prohibition not to discriminate in terms and conditions of employment?

1. Unequal application of disciplinary actions and other forms of harassment, Michigan Civil Rights Commission v. Detroit Police Department, #2272-EM, Sept. 27, 1968.

2. Unequal pay for equal work, as in the case of Rouse v. Nebraska Commission on Law Enforcement and Criminal Justice, NEB 71-3-350, dated Oct. 24, 1972, where the Nebraska Equal Opportunity Commission found that a $4,000 per annum pay differential was unwarranted on the basis of different job duties; see also Mize v. N. Y. State Division of Human Rights, NY Sup. Ct. App. Div., 1972,

3. Failure to provide maternity leave to:

   - unwed as well as married women, Doe v. Osteopathic Hospital of Wichita, 333 F. Supp. 1357 (D. Kan. 1971);

   - men as well as women (child care leave), Danielson v. Board of Higher Education, ___ F. Supp. ___ (D.C. N.Y. 1972);

4. Mandatory medical leave unsupported by medical evidence has been held to be:

   - a denial of the Equal Protection Clause of the 14th Amendment to the U. S. Constitution, LaFleur v. Cleveland Board of Education, 326 F. Supp. 1208 (N.D. Ohio 1971), rev'd 465 F. 2d 1184 (6th Cir. 1972) cert. granted ___ U.S. ___ (April 23, 1973); Pocklington v. Duval County School Board, 345 F. Supp. 163 (S.D. Fla. 1972); Monell v. Dept. of Social Services, NYC, ___ F. Supp. ___ (D.C. N.Y. 1972);

   Parkinson v. City of Cleveland Police Department et al., C.A. 3-338, consent decree entered April 17, 1973;

   a permissible classification based on sex, Schattman v. Texas Employment Commission, 459 F. 2d 32 (5th Cir. 1972), cert. den'd. 41 LW 3372 (Jan. 8, 1973); Struck v. Sec'y of Defense, 460 F. 2d 1372 (9th Cir. 1971) cert. granted 41 LW 3220 (Oct. 24, 1972), vacated and remanded to determine mootnees, 41 LW 3346 (Dec. 19, 1972)

5. An employer may not provide fringe benefit policies that discriminate on the basis of sex, Frontiero v. Laird, ___U.S. ___, 41 LW 4609 (May 14, 1973).

6. Retirement plans which require that males and females retire at different ages violate Title VII, Bartmess v. Drewrys U.S.A., Inc., 444 F. 2d 1186 (7th Cir. 1971), cert. denied, 404 U.S. 939 (1971); Dillinger v. East Ohio Gas Co., ___ F. Supp. ___ (N.D. ohio, 1971).

I. What types of seniority and promotional systems have been adjudged discriminatory?

   1. The Mobile, Alabama Police Department seniority system was declared illegal because it carried forward the effects of prior discriminatory practices by measuring in-grade service rather than departmental seniority, Allen v. City of Mobile. See also Harper v. Mayor and City Council, ___ F. Supp. ___ (D. md. 1973)

   2. The Mobile and Baltimore promotional policies were also held discriminatory because they were implemented by performance ratings which relied on white supervisors' subjective evaluations

of non-white employees, Allen v. City of Mobile, Harper v. Mayor and City Council.

J. What are the statutory and judge-made exceptions or defenses to a charge of employment discrimination under Title VII?

1. Statutory:

(a) The discriminatory practice, if it disadvantages members of one sex, national origin or religion (race is not included in this exception), is a BFOQ (bona fide occupational qualification); this has been construed to require that sex, religion, or national origin be essential to the performance of the particular job in question. Rosenfeld, v. So. Pac., supra; Bowe v. Colgate-Palmolive, supra;

(b) The seniority system under challenge is a bona fide seniority system; but this defense does not apply if the seniority system carries forward or preserves prior discriminatory practices (as, e.g., in Allen v. City of Mobile, supra). Local 189, Papermakers and Paperworkers v. U. S., 416 F. 2d 980 (5th Cir. 1969), cert. denied, 397 U.S. 919 (1970); Robinson v. Lorillard, 444 F. 2d 791 (4th Cir. 1971);

(c) The challenged test is professionally developed; however, even if the test is professionally developed, if it has a discriminatory effect it is illegal. Griggs v. Duke Power Co.;

(d) The statute does not require an employer to grant preferential treatment to a protected class in order to cure an imbalance in his work force; but courts may grant injunctive relief requiring that members of the

disadvantaged class be hired after a finding that they have been unlawfully excluded. U. S. v. IBEW, #38, 428 F. 2d 144 (6th Cir. 1970), cert. denied, 400 U. S. 942 (1972); U. S. v. Lathers, #46, 471 F. 2d 408 (2d Cir. 1973);

(e) The employer was relying on an EEOC opinion as to the legality of the challenged activity; this defense includes only those opinion letters identified as such as defined by EEOC regulation. Robinson v. Lorillard; Papermakers and Paperworkers v. U. S.

2. Judge-made:

(a) The doctrine of "business necessity": this doctrine was referred to in Griggs v. Duke Power Co. as the "touchstone" of an employer's defense of practices that have been shown to impact adversely on protected classes. The court in Robinson v. Lorillard has provided the best working definition of the business necessity defense:

"The applicable test is not merely whether there exists a business purpose for adhering to a challenged practice. The test is whether there exists an overriding legitimate business purpose must be sufficiently compelling to override any racial impact; the challenged practice must effectively carry out the business purpose it is alleged to serve: and there must be no acceptable alternative policies or practices which would better accomplish the business purpose advanced,

or accomplish it equally well with a lesser differential racial impact."

K. Have veteran's preference and the so-called "rule of three" been challenged as discriminatory?

1. The Minnesota veteran's preference laws were unsuccessfully challenged as a denial of equal protection; the law in question gave an absolute preference to all veterans who had passed the entry civil service exam and were placed on eligibility lists and a 5 point preference to veterans on all promotional exams. Koelgen v. Jackson, ____ U. S. ____ (1972), 41 LW 3502.

2. Pennsylvania's veteran's preference laws were also unsuccessfully challenged by a female plaintiff and held to be constitutionally valid. Feinerman v. Jones ____ F. Supp. ____ (M.D. Pa. 1973).

3. The "rule of three" selection system was found to be susceptible to subjective discriminatory application and the court ordered it replaced by a "rule of one". Strain v. Philpott, ____ 331 F. Supp. 836 (M.D. Ala. 1971).

L. What remedial steps have been ordered by courts and administrative bodies to eliminate discrimination?

1. The victims of the discrimination are made whole (placed in the position they would have been but for the discrimination) by orders to employ, re-employ, promote, etc., and are awarded any back pay, seniority rights, benefits, etc. necessary to accomplish that goal, Cooper v. Allen, 467 F. 2d 836 (5th Cir. 1972); U. S. v. Frazer, 317 F. Supp. 1079 (M.D. Ala. 1970); Armstead v. Starkville Municipal Separate School District, 325 F. Supp. 560 (N.D. Miss. 1971), modified on other grounds,

461 F. 2d 276 (5th Cir. 1972); Harkless v. Sweeny Independent School Dist., 427 F. 2d 319 (5th Cir. 1970), cert. denied, 400 U.S. 991 (1971).

2. The court may issue a temporary restraining order, if the plaintiff can show immediate and irreperable injury, enjoining the use of the alleged discriminatory device pending a full hearing on the merits of the allegations, Pennsylvania v. O'Neill, supra; Bridgeport Guardians v. Bridgeport Civil Service Commission, supra; Holliman v. Price, supra.

3. The court may, prior to a full hearing on the merits, order temporary affirmative relief including filling vacancies in accord with a prescribed racial/sexual ratio. Arnold v. Ballard, ___ F. Supp. ___ (N.D. Ohio, 1973); Pennsylvania v. Sebastian, ___ F. Supp. ___ (W.D. Pa. 1972).

4. After a hearing on the merits, courts have ordered affirmative hiring ratios and preferences for members of the excluded class. In Contractors' Ass'n. v. Shultz, 442 F. 2d 159 (3rd Cir. 1971), cert. denied, 404 U.S. 854 (1971), the goals and timetables imposed under the Philadelphia Plan by the U.S. Department of Labor were upheld. In Joyce v. McCrane, 320 F. Supp. 1284 (D.C. N.J. 1970), it was held that goals for the hiring of minorities are not in conflict with Title VII statutory prohibitions against preferential treatment to remedy an imbalance in the work force. The following public employment cases include specific quotas, goals, minority and female percentages and ratios designed to eradicate all vestiges of discrimination:

Bridgeport Guardians v. Bridgeport Civil Service Commission:

approximately 50% of new hires and promotions to be minorities*;

- Pennsylvania v. O'Neill: hire 1 black for every 2 whites;
- Castro v. Beecher: hire from designated priority groups, the first priority being certain black and SSA applicants;
- Carter v. Gallagher: hire one black for every 2 whites;
- Coffey v. Brady: fill 50% of all vacancies with blacks;
- Hogue v. Bach: 50% of all vancancies be filled with blacks;
- NAACP v. Allen: hire 1 black for every white until black representation reaches 25%;
- NAACP v. Imperial Irrigation Dist., No. 70-302 - GT (S. D. Calif. 1972) (Consent decree): hire and promote blacks and Chicanos in equal proportions to their representation in the labor market (67.6%);
- Shield Club v. City of Cleveland: hire 18% black;
- Strain v. Philpott, 331 F. Supp. 836 (M.D. Ala. 1971): hire 50% blacks into the Alabama Cooperative Extension Program until the percentage of black employees equals the percentage of blacks in the state;
- U. S. v. Frazer: hire 50% black into the Department of Public Safety until the work force contains 25% blacks.
- Erie Human Relations Commission and Lofton, Williams v. Mayor, Police Department and Civil Service Commission, ____ F. Supp. ____ (E.D. Pa. 1973): court ordered 1:1 hiring off most recent eligibility list until at least 10 blacks are appointed to the force.

M. What are the limits of the discretion of a federal agency to secure voluntary compliance with Title VI?

1. The U. S. Department of Health, Education and Welfare's policy of "benign neglect" toward recalcitrant segregated school systems was found to be beyond the limits of its discretion to effectuate the provisions of Title VI through voluntary means. The discretion of a federal agency is restricted to attempts to achieve voluntary compliance; failing that, the agency must take steps either to make an administrative determination of ineligibility for funds or to refer the matter to the Justice Department for a civil suit. Adams v. Richardson, 351 F. Supp. 636 (D. D.C. 1972).

N. Are state agencies under any special obligation to ensure nondiscrimination?

1. A long line of U. S. Supreme Court cases makes it clear that a state, including its legislative, judicial and executive officers, which is merely passive, or which countenances rather than encourages the discrimination, has violated its affirmative

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* In affirming the section of the lower court's decree concerning hiring quotas the Second Circuit said,

> "Finally, but perhaps the most crucial consideration in our view is that this is not a private employer and not simply an exercise in providing minorities with equal opportunity employment. This is a police department and the visibility of the Black patrolman in the community is a decided advantage for all segments of the public at a time when racial divisiveness is plaguing law enforcement."

duty under the 14th Admendment. It has become, in the words of the court, ". . . a joint participant in the challanged activity. . ." Burton v. Wilmington Parking Authority, 365 U. S. 715 (1961); see also, Shelley v. Kraemer, 334 U. S. 1 (1948) and Cooper v. Aaron, 358 U. S. 1(1958).

APPENDIX Q

POLICE ENTRY TESTING AND MINORITY EMPLOYMENT: IMPLICATIONS OF A SUPREME COURT DECISION

by

Stanley Vanagunas

The practice of using a general intelligence test as one criterion for employment as a police officer has long been established in most departments throughout the nation, as well as in a variety of other private and public occupations. Characteristically, the exam is an abbreviated version of the Army General Classification Test (AGCT), the Otis-Quick, the Wonderlic Personnel Test, the California Short Form and similar instruments. Due to the persistent discrepancy in test performance by minority applicants as opposed to whites, minorities as a group scoring substantially below their white counterparts, the general intelligence test has been increasingly criticized as culturally biased and, consequently, discriminatory.

Congress, at the time of passage of the Civil Rights Act of 1964, was cognizant of the discriminatory potentials inherent in the general intelligence testing. Section 703(h) of Title VII of the Act affirmed the practice but with the proviso "that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, or national origin."[1] The Civil Rights Act accepted intelligence testing scores as a criterion for employment provided intent to discriminate was not present.

On March 8, 1971, the Supreme Court substantially modified this interpretation of the statute. In Griggs v. Duke Power Co., the Court ruled that while intent is relevant the main concern of the Civil Rights Act is with consequences.[2]

This was a class action brought by a group of Negro employees against the Duke Power Company of North Carolina. The plantiffs alleged that the company was in violation of Section 703 of Title VII of the Civil Rights Act of 1964 in that it had adopted discriminatory employment practices. Prior to the effective date of the Act, Duke Power Company had openly discriminated on the basis of race in hiring and assignment of its employees. Blacks were initially placed within departments where the highest paying jobs paid less than the lowest paying jobs in every other department. On the other hand, whites could be and were assigned to the higher paying department. After the

[1]Civil Rights Act of 1964, 42 U.S.C.A.: 2000(e) et. seq.
[2]Griggs v. Duke Power Company, 915 Sup. Ct. 849 (1971).

effective date of the Civil Rights Act of 1964, the firm stipulated that in order to qualify for initial assignment to any department other than the lowest paying an applicant must have completed high school and have registered a satisfactory score on the Wonderlic Intelligence Test and the Bennett Mechanical Aptitude Test. The company further stipulated that employees without a high school education hired prior to the effective date of the Act may qualify for promotion to higher paying departments by obtaining a passing grade on the above tests. The plaintiffs claimed that the prescribed procedure was discriminatory.

In the course of litigation, the District Court held that the Duke Power Company, had ceased overt racial discrimination.[3] The Court of Appeals upheld the lower court and ruled that there was no showing of discriminatory intent in the adoption by the company of the diploma and testing requirements and, therefore, it was not in violation of the Civil Rights Act.[4]

Chief Justice Berger wrote the opinion which reversed the holding of the Court of Appeals. The Supreme Court held that neither the District Court nor the Court of Appeals erred in examining the employers intent but "good intent does not reduce employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups...Congress directed the thrust of the (Civil Rights) Act to the consequences of employment practices, not simply motivation".[5] The Court cited the 1960 census which showed that in North Caroline 34% of white males completed high school as opposed to 12% of Negro males. Similarly, the Court drew upon a study by the Equal Employment Opportunities Commission which found that a particular test battery, including the Wonderlic and Bennett tests used by Duke Power Co., resulted in 58% of whites passing the tests, as compared to only 6% of the blacks.

The Court further stipulated that while Section 703 (h) of the Civil Rights Act permits the usage of general intelligence testing for employment eligibility purposes, such tests must be demonstratably job related. In reaching this conclusion the Supreme Court, in effect, accepted Equal Employment Opportunity Commission's interpretation of Section 703(h). EEOC's Guidelines on Employee Selection Procedures require employers using tests to have available "data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior comprising or relevant to the job or jobs for which Guidelines are being evaluated."[6]

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[3] 292 F. Supp. 243 (1968).
[4] 420 F. 2d 1225 (1970).
[5] Op. cit., Griggs v. Duke Power Company.
[6] Op. cit., Griggs v. Duke Power Company, See Equal Employment Opportunity Commission, Guidelines on Employee Selection Procedures, 35 Fed. Reg. 12333 (August 1, 1970).

The Griggs case has since been used as precedent to vacate the judgement of a federal district court upholding the use of an Otis test. In Colbert v. H-K Corporation, the U.S. Court of Appeals, Fifth Circuit, ruled for the appellant, Miss Margie D. Colbert, a black woman who was denied clerical employment after whe failed to obtain an adequate score on the Otis Self-Administering Test of Mental Ability and the 16 Personality Factor Test.[7] The appeals court vacated and remanded the case to the district court for reconsideration in the light of Griggs v. Duke Power Company, an intervening decision by the Supreme Court.

The Griggs decision, strictly interpreted, applies to private employers. However, as the issue is raised, the case, very likely, will be extended to public employers where intelligence testing has long been prevelant. This in fact has already been done in at least one case that has come before the lower federal courts.

In January, 1970, Columbus School District of Mississippi adopted a rule requiring all applicants for teaching positions to attain a combined score of 1000 on the Common and Teaching Area Examinations of the NTE (National Teachers Examination) in order to qualify for employment. Action was brought by a group of black teachers on the grounds that the test requirement was discriminatory since the established score of 1000 on the NTE would serve to disqualify 89% of black graduates from Mississippi institutions while making 90% of white graduates eligible for employment.[8]

The District Court ruled that the use of this procedure to employ teachers was unconstitutional racial classification as the defendant failed to show a relationship between the cutoff score used and job performance as required by Griggs. What is particularly interesting about the Baker case is the rationale extended by the Court in the application of the Griggs decision to a public agency.

> "Because the defendants are a public agency and its officer, their actions are governed not by Section 703 of the Civil Rights Act of 1964, but by the Fourteenth Amendment of the Constitution. The Fourteenth Amendment imposes upon defendants prohibitions against race discrimination that are at least as great as those levied upon private employers in Section 703."[9]

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[7] Colbert v. H-K Corporation, 444 F. 2d 1381 (1971).
[8] Baker v. Columbus Municipal Separate School Districts, 329 F. Supp. 706 (1971).
[9] Ibid.

In the case of Western Addition Community Organization v. Alioto, the Northern California District Court ordered the defendants, the officials of the City of San Francisco, to establish the validity of "Fireman Class H2 Civil Service" exam, a test placing primary emphasis on mathematics, verbal skills and reading comprehension. The Court ruled that "the burden shifts to the public agency to justify the use of such generalized hiring tests by showing come rational connection between the qualities tested by the written examination and the actual requirements of the job to be performed."[10] While this decision was rendered before Griggs, it is in the same mold and can reasonably be expected to stand by virtue of the Supreme Court case.

In Morrow v. Crisler, [11] the testing practice of a police agency was one of the issues raised. A suit in equity was filed by black plaintiffs alleging racially discriminatory practices by the Mississippi Highway Patrol. Among the facts brought out by the Court was that the Patrol has never in its history employed a black as a sworn officer. While intelligence testing was a peripheral issue, the Court, nevertheless restrained and enjoined the Mississippi Highway Patrol from the practice of requiring applicants for patrolmen positions as a condition to consideration for employment, to pass a standardized general intelligence test or the Otis Quick Mental Scoring Test or any other test which have have not been validated or proved to be significantly related to successful job performance.

Griggs was not cited by the Court in this ruling, yet in its language it is very much like Griggs. The injunction was rendered somewhat ambiguous in its effect as the Court called upon the Mississippi Highway Patrol "to comply with the regulations adopted by the (Mississippi) Classifications Commission, including the giving of examinations which are standardized nationally approved tests that are administered in an objective manner." The Otis test, one suspects, would be considered by many employers as a standard used throughout the nation.

If Griggs is sweepingly applied to the police profession, a period of "anarchy" can be readily forseen in the recruit selection standards of police departments not prepared to offer hard facts as to the relationship between test instruments used and the officer's job. Doubt is being voiced as to the success of general intelligence tests to predict police job performance. Richard Margolis, for example,

[10] Western Addition Community Organization v. Alioto, 330 F. Supp. 536 (1971). Of the 1883 potential applicants who took the 1968 written examination for Fireman H2 101 were Negro and 69 were Mexican-Americans. A total of 662 applicants passed the written examination. Of this number 12 were Negro and 24 were Mexican-Americans.

[11] Morrow v. Crisler, Civil Action No. 4716, United States District Court, Southern District of Mississippi, Jackson Division (September 29, 1971).

points to the correlation of recruit test scores and performance at the typical police academy but states that "neither the original applicant's test nor the many subsequent tests given by the academy have been shown to be of strict relevance to essential police function."[12] Police departments might do well to turn their attention to the matter of test validity.

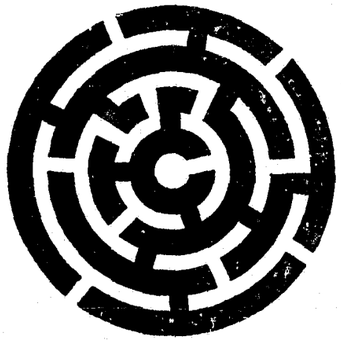
The police profession has long associated scores on intelligence tests with "quality" of applicants. The President's Commission on Law Enforcement, for example, recommended intelligence tesing as one of the "absolute minimum techniques" to determine the intellectual fitness of police candidates.[13] As a consequence, tne Griggs decision by the Supreme Court has the potential of adding to the discord between the Courts and the police community.

[12] Margolis, Richard J., Who Will Wear the Badge? A Report of the United States Commission on Civil Rights, U.S. Government Printing Office (Washington D.C., 1970), p. 14.

[13] The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice, U.S. Government Printing Office (Washington, D.C., 1967), p. 110.

APPENDIX R

A CORRECTIONAL MUST... INCREASED STAFF RECRUITMENT FROM MINORITY GROUPS



COMMISSION ON CORRECTIONAL FACILITIES AND SERVICES

American Bar Association

A CORRECTIONAL MUST... INCREASED STAFF RECRUITMENT FROM MINORITY GROUPS

In 1969, The Joint Commission on Correctional Manpower and Training rendered its final report on the most comprehensive analysis ever undertaken of the education, selection, staff development and personnel utilization needs of the nation's correctional agencies. Its work, mandated and supported by the Correctional Rehabilitation Study Act of 1965, touched upon the whole spectrum of problems and deficiencies relating to correctional manpower.

One of the Commission's major findings dealt with the underrepresentation of minority groups among correctional personnel:

> *Minority group members are being aggressively recruited and trained for responsible jobs in other sectors of the American economy. But if there are such efforts in corrections, they have had little impact on the overall situation. While Negroes make up 12 percent of the total population, only 8 percent of correctional employees are black. Negroes are conspicuously absent from administrative and supervisory ranks, and they form only 3 percent of all top-and-middle-level administrators.*
>
> *Recommendation: Correctional agencies at all levels of government should intensify efforts to recruit more Negroes, Mexican-Americans, and other minority group members into correctional work. Training programs should be developed to ensure that they have opportunities for career advancement in the field.*

Subsequent events have highlighted the urgency and importance of the Joint Commission's imperative. Indeed, the nation's prison systems seem to have inherited the mantle of racial stress and turmoil focussed in the great civil rights demonstrations and urban riots of the sixties. This has been vividly symbolized by the tragedy at Attica prison in 1971—the largest and most costly prison riot in the country's history — by an aftermath of smaller but disturbingly frequent disorders in other penal institutions, and by an era of unprecedented court activity in assertion of Bill of Rights protections for prisoners in institutions (largely minority group inmates).

It has become clear that an indispensable ingredient for balance, effectiveness and public confidence in our correctional machinery must be broader participation from the minority groups whose members feed corrections' client populations in

large proportion. This insight has been broad-based and advanced by a wide spectrum of national thought. Its scope is illustrated by expressions from such varied sources as the Attorney General of the United States keynoting the National Conference on Corrections:

> *I call upon all agencies to increase minority employment among professional correctional personnel. In my opinion this would greatly increase the effectiveness of counseling and guidance at all stages of the correctional process. Practically all prison systems, including the Federal system have a long way to go in this regard . . . I urge corrections institutions at all levels to make an extraordinary effort to find and recruit minority personnel – not only because it is the law, not only because it is fair, but because it can genuinely benefit the corrections process. (John N. Mitchell–Williamsburg, 1971).*

A federal judge addressing the 100th anniversary Congress of the American Correctional Association:

> *Obviously, many aspects of the correctional system have to be improved. Nevertheless, I submit that if we fail simultaneously to deal with the patent racism in and outside of our institutions, then any other improvements will be of minimum value . . . Is it without significance that one of their [Joint Commission's] most important findings was that "minority group members are being aggressively recruited and trained for responsible jobs in other sectors of the American economy? But if there are such efforts in corrections, they have had little overall impact on the situation". (Leon J. Higgenbotham – Cincinnati, 1970).*

A leading jail administrator speaking to a national readership audience on the problem of prison riots:

> *One way of assuring humane and fair treatment to inmates . . . is to eliminate the hostility based on racism which too many guards feel toward inmates. This cannot be done without eliminating the lopsidea racial ratio between guards and inmates. At present, more than 60 percent of the nation's jail and prison population is urban black and Spanish-speaking (Puerto Rican, Chicano, etc.) but not even two percent of that majority is employed in corrections as guards and other personnel, not to mention wardens or superintendents. Consequently, the prison communication gap exists not only at Attica but throughout the U.S. correctional system. (Winston E. Moore – Ebony Magazine, December, 1971).*

And the men in charge of the nation's major correctional systems, speaking jointly in a new series of policy and procedural guidelines:

> *There is a clear need to increase the number of minority personnel at every level of corrections – from top management to the newest correctional officer or clerk. Constant care must be taken to see that minority staff are treated fairly in every aspect of assignment, promotion and discipline. It is desirable that every central headquarters have a high level official directly responsible for supervising the recruitment and fair treatment of minority employees. In large correctional systems, such a position should exist at every major institution. Access to the head of the system should always be possible for any employee concerned with a problem of discrimination. Artificial and unnecessary hindrances to minority employment should be eliminated. (Association of State Correctional Administrators – Pittsburgh, 1972).*

The Present Situation

Federal statistics show upwards of 152,000 workers employed in federal, state and local correctional agencies. This work force is responsible at any given time for more than 1 million adult and juvenile offenders in institutions or under community supervision. Most of these personnel (possibly 75%) work with the smaller number of offenders in institutional settings and the remainder with the majority of offenders on probation, parole, or in new community programs.

Current national statistics on minority employment in corrections are not available. Joint Commission estimates, based on surveys conducted in 1967-68, indicated a non-white component of 13% of the total manpower pool. Underrepresentation tends to be more marked in adult than juvenile corrections and in institutions than field supervision. For example, the Joint Commission surveys identified the following variations in non-white staff composition:

	Adult Institutions	Juvenile Institutions	Adult Field	Juvenile Field
Administrators*	0%	14%	5%	3%
First Line Supervisors	1%	23%	6%	15%
Functional Specialists**	9%	25%	15%	21%
Line Workers	5%	26%	xxx	xxx

*Today, there are five directors of state departments of adult or juvenile corrections, three directors of major metropolitan corrections departments, and several deputy and assistant directors from minority group ranks.
**Includes probation and parole officers.

A recent survey (1971) confirms that low minority representation on correctional staffs continues. Not more than five state systems had black staff complements of more than 20% of the total correctional work force and the combined minority group ratios were virtually the same.

National tabulations of minority offender ratios in institutions or under supervision are also unavailable, although most states and the federal system keep their own statistics on this subject. However, survey estimates indicate that more than half of all offenders in institutions are from minority groups (Black, Chicano, Puerto Rican, Indian or Oriental).

Sensitivity to the foregoing imbalances in correctional manpower and their detrimental implications for our penal systems is as indicated, widespread. Virtually all correctional systems have in ensified efforts to attract larger proportions of qualified minority personnel but successes have been limited, commitments have varied among different agencies, and perhaps most important, effective techniques and "know-how" have eluded even well intentioned departments and agencies.

Set forth in this brochure are brief accounts of some of the steps taken by the federal system and a group of state correctional departments considered to be among the leaders in agressive minority recruitment efforts. The group does not include all states that have mounted intensive programs nor were the selections meant to minimize the efforts of the many state and local departments now seeking as best they can to respond to the challenge of minority recruitment. The data is offered with full recognition, in the words of former Attorney General Mitchell, that all systems "have a long way to go" and that even those described have not yet achieved an optimal, or even acceptable, level of success–both as regards total staff complements and representation at supervisory, middle management and administrator levels.

All examples relate to federal and state as opposed to local departments of corrections. Often it is more manageable for a local department to attain greater minority balance. Achievements of major metropolitan agencies such as the Cook County (Illinois), New York City and District of Columbia Departments of Corrections, with minority staff ratios of 80%, 48% and 49% respectively*, stand as examples of what local departments can accomplish.

It will be noted that all programs described (U.S. Bureau of Prisons, Illinois, California and South Carolina) are efforts launched within the last few years by progressive directors of corrections. They typify the insights and flexibility demanded of the modern correctional administrator and of departments seeking to keep abreast of the difficult demands, new pressures, and changing circumstances confronting correctional systems.

Federal Bureau of Prisons

By directive dated November 23, 1971, the Director of the Federal Bureau of Prisons instructed all 28 federal institutions to work toward a goal of one-third minority employment in new hiring, to be attained by mid-1972. The director indicated that if some institutions were unable to achieve this goal, positions could be reallocated to other institutions to assure attainment of the Bureau objective. A special high level minority assistant was appointed, reporting to the Bureau personnel chief, to monitor progress in this area and to give recruiting and training assistance when requested by Bureau officials in the field.

By April 1972, six months after initiation of the intensive recruitment program, 15 of the 28 federal facilities had attained or surpassed the one-third goal and three more were slightly below but over the 30% level. A bureau-wide total of 37% minority employees had been achieved in all new staffing, representing 206 of 551 new hires (the largest minority group being black with 159 new hires). Three months later, overall Bureau recruitment remained above the one-third goal and two more institutions had achieved the target level.

In terms of ultimate goals, the federal minority inmate population is currently about 35%. To serve the needs of these inmates, the federal correctional staff consists of approximately 11% minority correctional officers and related personnel. The Bureau hopes to achieve the overall goal of 33% minority staff by 1977. At the supervisory and administrative level, minority personnel were appointed in the past two years to these posts: two institutional directors, two associate wardens, one administrator in the Institutional Services Division at headquarters, and numerous promotions to middle management positions (institutional lieutenants, correctional counsellors, etc.). Further progress in this area is needed and is being sought by the Bureau leadership.

*Corresponding inmate ratios are approximately 80% (Cook County), 88% (New York City), and 90% (District of Columbia).

The Bureau's recruiting and hiring effort is highly personalized. On-site visits are made to areas where interested minorities are located. These personal contacts help minimize the credibility gap that exists between the promise of minority employment and the reality of being employed. The special recruiting assistant travels at the instruction of the Director for trouble-shooting in facilities experiencing recruitment difficulty, as well as on request from the institutional heads themselves. The Bureau has also added a major curriculum component in staff training centers for new employees and in-service workers which deals with intergroup relations and minority understanding.

One important demonstration of the federal effort is that relocation problems and hesitancy for potential minority staff can be overcome, given hard work, adequate incentives and special support in dealing with the personal, social, financial and other adjustment problems often involved in such situations. For example, interim housing in bachelor officer quarters and credit union loans prior to the worker's initial pay period have been used to ease the relocation adjustment.

The written examination for correctional officers has been eliminated since 1968 and in March, 1972 the Bureau was able to achieve "selective placement consideration" for applicants "having a thorough knowledge and understanding of the customs, language patterns, and problems of specific groups of inmates." This has been a critical tool of the minority recruitment effort. It permits the Bureau to insist on selection of candidates intimate with Black, Mexican-American or other minority backgrounds from general civil service lists of eligible candidates. Another vehicle for minority personnel hiring has been the Veterans Readjustment Act. This enables the Bureau to hire returning servicemen from minority groups in "trainee" placements and without regard to competitive civil service requirements. Individuals in this group, after two years of successful job performance, are given a competitive appointment at increased grade and pay levels.

Illinois

The Illinois Department of Corrections, through intensive work over the past four years, has brought the number of non-white staff from 300 in 1968 to more than 820 in mid-1972–a gain of over 170%. Although still modest in terms of overall personnel complement (about 17% of the total department work force of nearly 5,000 and an inmate/supervised offender population of approximately 65% minority composition) a number of important actions have been taken. These promise continuing future progress.

The department has established a special office of minority recruitment with its own line budget ($100,000 in fiscal year 1973), a chief reporting directly to the state director of corrections, and a four-member staff. This office has developed statewide contacts with community organizations as its primary vehicle for recruiting minority guards and counsellors. Colleges are a channel for recruiting minorities to the higher positions of counsellors (e.g., parole agents, institutional counsellors, community program executives).

One out of every five new employees now comes from a minority group, notwithstanding the need for compliance with civil service eligibility lists, testing requirements, and tenure regulations, and the fact that most institutions are in downstate rural areas with small minority populations. When recruited for correctional officer or youth supervisor positions, candidates are sent for an oral examination before a board composed of department of corrections personnel. If a candidate is rejected for a position, the board must give specific reasons. Arrest records cannot be used to disqualify an individual from a job as correctional officer, but a conviction may be considered.

Although the Illinois Department has jurisdiction over parole supervision and a number of youth and community services as well as adult institutions, balanced minority staffing is often most difficult to achieve in the large prison. Thus, at the state's largest institutional complex (Stateville-Joliet) there were only 18 black employees in 1969 – out of a total staff of over 700 – no black assistant warden, no black captain and one black lieutenant. Today, one of the four superintendents at the complex is black and staff includes a black assistant superintendent, a black chaplain, a black and a Spanish-speaking doctor, a black counsellor, several black lieutenants, one senior guard captain, five guard sergeants, and almost 100 black correctional officers, as well as clerks and medical staff.

The Illinois Department has also accorded attention to and taken pride in its growing roster of top level administrators from minority groups. There are now 40 black administrators in the top 1% salary range of the Department, including the heads of all adult field services, parole-work release, halfway houses and both juvenile and adult parole superintendents. Black assistant wardens have been appointed for the first time at three prisons, and among juvenile institutions (which in 1969 included only one black superintendent), the overall administrator of juvenile institutional services and the directors of 3 juvenile institutions and 2 program units at the largest boys training school are minority personnel.

California

The California Department of Corrections increased its ethnic minority personnel from 9.5% in 1968 to 15% in 1972 – a net gain of 450 employees in a total department staff of some 7,000. This was the result of an "affirmative action program" promulgated by the state director of corrections (responsible for all adult institutions in the state) and built upon a frank recognition of racism (discrimination) existent in many phases of correctional administration. The disparity between a 15% minority personnel level and a 50% minority inmate population remains, but the program continues as a priority effort.

The heart of the California affirmative action program is the Human Relations Unit, a three-man staff specializing in minority recruitment and social issues. As part of the staff team, the director of corrections has appointed two consultants, one Black and one Chicano, who are acquainted with and sensitive to the needs of the minority communities throughout the state. The unit has been a major resource for wardens, superintendents and division chiefs who, under the action program, were given personal responsibility for increasing the number of minority employees.

The selection program for correctional officers consists of five phases: (1) recruitment, (2) written examination, (3) oral interview, (4) physical examination, and (5) a nine-month probationary period. Its administration has been delegated to the Department of Corrections by the state civil service system and, with the latter's approval, the first three phases have been significantly modified to facilitate the hiring of minority officers.

It was soon learned that traditional recruiting methods failed to attract a sufficient number of minority candidates. Instead of primary reliance on newspaper ads for attracting minority interest, more emphasis is being placed on personal contact. Experience revealed that the use of incumbent minority staff is the best recruiting source. Also, considerable attention is given to minority media and community grass-root organizations to spread the message.

The examination sites have also been moved to the community and the Human Relations Office assists training officers in selection of locations and in preparing for recruitment and testing. (For one institution adjacent to an all-white coastal community, recruiting teams travelled 150 miles inland to administer examinations, with considerable hiring success, in a minority community.)

As for the examination itself, prior to the affirmative action program the written portion was weighted 60% and the oral interview 40%. Many minority candidates did not fare well on

the written part for a number of reasons, among them inadequate preparatory education and cultural bias in the examination. After a careful assessment, it was concluded that the candidates' personal qualifications, characteristics and suitability were more appropriately examined by supervisory staff interviews. Accordingly, the written examination was changed to a pass/fail basis and the passing point modified to permit a greater number of candidates to reach the oral interview. Concurrent with this new approach, steps were taken to help interviewers work through any unconscious social biases and better understand differing characteristics exhibited by interviewees (e.g., speech patterns, dress, grooming).

In addition to modifications facilitating the hiring of minorities, special training sessions were initiated to strengthen assessment of the 9-month probationary period. These sought to acquaint supervisors with basic socio-cultural traits of minority groups, differences in relating to individuals, and understanding of external expressions of independence (e.g., attitudes of returning minority veterans which often seemed to border on insubordination). Also, exit-interviews (more than 100 to date) are given to all departing minority employees to probe feelings about on-the-job conditions. Immediately after the exit-interview, the consultant checks with former supervisors and co-workers to ascertain whether racial bias or comparable difficulties may have contributed to the termination. Although most interviewees express positive feelings, any adverse findings of the consultant are reported to the head of the institution for possible corrective action.

South Carolina

The South Carolina Department of Corrections is one of the few state departments of adult corrections to have achieved a minority employment ratio in excess of 25%. The department increased its proportion of black employees from 8.5% in 1968 to nearly 30% in August 1972 – a rise from 38 to 230 workers in a total staff complement of 950. Now that a minority base has been established in line correctional positions, emphasis is being placed on elevating members of minority groups into middle management positions. Thus far, an assistant director of the department, the chief psychiatrist, the director of drug treatment programs, the director of the department's Project Transition, a deputy warden at the largest state institution, and several administrative assistants to top personnel have been drawn from minority ranks.

The personnel office of the Department of Corrections has primary responsibility for recruiting minorities to fill its ranks. However, supplementing the traditional civil service em-

ployment route, an effort to intensify minority employment has been conducted through the Public Service Careers (PSC) Program of the U.S. Department of Labor's Manpower Administration. The PSC effort in South Carolina corrections, which began operation in May, 1971, is a 21-month federally-funded project aimed at providing correctional jobs for the disadvantaged and upgrading training to prepare them for more responsible positions.

The department's PSC program set its goals to hire and train 110 new officers and to upgrade an additional 50. It has enjoyed a good measure of success. Nearly 120 officer trainees were recruited (with some attrition through dropouts and resignations but generally good retention) and the program succeeded in advancing 65 correctional officers, primarily from entry level positions to higher pay grades. In addition, the PSC program has provided opportunities for 20 support personnel (medical assistants, food service, clerical). Ninety percent of the participants in the PSC program are, or at one time were, black. The primary vehicle for recruiting minorities into this program has been the State Employment Security Commission and the State Personnel System. On termination in early 1973, the PSC effort will be continued on a reduced scale with state funds.

The Commission Position

The American Bar Association's Commission on Correctional Facilities and Services is pleased to recommend and support increased minority personnel representation at all levels of the corrections ladder and to endorse creative, aggressive programs directed to that end. Along with progressive correctional systems and the growing body of professional and public interest organizations which have expressed similar positions, the Commission calls on responsible government leaders to renew efforts and intensify commitment in this direction as a correctional reform "must."

It is hoped that the program sketches presented in this brochure will be of assistance to those interested in minority recruitment. The Commission suggests that direct contact be made with the correctional departments involved for further information:

Federal Bureau of Prisons –Personnel Officer, 101 Indiana Avenue, N.W., Washington, D.C. 20537
California Department of Corrections – Human Relations Agency, Sacramento, California 95814
Illinois Department of Corrections – 400 State of Illinois Building, Chicago, Illinois 60601
South Carolina Department of Corrections – Post Office Box 766, Columbia, South Carolina 29202

About the Commission

The Commission on Correctional Facilities and Services is a special public service effort to foster improvement of the nation's correctional apparatus–prisons, jails, probation, parole, community programs and new alternatives for the rehabilitation of criminal offenders. Sponsored by the American Bar Association, it was created in 1970 to serve as a vehicle for expressing the interest of the bar in this critical segment of the criminal justice process. Interdisciplinary in character, the Commission has twenty-three members and a full-time professional staff located in Washington, D.C. A grant from the Ford Foundation supports the program development activities of the Commission and a variety of federal and private awards contribute assistance to its several action programs.

Further information about the Commission, its activities, and publications may be obtained by inquiry directed to the Commission offices at 1705 DeSales Street, N.W., Suite 100, Washington, D.C. 20036.

APPENDIX S

MINORITY RECRUITMENT IN CORRECTIONS—NEW FEDERAL AID REQUIREMENTS

COMMISSION ON CORRECTIONAL FACILITIES AND SERVICES

American Bar Association

ABOUT THIS PAMPHLET . . .

On March 9, 1973 the Law Enforcement Assistance Administration published in the Federal Register two "equal rights guidelines" applicable to grantees of the Justice Department's law Enforcement Assistance Administration. This marked an important step in the resolution of a series of "civil rights" issues in law enforcement presented in late 1971 to LEAA in a Petition for Regulatory Change. The petition was filed by a coalition of leading civil rights and labor organizations.

Although most of the issues raised in the 1971 petition do not directly touch the area of corrections, two issues do and LEAA's resolution of them signifies new federal interest in the area of equal employment opportunity for federally-funded corrections facilities and programs. The two new requirements deal with (1) location of correctional facilities where such location may have an adverse impact on minority individuals and (2) a requirement that agencies funded by LEAA evaluate present employment patterns and take steps to correct deficiencies in the number of minority group persons in their work force (both racial minorities and women). They are discussed in detail in this pamphlet with special emphasis on their significance and impact for correctional systems.

This brochure, the second in a series released by the ABA Commission to stimulate increased recruitment of minority correctional staff, was developed with the assistance of the Center for National Policy Review. The Center served as counsel and advocate for the civil rights groups who presented the 1971 petition to the Justice Department and assisted LEAA in working out the details of the new guidelines. The pamphlet's text is largely the work of Arthur M. Jefferson, supervising attorney for the Center.

The initial pamphlet in the minority recruitment series is entitled **A Correctional Must . . . Increased Staff Recruitment From Minority Groups.** *It describes the problem of underrepresentation of minority group employees on correctional staffs, cites numerous reform recommendations and standards to alleviate the deficiency, and briefly sketches the special work of four corrections departments in expanding minority staffs. Copies may be obtained by request directed to the Commission at its offices in Washington, D.C. (1705 DeSales Street, N.W., Washington, D.C. 20036).*

Richard J. Hughes, Chairman
Commission on Correctional Facilities and Services

June, 1973

MINORITY RECRUITMENT IN CORRECTIONS—NEW FEDERAL AID POLICIES AND REQUIREMENTS

Federal Aid for Correctional Improvement

Large scale federal grant aid to support correctional programs and improvements is a recent development in state and local criminal administration. It was only five years ago that the Omnibus Crime Control and Safe Streets Act of 1968 was enacted.* Following a series of small experimental grant programs in the crime and delinquency area,** this statute signalled the start of broad dollar assistance to all components of criminal justice activity—police, courts, prosecution, and corrections.

The new law was a fortunate and needed event for the nation's hard-pressed and under-funded correctional systems. Recent presidential commission studies had taken a hard look at the problems of our prisons, jails, probation, parole and other apparatus for the custody, supervision and rehabilitation of criminal offenders. The deficiencies found were many. Facilities were aging; staff was undertrained and underpaid; administration was fragmented; and modern concepts of rehabilitation had made little headway. The new directions for reform were laid out—and progressive correctional administrators had little quarrel with them. The costs of implementation, however, were staggering, especially in an era of skyrocketing costs for all public services—health, sanitation, education, welfare, manpower, etc. Any federal help whatever could contribute immeasurably to the pressing agenda of correctional reform. This was the promise of the Omnibus Crime Control Act and one that has been realized in significant degree.

Funding Under the LEAA Program

A new unit within the Department of Justice was established to administer the Omnibus Act's grant programs. This was the Law Enforcement Assistance Administration (LEAA), now operating with nearly 600 employees from its Washington headquarters and regional offices in Atlanta, Boston, Chicago, Dallas, Denver, Kansas City, New York City, Philadelphia, San Francisco, and Seattle. LEAA was given responsibility for overseeing the comprehensive law enforcement plans which each state had to develop to qualify for its share of "block grant" action funds. (These grants absorb most of the federal dollars.) LEAA also has to administer special research, technical assistance, educational subsidy and "discretionary" grant programs and handle the complex duties applicable to all federal aid programs such as policing grantees to assure non-discrimination in the use of federal grant funds or in the policies of agencies receiving awards (Title VI of the Civil Rights Act of 1964).

Correctional system participation in LEAA action grant awards grew rapidly and decisively. This included allocations from state "block grants" (large awards to states for implementation of their comprehensive law enforcement plans) and receipt of discretionary grants (special grants awarded by LEAA in areas and for purposes deemed particularly meritorious). Then, in amendments to the LEAA legislation approved in 1971, a new section (Part E) was added providing funds exclusively for correctional system improvement. This was to be over and above the correctional share in the state block grants and LEAA discretionary grants. Moreover, the amended act specified that the appropriation for Part E grants had to be at least 20% of the total LEAA action grant appropriation. Thus, from the first year of awards to the present, the LEAA correctional "investment" has increased many times:

Fiscal Year	Total LEAA Appropriations	Total Action Awards for Correctional Programs
	(in millions of dollars)	
1969	$ 60	$ 3.5
1970	268	60
1971	529	175*
1972	699	220*
1973	855	240*(estimate)

*Includes Part E correctional allocations of $47.5, $97.5, and $113 million, respectively, for fiscal years 1971, 1972, and 1973.

With this growing influence and leadership in correctional system improvement, it was particularly important for LEAA to raise its voice on behalf of a critical manpower problem—lack of minority staff at both line and leadership levels within correctional institutions and agencies. Study commissions had previously highlighted this deficiency and the record is summarized in the first pamphlet in this series—*Increased Recruitment From Minority Groups—A Correctional Must.* There, statistics are set forth showing a minority component in correctional staff (under 15%) grossly disproportionate to the minority makeup of offender populations (estimated at over 50% nationally). This is particularly true in prisons, jails and other institutions—the most volatile and neglected element of the penal system. In addition, short case

*Public Law 90-351 (1968) as amended by Public Law 91-644 (1971), 42 U.S. Code, sec. 3701 et seq.

**These include the Juvenile Delinquency and Youth Offenses Control Act of 1961 (1961-67), the Law Enforcement Assistance Act of 1965 (1965-68), and the Juvenile Delinquency Prevention and Control Act of 1967 (still operative at modest funding levels).

studies describe the work of four major correctional departments that have undertaken intensive and aggressive efforts to expand minority staff.

The New LEAA Guidelines

To all concerned with this problem, it was gratifying to see LEAA issue "equal rights" regulations in early 1973 having special relevance to minority staff recruitment in corrections. Some of these extend beyond correctional concerns, i.e., deal with equal employment opportunity in all elements of the criminal justice system. The purpose of this pamphlet is to summarize those issuances, highlight their application and significance for correctional agencies, and urge advance planning, full compliance and special attention by all responsible for correctional programs. Since these requirements are now "keys" to continued federal aid, the correctional profession's stake in expanded minority staffs—long a recognized manpower priority—is now more important then ever.

It was on March 9, 1973 that LEAA published in the Federal Register two "equal rights guidelines" applicable to correctional grantees.* An additional requirement was in final stages of negotiation and is now in force. These new requirements deal with

(1) affirmative action by LEAA grantees to remedy deficiencies in the number of minority group persons, including women, employed in their work force and the elimination of discriminatory minimum height requirements (height requirements not discussed in this pamphlet); and

(2) the problem of site selection of correctional facilities where the location may have an adverse impact on the employment of minority persons.

Minority persons are defined to include Black, Oriental, American Indian, or Spanish-surnamed Americans.

Location of Correctional Institutions

The new rules on location of correctional institutions were proposed because employment patterns in many state prison systems indicated that minority correctional officers were not being successfully recruited. In the aftermath of the Attica tragedy, for example, one of the factors widely cited as increasing tensions was the existence of prison populations composed primarily of minority group persons and supervised by correctional forces that were almost exclusively white. It has been reported that although over 65 per cent of the inmate population in New York's correctional institutions are non-white (Black and Puerto Rican), whites hold more than 90 per cent of all staff positions in the correctional system. (New York Times, Sunday, October 24, 1971). The state's correctional facilities are mostly located in rural areas (e.g. Attica, Auburn, Clinton, Elmira, Dannemora, etc.). State correctional department officials have explained that this remoteness of major state facilities from centers of black population is a primary reason for the dearth of minority group employees. The state situation is in contrast with New York City's correctional system in which Blacks and Puerto Ricans account for nearly half the staff.

The new requirement on location of LEAA funded correctional facilities is included in an amendment to its contract with the National Clearinghouse for Criminal Justice Planning and Architecture at the University of Illinois which must clear all new construction projects supported with LEAA Part E monies.* It applies to grants involving the construction, relocation, establishment or physical placement of any correctional or community-based facilities. It is consistent with the spirit of the new March 9 guidelines and based as well on even older Justice Department regulations issued to implement Title VI of the Civil Rights Act of 1964**.

The provision requires that states and local government units applying for LEAA financial assistance must determine whether the proposed location of a correctional facility will, or will tend to, (1) exclude, diminish or otherwise adversely affect the employment opportunities of minority individuals; (2) subject minority individuals to inferior or a diminished number of programs, services, and activities; or (3) make minority employment or participation difficult because of the lack of adequate public transportation or local housing or both.

Examples given of unlawful location activities are locating a correctional facility serving substantial numbers of minority persons in a labor market area in which minority individuals do not reside (in which case the agency must secure actual employment of minority individuals)—or discriminatory staffing patterns between facilities in areas which have more non-minority persons than does the general surrounding service area—or placing a halfway house, group home, court diversion project, drug treatment center or other community-based correctional facility so that minorities are excluded from the benefits or services of the facility.

If the location of the facility will have any of these effects, the rule requires that the correctional agency *"must take steps to secure actual employment of minority individuals."* Suggested actions which a correctional agency may take include, but are not limited to, recruitment outside the market area of the proposed facility, steps to assure an adequate supply of available and suitable housing, or provision of transportation assistance to employees living outside the area of the facility's location.

The contract guideline requires all applications for correctional facility funds to include a statement giving:

(a) The basic demographic population characteristics of the service area including race, color and national origin;
(b) The probable racial or national origin characteristics of the inmate population;
(c) Other alternative locations;
(d) The impact (adverse or favorable) on minorities and non-minorities of the alternative location;
(e) The availability of public transportation to the proposed site;
(f) The availability or nonavailability of low and moderate income housing for facility employees.

Although the Clearinghouse has always considered these kinds of factors in reviewing projects for construction or establishment of new facilities, it is now aligning its data requests, checklists, and review procedures to the precise requirements of the new mandate.

Affirmative Employment Efforts

The second guideline, announced in the March 9, 1973 Federal Register notice, requires an affirmative program of Equal Employment Opportunity. This regulation affects LEAA grantees (including state and local correctional departments) (i) which have 50 or more employees and have received grants or subgrants of $25,000 or more since the enactment of the Omnibus Crime Control Act and (ii) where the available minority work force in the agency's relevant geographic area (state, standard metropolitan statistical area, or county) is 3 per cent or more of the total work force. It requires such grantees, within 120 days following promulgation of the guidelines, to formulate, maintain and implement a written Equal Employment Opportunity Program as to employment practices affecting minority persons and women.

Grantees are required here to make two evaluations of employment opportunities, one for racial minorities and another for women. This analysis is to include:

1. An analysis of the representation of minorities and women in all job categories;
2. An analysis of all present recruitment and employment procedures including written tests, interview procedures, education prerequisites, referral procedures;
3. An analysis of seniority practices, promotion procedures and training programs; and
4. "A reasonable assessment" of whether minority employment is being hindered by "external factors" such as available suitable housing in the geographical area or lack of suitable transportation to the workplace.

The grantee must, in its Equal Employment Opportunity Program, prepare a job classification table with principal duties and rates of pay and the number of employees within each classification by race, sex and national origin. Further information to be documented includes: (i) the number of disciplinary actions against individuals by race, sex and national origin; (ii) the number of individuals hired in the last fiscal year by race, sex and national origin; (iii) the number of employees making application for promotion or transfer and the number of persons actually promoted or transferred, classified by race, sex and national origin; and (iv) available area labor characteristics (total population, work force, and existing unemployment by race, sex and national origin).

Finally, a detailed narrative statement explaining the recipient's existing employment policies and practices towards recruitment of women and minorities is also required. This must be detailed so that if, for example, tests are used in selecting employees, the test should be described along with data on how it is administered, scored and weighted and whether it has been validated. LEAA recipients are referred to general federal guidelines on impermissable selection practices issued by the Equal Employment Opportunity Commission and are asked to set forth and explain any nonconformity with such EEOC guidelines. (In general, the EEOC guidelines prohibit tests which exclude minorities unless the tests are validated, i.e. are statistically demonstrated to be an accurate predictor of job performance.)

*The major item was the *Equal Employment Opportunity Guidelines* published as a new Subpart E in Title 28, Code of Federal Regulations, part 42 (the Dept. of Justice's basic regulation on nondiscrimination and equal opportunity in administration of LEAA grants).

*Contract No. J-LEAA-014-70 (June 30, 1970 as subsequently amended in 1970, 1971 and 1972, and renegotiated in 1973). The LEAA directive requiring National Clearinghouse construction project review is LEAA Guideline 4063.2A (Feb. 14, 1973).

**Title 28, Code of Federal Regulations, Subpart C ("nondiscrimination in Federally Assisted Programs"—July 29, 1966) and Subpart D ("Equal Employment Opportunity in Federally Assisted Programs"—August 18, 1972).

After identifying the minority and female work force within the recipient agency and completing the foregoing profiles and analyses, the agency is required to come up with a plan to eliminate discriminatory patterns of employment throughout its employment levels. This program is to be kept on file by the grant recipient so that it may be reviewed by the appropriate state planning agency or by LEAA. Also, specific personnel must be identified to implement the grantee's Equal Employment Opportunity Program.

The plan must include information on new or expanded programs for increased recruitment of minorities and women and new policies and procedures implemented to facilitate promotion of minorities and women. Plans are to be regularly updated, evaluated as to their effectiveness, and revised where necessary.* From this point on, applications for new or continuing LEAA grants *must be accompanied by a certificate stating that the recipient has an Equal Employment Opportunity Program on file* (a copy of which goes to the LEAA civil rights compliance office in Washington for discretionary grants of over $100,000). State planning agencies must certify that they impose the same requirement for an Equal Employment Opportunity Program on recipients of awards from the state block grants.

Correctional agencies should bear in mind that in the reviewing compliance with the new guidelines, priority will be given to grant recipients which have a *significant disparity* between the percentage of minority persons in the geographical area work force and the percentage of minority staff in the grantee agency. A significant disparity will be assumed whenever the percentage of minority staff in the agency is not at least 70% of the minority percentage of the total work force in the area.

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These new guidelines mark an increased commitment by the LEAA to the problem of minority employment in law enforcement. Their success in the correctional field will largely depend on three factors: vigorous enforcement by LEAA's Office of Civil Rights Compliance, support and monitoring by the "private sector," and cooperation and commitment from state correctional agencies and their local counterparts. Of these, the last is clearly the most important and the most critical to solid progress. As in many areas of complex social change, durable progress is likely to come only if the responsible authorities—in this case correctional administrators—offer their hearts as well as their energies and talents to this important manpower priority. It is one, perhaps, which has more long-term significance for stable administration and effective performance in corrections than in almost any other governmental service area.

The nation's correctional and prison system directors have made their position clear:

> "There is a clear need to increase the number of minority personnel at every level of corrections—from top management to the newest correctional officer or clerk. Constant care must be taken to see that minority staff are treated fairly in every aspect of assignment, promotion and discipline.
>
> It is desirable that every central headquarters have a high level official directly responsible for supervising the recruitment and fair treatment of minority employees. In large correctional systems, such a position should exist at every major institution* Access to the head of the system should always be possible for any employee concerned with a problem of discrimination. Artificial and unnecessary hindrances to minority employment should be eliminated. Civil Service requirements should be carefully examined to determine if any unreasonable barrier exists to the employment of minority personnel."
>
> [Association of State Correctional Administrators, *Uniform Correctional Policies and Procedures—1972* (from section on "Racial Issues")]

The federal government through LEAA has now interpreted the legal mandate for equal employment opportunity in terms of federal grant-in-aid policies and requirements specifically applicable to correctional and law enforcement agencies. The opportunity and impetus presented to achieve the important national goals and benefits behind these new rules—both for corrections and minority citizens—is unprecedented. We need to make the most of it.

*This guideline is similar to requirements that other federal agencies, e.g., the Office of Contract Compliance, have imposed upon employers who do business with, and are regulated by, the Federal government. The steps required are similar to those taken voluntarily by a number of correctional departments which have greatly improved opportunities for minorities and women. [See initial pamphlet—A Correctional Must . . . Increased Staff Recruitment From Minority Groups.]

*It should be noted that that Association of State Correctional Administrators' concept of a high level official directly responsible for supervising minority recruitment will also provide a staff person able to think through and to respond to the new LEAA regulations and detailed reporting requirements. Such a position (with adequate staff resources) would thus seem all the more desirable.

Excerpt From 1973 CORRECTIONS STANDARDS of the NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS

STANDARD 14.2. RECRUITMENT FROM MINORITY GROUPS

Correctional agencies should take immediate, affirmative action to recruit and employ minority group individuals (Black, Chicano, American Indian, Puerto Rican, and others) for all positions.

1. All job qualifications and hiring policies should be reexamined with the assistance of equal employment specialists from outside the hiring agency. All assumptions (implicit and explicit) in qualifications and policies should be reviewed for demonstrated relationship to successful job performance. Particular attention should be devoted to the meaning and relevance of such criteria as age, educational background, specified experience requirements, physical characteristics, prior criminal record or "good moral character" specifications, and "sensitive job" designations. All arbitrary obstacles to employment should be eliminated.

2. If examinations are deemed necessary, outside assistance should be enlisted to insure that all tests, written and oral, are related significantly to the work to be performed and are not culturally biased.

3. Training programs, more intensive and comprehensive than standard programs, should be designed to replace educational and previous experience requirements. Training programs should be concerned also with improving relationships among culturally diverse staff and clients.

4. Recruitment should involve a community relations effort in areas where the general population does not reflect the ethnic and cultural diversity of the correctional population. Agencies should develop suitable housing, transportation, education, and other arrangements for minority staff, where these factors are such as to discourage their recruitment.

[See also standards 14.1, 14.3, and 14.4 for related positions on recruitment of new personnel generally, employment of women, and employment of ex-offenders.]

About the Commission

The Commission on Correctional Facilities and Services is a special public service effort to foster improvement of the nation's correctional apparatus—prisons, jails, probation, parole, community programs and new alternatives for the rehabilitation of criminal offenders. Sponsored by the American Bar Association, it was created in 1970 to serve as a vehicle for expressing the interest of the bar in this critical segment of the criminal justice process. Interdisciplinary in character, the Commission has twenty-four members and a full-time professional staff located in Washington, D.C. A grant from the Ford Foundation supports the program development activities of the Commission and a variety of federal and private awards contribute assistance to its several action programs.

About the Center

The Center for National Policy Review works to assure that federal laws and policies are implemented to protect the interests of minority groups. It consists of a group of lawyers and social scientists engaged in research and legal action on behalf of the principal civil rights groups in the country. As part of its work, the Center monitors federal programs to determine whether legislative advances in civil rights are being translated into real advances in eliminating patterns and practices of racial, ethnic, and sex discrimination. In addition to law enforcement, the Center's major concerns are with housing credit practices, federal site selection, employment, metropolitan school desegregation, revenue sharing and the civil rights policies of regulatory agencies. As can be seen, its interests extend to all federal programs and policies which have an impact on minorities and women. Located at the Law School of Catholic University of America in Washington, D.C., the Center operates under support grants from the Ford Foundation and Rockefeller Brothers Fund.

PLEASE NOTE

This pamphlet concerning new Equal Employment Opportunity Guidelines issued by the Department of Justice, as they affect correctional departments and agencies, should not be regarded as a substitute for the official regulations. These have been published in Title 28 of the Code of Federal Regulations (Part 42—Subpart E). The exact text of the new regulations may be obtained from the Office of Civil Rights Compliance, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C. 20530.

APPENDIX T

Selected Portions of Recommendations
of the National Advisory Commission
Criminal Justice Standards and Goals

POLICE TASK FORCE REPORT

Standard 13.3

Minority Recruiting

Every police agency immediately should insure that it presents no artificial or arbitrary barriers—cultural or institutional—to discourage qualified individuals from seeking employment or from being employed as police officers.

1. Every police agency should engage in positive efforts to employ ethnic minority group members. When a substantial ethnic minority population resides within the jurisdiction, the police agency should take affirmative action to achieve a ratio of minority group employees in approximate proportion to the makeup of the population.

2. Every police agency seeking to employ members of an ethnic minority group should direct recruitment efforts toward attracting large numbers of minority applicants. In establishing selection standards for recruitment, special abilities such as the ability to speak a foreign language, strength and agility, or any other compensating factor should be taken into consideration in addition to height and weight requirements.

3. Every police agency seeking to employ qualified ethnic minority members should research, develop, and implement specialized minority recruitment methods. These methods should include:

a. Assignment of minority police officers to the specialized recruitment efforts;

b. Liaison with local minority community leaders to emphasize police sincerity and encourage referral of minority applicants to the police agency;

c. Recruitment advertising and other material that depict minority group police personnel performing the police function;

d. Active cooperation of the minority media as well as the general media in minority recruitment efforts;

e. Emphasis on the community service aspect of police work; and

f. Regular personal contact with the minority applicant from initial application to final determination of employability.

4. Every police chief executive should insure that hiring, assignment, and promotion policies and practices do not discriminate against minority group members.

5. Every police agency should evaluate continually the effectiveness of specialized minority recruitment methods so that successful methods are emphasized and unsuccessful ones discarded.

Commentary

Increasing emphasis must be placed on recruiting qualified blacks as police officers in communities with black residents. In communities with Mexican-American residents, there is a need to seek qualified Mexican-Americans. This standard, however, is not limited to any one ethnic minority group. Whenever there is a substantial ethnic minority population in any jurisdiction, no matter what the ethnic group may be, the police service can be improved by employing qualified members of that group. Every police agency should adhere to the principle that the police are the people and the people are the police. When qualified minority group members do not enter the police service by whatever procedure is in effect, the guidelines in this standard should be implemented for active recruitment of such persons.

The need for minority police officers has been stated repeatedly. The President's Commission on Law Enforcement and Administration of Justice pointed out that to police a minority community with only white police officers can be misinterpreted as an attempt to maintain an unpopular status quo rather than to maintain the civil peace. Clearly, the image of an army of occupation is one that the police must avoid. The Commission further stated that minority officers can break down prejudice and stereotypes in the minds of majority officers, and that minority officers are better able to police a minority community because of their familiarity with the culture. Other benefits mentioned are reduced resentment on the part of citizens and, in some cases, the officer's ability to speak a foreign language.

The 1968 National Advisory Commission on Civil Disorders concluded that, in controlling civil disorders in Detroit, integrated Army troops performed better than less integrated National Guard troops. The Commission recommended increased recruitment of minority group police officers.

Proportionate Employment of Ethnic Minorities

Although the need to employ minorities as police officers may be obvious, their employment in many instances has not been appreciable despite the best intentions and diligent efforts of many police administrators. A survey of 28 police agencies conducted by the National Advisory Commission on Civil Disorders graphically illustrates the underrepresentation of minorities in the police service. The median figure for black sworn personnel was 6 percent; the median figure for the black population was 24 percent. In no case was the proportion of blacks in the police agency equal to the proportion in the population. A 1972 study of police recruitment and selection showed a similar disparity in minority representation within Massachusetts law enforcement agencies. (*A Study and Refinement of the Police Recruitment and Selection System, Commonwealth of Massachusetts,* Bio Dynamics Inc., 1972).

Statistics from throughout the country indicate that this underrepresentation is due in part to the fact that a greater percentage of minority applicants fail to meet police selection standards. This is not surprising, since minorities are traditionally disadvantaged, both culturally and educationally.

But in view of the need for minority police officers to foster better community relations and increase police effectiveness, police administrators not only should recruit minorities, but also should insure that unwarranted cultural bias is eliminated from the selection process.

Any reluctance on the part of police administrators to employ minority police officers is being overcome by Federal courts, which have established a solid record of eliminating cultural bias in the selection process and demanding preferential minority employment to rectify the effects of past discrimination. In most cases, preferential recruiting and hiring is directed toward approximating the minority composition of the community within the employee ranks.

Court Cases

A model case in point is *Carter* v. *Gallagher,* 452 F.2d 315 (1971), which alleged discrimination in the hiring procedures of the Minneapolis Fire Department. The court found that certain selection requirements were in fact discriminatory and were not job-related. The Eighth Circuit Court of Appeals ordered the city to rectify the situation. The court held in part that the fire department must hire one minority group member for every three whites employed until 20 minority group members are hired. A similar decision requiring preferential hiring was recently handed down in Philadelphia.

In *Allen* v. *Mobile,* 331 F. Supp. 1134 (1971), a suit alleging discrimination in assignment and promotion policies was brought against Mobile, Ala. Discrimination against black officers was found in the manner in which personnel were assigned and promoted. The court ordered the city to consult with black leaders in developing recruitment programs, and to direct advertising and promotion toward the black community. All advertising was to state that the City of Mobile is an equal opportunity employer. This order was handed down even though employment discrimination was not an issue in the original suit.

It is far wiser for police administrators to seek out aggressively and employ qualified members of

minority groups than to await the dictates of a court. Police administrators should seize the initiative in minority hiring.

Several recruitment techniques and programs have been particularly effective in attracting minorities. Police agencies seeking to recruit minorities should consider techniques described below and should develop techniques appropriate for their own particular needs.

However, the employment of persons from all ethnic groups within the community should be a recruitment goal, not a personnel policy governing the hiring of police personnel. Primary consideration should be given to employing the best qualified candidates available, regardless of ethnic background. The ethnic makeup of a community should be viewed as a guide for recruitment policies and procedures, not as a basis for quota hiring. If recruitment procedures fail to attract minority candidates from whom qualified applicants can be selected, there may be a need for new recruitment techniques; selection procedures should remain the same, however.

Selecting Qualified Minority Applicants

Although the employment of minorities in jurisdictions with minority communities is essential, the employment of minority group police officers without regard to their qualifications weakens an agency. Standards for the selection of police officers should be applied across the board without regard to race or ethnic origin.

Such a policy, however, presents problems. Some minorities suffer cultural and educational disadvantages, and are disqualified at a greater rate. The unusually high disqualification rate may extend into other areas.

The President's Commission on Law Enforcement and Administration of Justice pointed out that seemingly innocuous standards, traditional in the selection of police officers, may bear little relation to the requirements of the position and yet tend to disqualify minority applicants. Overly stringent standards regarding physical health are examples. Often persons from disadvantaged minority groups have been unable to afford the same level of medical care as those from other segments of the population, and they suffer corresponding deficiencies.

Police agencies should analyze what police officers really do, and set standards accordingly. It is conceivable that many physical standards might well be downgraded slightly, as some agencies have done with vision and dental requirements. Perhaps higher standards of education will impose an additional adverse effect on minority recruitment. But the disqualification of candidates should be done validly, not arbitrarily or capriciously.

In order to hire minority group members as police officers, police agencies must attract large numbers of minority applicants in anticipation of their unusually high attrition rate; additionally, they should apply compensating factors to expand the number of minorities that are employable. Compensating factors allow any applicant who does not meet one qualification, but excels in another, to be employed because the area of qualification outweighs the deficiency. A variety of compensating factors may be used.

In using compensating factors, the police agency must emphasize those elements of police work that are most important to it. O. W. Wilson, in *Police Planning,* suggests that one who excels in physical stature can be considered to have overcome an educational deficiency. In light of the modern police mission, however, education is far more important than physical size. A superior level of educational achievement should outweigh a physical deficiency.

Certain minimum qualifications—including moral character, mental ability, and psychological health—must be met directly rather than by compensation. Deficiencies in such requirements as height, weight, or vision may be compensated for by an unusual language skill, leadership experience, or education in excess of minimum requirements. Each agency must develop a policy on compensating factors tailored to its own purposes, but should insure that each candidate is hired only after it has been determined that he is qualified to be a police officer.

Special Recruitment Methods

In recruiting minority applicants, it is often necessary to overcome a distrust of the police. Minority recruiters can establish rapport with their audience and demonstrate that police agencies want and need minority personnel. The minority recruiters are more familiar with minority community attitudes; this facilitates communication. The use of minority recruiters has been successful across the country, particularly in Phoenix, Ariz.; Washington, D.C.; Kansas City, Mo.; New York, N.Y.; and Detroit, Mich.

Minority officers should not be assigned to recruitment duties arbitrarily. These officers should have the same training and qualifications as any other recruiter. Qualifications include articulateness, in-depth knowledge of the police profession and the individual agency, and a high degree of motivation.

The cooperation of minority community leaders and civic organizations is helpful in disseminating recruitment materials and providing opportunities

for recruiters to address groups of potential applicants. Community leaders themselves, if convinced of the sincerity of the police in recruiting minorities, may become active recruiters by referring applicants. The 1971 Rand Corporation report on minority recruiting in New York City recommended increasing the use of community leaders and civic organizations.

Depicting minority group police personnel in TV, billboards, and newspaper advertisements demonstrates that there is a role for minorities in police work. The Detroit Police Department has developed an effective series of newspaper, poster, and billboard advertisements.

Having identified a target population of one or more ethnic minorities, police must seek to attract them to the police service through communication. Washington, D.C., Detroit, New York, and other cities, have successfully used minority-oriented media. Overreliance on minority media can be unproductive, however. The Rand Institute study on minority recruiting in New York reported that the general media in the city were at least as productive in attracting minorities as minority media.

The Rand study found that the relatively high starting salaries and job security of many police agencies, while undoubtedly of some interest to all applicants, were not the primary interests of minority applicants. Rand discovered that minority applicants were motivated first by an "opportunity to maintain law and order;" second, by the "feeling that comes from helping people;" and third, by "fringe benefits and job security." Majority applicants were motivated by fringe benefits, job security, and pay, in that order.

Motivation

In any recruitment campaign, it is important to identify, then emphasize, what factors will motivate potential applicants.

Retaining minority applicants who display the basic qualifications for police work is just as important as attracting qualified minority applicants in the first place. The Rand Institute's study revealed that after the initial testing, most attrition of candidates was caused by a lack of motivation to follow through on the selection procedures during the lengthy processing. At the time of the Rand study, it took the New York Police Department up to 17 months to process each applicant. The Rand researchers did find that minority applicants who had voluntarily dropped out of the selection process responded positively to personal contact by the researchers. Rand recommended not only accelerating the selection process, but instituting personal contacts between police department personnel officers and minority applicants in order to sustain the applicants' interest in a police career during the selection process.

Such a system should not be considered too burdensome in light of the potential results. A biweekly phone call or letter to the applicant apprising him of his status assures him of the police agency's sincere interest in employing him if he is found to be qualified. This procedure helps overcome minority apprehensions about their acceptance in law enforcement positions. These apprehensions contribute to the high dropout rate.

Discrimination

The number of minority applicants will not increase much if discrimination continues in the assignment and promotion of personnel within the agency. It is the total police image that will influence minority interest in police careers.

The President's Commission on Law Enforcement and Administration of Justice identified a history of racist personnel policies within a few certain police agencies. These policies limited black officers' authority to make arrests and restricted them to working only in minority neighborhoods. The policies also restrained black officers from working with whites or in specialist assignments. It is hoped that these policies have been abolished and will never be reinstituted.

Minority officers are not second-class police officers; they should be selected by the same basic standards as all other officers and should therefore compete on an equal basis for every assignment. They should be deployed in minority neighborhoods but not restricted to working there; they should be allowed to work with all other officers and not forbidden to work with other minority officers.

If minorities are hindered from advancing to supervision, management, and administration, they are less likely to respond to recruitment. A National Advisory Commission on Civil Disorders survey in 1967 revealed marked racial disproportions in supervisory personnel: One of every 26 black police officers was a sergeant; the ratio for whites was one in 12. One of every 114 black officers was a lieutenant; the white ratio was one in 26. One in every 235 was a captain; the white ratio was one in 53.

As with employment qualifications, it may well be that minority officers are discriminated against by promotion standards that are not valid in the first place. Therefore, police administrators should identify the attributes of supervisors, managers, and administrators, and develop valid standards for the selection of personnel for promotion, in hopes of eliminating any bias.

It should be noted that the Equal Employment Opportunities Commission guidelines for hiring apply equally to the selection of personnel for special assignment and promotion.

Evaluation of Minority Recruitment

Seeking out and hiring the most qualified minority group members is a goal that should be reached through special minority recruitment programs, not through preferential or quota hiring. The specific hiring goal should be determined by comparing the minority makeup of the community with the minority composition of the police agency. Then an estimate should be made of the number of minority applicants necessary to achieve this goal within a reasonable period of time. Finally, specific recruitment techniques known to attract minority applicants should be applied. These techniques should be used in preference to general recruitment techniques, and emphasized or discarded on the basis of their proven effectiveness.

In 1971 the Detroit Police Department found that it had 13 percent minority personnel compared with a community population of 44 percent minority group members. It was determined that if the department continued its annual hiring ratio of 20 percent minorities, it would never approach an ethnic makeup reflecting that of the community. Over half of the police officers hired would have to be from minority groups to achieve an ethnic balance by 1980. The precise number of minority applicants that would be needed each month to reach the ultimate goal was established by simple calculation based on the disqualification rate of minority applicants. Recruitment efforts known to attract minority applicants were then emphasized in preference to general recruitment techniques

If these special techniques are successful in attracting minority applicants, Detroit will continue to use them; if not, they will be replaced by other techniques. The relative success of recruitment techniques can only be determined by monitoring the program.

It should be noted that while certain recruitment techniques are being emphasized in Detroit, no one is being hired on a preferential basis. The best qualified applicants are hired first, regardless of their ethnic background. If an insufficient number of minority persons apply, Detroit will engage in different or more intense recruitment efforts only, and not in preferential hiring.

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6. *Allen* v. *Mobile*, 331 F. Supp. 1134 (1971).
7. *Carter* v. *Gallagher*, 452 F. 2d 315 (1971).

Related Standards

The following standards may be applicable in implementing Standard 13.3:

1.7(1) News Media Relations.
10.1(9) Assignment of Civilian Police Personnel.
10.2(1a)(2a) Selection and Assignment of Reserve Police Officers.
13.1 General Police Recruiting.
13.4 State Mandated Minimum Standards for the Selection of Police Officers.
13.6(1)(2) Employment of Women.
Recommendation 13.1 Job-Related Ability and Personality Inventory Tests for Police Applicants.

Standard 13.6

Employment of Women

Every police agency should immediately insure that there exists no agency policy that discourages qualified women from seeking employment as sworn or civilian personnel or prevents them from realizing their full employment potential. Every police agency should:

1. Institute selection procedures to facilitate the employment of women; no agency, however, should alter selection standards solely to employ female personnel;

2. Insure that recruitment, selection, training, and salary policies neither favor nor discriminate against women;

3. Provide career paths for women allowing each individual to attain a position classification comensurate with her particular degree of experience, skill, and ability; and

4. Immediately abolish all separate organizational entities composed solely of policewomen except those which are identified by function or objective, such as a female jail facility within a multiunit police organization.

Commentary

The role of women in the police service has been based largely upon traditional and often outmoded ideas. Some misconceptions concerning the female's ability to perform certain "masculine" tasks have been dispelled as a result of changing social attitudes. The police service should keep abreast of social patterns and legal requirements by reassessing the function of women in the police field. Police administrators must determine whether expansion of the woman's role will further the cause of efficient police service.

As early as 1845, the public recognized that women perform certain police functions better than men. Two matrons were employed at The Tombs prison in New York City to process female prisoners. During the next 4 decades, the practice of using prison matrons became widespread. Just prior to the turn of the century, a movement to employ women as regular police officers gained support among several social action groups. This movement culminated in the hiring of the first regularly rated policewoman by the Los Angeles Police Department in 1910.

By the end of World War I, more than 220 cities employed policewomen. One of the major reasons for this relatively rapid acceptance of female peace officers was the change in the public's view of the police function. The use of women coincided with the newly accepted tenets of citizen protection and crime prevention, instead of exclusive concentration on the enforcement of laws and the detection of criminal behavior.

In 1922, the International Association of Chiefs of Police acknowledged that women were essential to police work and offered standards for the qualification, selection, and training of policewomen. The IACP outlined duties that were essentially preventive in nature and concentrated on the areas of juvenile delinquency, female criminality, family crises, runaways, missing persons, and sex offenses. Although the IACP stressed the use of women as a preventive force and cautioned against their making arrests, the recognition given to the woman's role provided momentum to women's drive for a permanent niche in the police service.

Traditional Role

Despite initial progress, policewomen have tended to be frozen into the traditional role bestowed upon their predecessors many years ago. The 6,000 policewomen in this country comprise approximately 2 percent of the sworn police population. Yet, a nationwide survey conducted by the International City Management Association in 1970 revealed that they constitute from 14.5 percent (in cities of 100,000–250,000) to 36.3 percent (in cities over one million) of the sworn personnel in juvenile units. Most of the others work as matrons, sex crime investigators, and clerical personnel.

Many agencies have attempted, some successfully, to exclude women altogether by quota systems, discriminatory hiring, and promotional policies. One department maintained a fixed quota for policewomen positions for 15 years and that quota was increased only recently. Additionally, in this department female officers are not eligible to take the examination for corporal, the first promotional level available for patrolmen. Only within the last 5 years have many agencies allowed women to take supervisory examinations. In many agencies substantial numbers of policewomen are assigned to clerical duties.

For the most part, women have not attempted to correct such situations. A notable exception was a policewoman who won a suit against the New York City Police Commission in 1963 that enabled her to take a promotional examination for sergeant. Despite her victory, other women have been reluctant to seek judicial resolutions except in isolated instances.

However, it is time for police agencies to anticipate such challenges to the status quo and to initiate measures to prevent judicial mandates which may seriously hamper effectiveness. The Supreme Court in *Griggs* v. *Duke Power Company,* 401 U.S. 424 (1970) held employment selection criteria processes must be nondiscriminating, specifically job-related, and validated. On March 21, 1972, the Equal Employment Opportunity Commission was empowered to enforce Title VII of the Civil Rights Act of 1964 as it applies to discrimination against women. The dominant principle of that law is that all jobs must be open to both men and women unless it can be proved that sex "is a bonafide occupational qualification necessary to the normal operation of that particular business or enterprise."

On March 22, 1972, the Senate approved the Equal Rights Amendment to the Constitution which prohibits denial of equal rights on the basis of sex. If ratified by three-fourths of the States, this amendment will become law. Although the ultimate impact of such a law remains unclear, its significance for police agencies would probably be determined by the interim progress each agency made in promoting employment opportunities for women.

Selection Procedures

Probably the most critical determination for any police agency to make in providing for the employment of women is the establishment of its selection criteria. Some agencies have required that women have more education than male applicants. Prior to 1969, Washington, D.C.'s Metropolitan Police Department required that women applicants possess a college degree, while men needed only a high school diploma. Before 1965, the Miami, Fla., Police Department had a similar selection procedure. The rationale was: "If we have so few positions, why not take the best?" However, legal decisions now prohibit this practice.

The Washington, D.C., Metropolitan Police Department now requires that men and women have the same qualifications with the exception that women are allowed a lower minimum weight. In effect, this means that women who are 5 feet 7 inches tall and possess all other qualifications can compete with men for police vacancies. This process has been carried a step further in St. Petersburg, Fla., which has eliminated the classification of policewoman in its public safety agency. As of July 11, 1972, anyone, including women, who meets the requirements and successfully proceeds through the selection process is eligible for appointment to the position of "policeman."

Because most police work requires physical strength and agility, agencies must not establish criteria that will result in the hiring of police officers unable to perform police duties. Agency hiring standards should not be altered to employ women at the cost of reduced physical effectiveness of individual police officers. Nor can police agencies continue to maintain different hiring qualifications

for men and women without discriminating against one group or the other.

Therefore, each agency must establish criteria that will facilitate the employment of both men and women without restricting its capability to carry out its function. Recently the Federal Government has moved in this direction. In December 1971, the Secret Service administered the oath of office to five women, the first in the 106-year history of the agency. On July 17, 1972, FBI Acting Director L. Patrick Gray III swore in the Nation's first female FBI agents. These historic occurrences indicate that the time is ripe for a reevaluation of the employment standards for women throughout the police service.

Abolition of Discriminatory Policies

Although restructuring selection criteria will facilitate the entrance of qualified women into the police service, other inequities must also be removed for an agency to derive maximum benefit from its policewomen. Very few agencies actively recruit women. They seek to perpetuate quotas which have been established for years.

The performance of woman recruits in some agencies indicates that a relaxation of such quota systems may be in order. While the average IQ scores of male recruits dropped from 107 to 93 on the New York Police Department between 1962 and 1969, the 1966 class of female recruits recorded the highest average score, 111, during that period. In a recent coeducational Miami, Fla., recruit class, a woman was given the most outstanding recruit award.

Washington, D.C.'s Metropolitan Police Department is now hiring 100 additional female officers in an effort to evaluate their effectiveness in patrol duties.

Training

Some agencies have neglected training of female personnel. Many conduct separate training classes for female personnel which are geared toward the investigative rather than the line functions of police work. Female recruits in Washington, D.C., have complained that instructors in certain courses have advised women to skip field-related classes because they would never have occasion to use the information. Women are also excused from the qualifying examination in physical fitness and passed automatically. These exemptions tend to perpetuate the image of "weakness" of female officers, to promote an overprotective attitude on the part of male officers, and are, in fact, as discriminatory against male officers as they are against female officers.

The Dallas, Tex., Police Department now includes 1 month of patrol observation with a training officer as part of its training course for female officers, a practice initiated by Chief Frank Dyson in 1971. At its inception, this program almost had disastrous results because the male training officers were not informed in advance of their obligations, the public was not prepared to accept the women, and some staff personnel were unaware of the new program. Consequently, there was an initial lack of uniformity in the patrol experience gained by the women, and the agency was criticized by some. This example illustrates the need for careful planning and adequate publicity in a venture of this nature.

Compensation

A recent development in Detroit, Mich., suggests the need to compensate policewomen specifically for the duties they perform when their promotional opportunities are limited. Five Detroit policewomen filed a complaint with the Michigan Civil Rights Commission alleging that their salaries were not commensurate with those of their male counterparts. These women claimed that their duties are those of detective sergeants who receive $14,470 a year, yet they are being paid patrolmen's salaries of $12,750.

Representative Career Paths

If women are to assume a role in the mainstream of police service, it is imperative that career development opportunities be made available to them. In most agencies, the limited scope of a policewoman's duties has precluded her elevation above the basic position classification. Notable exceptions exist, for the most part, where an agency's organization includes a separate women's division or bureau. In such cases, women are elevated within this organizational branch as supervisors or administrators of female personnel only.

In most agencies, promotions are predicated upon an officer's experience, knowledge, and ability as determined through an examination process. Regardless of abilities, women have been unable or unwilling to compete successfully in this process. Their duties have not been conducive to the attainment of comprehensive knowledge or experience in police work, especially in basic line functions. Since they cannot normally qualify for those positions which require such a background, some agencies have systematically excluded them from the promotional processes. This picture is gradually changing in some agencies. The Dallas, Tex., and

Miami, Fla., Police Departments have opened promotional examinations to women.

Probably the most innovative promotional policy has been instituted in Washington, D.C., where the Metropolitan Police Department maintains only one promotional list, which includes male and female officers. When a vacancy occurs, the next eligible person is elevated, regardless of sex.

One of the major barriers to women seeking careers as police officers is the practice of placing policewomen in specialized assignments upon completion of their training period. As a result, they do not gain broad-based experience in all phases of police work, especially in the area of patrol. Such specialization has become a double-edged sword. Many experienced policewomen have cultivated a certain pride in their status and are reluctant to relinquish it. Instead of earning their positions, they have been awarded them on the basis of sex. Conversely, younger female officers view assignments to patrol and other line functions as challenging experiences. These officers view the expansion of the woman's role as a necessity for advancement within the service.

After completing academy training, a Miami, Fla., policewoman is assigned to a field training officer in patrol, or to an experienced accident investigator. After demonstrating her abilities in patrol, she may be assigned as a regular partner to a male officer. Women are not assigned to one-person patrol units, but with adequate training, are utilized as single unit accident investigators. It is reported that the program has been initially effective, although it is still too soon to evaluate its overall impact. There is optimism about broadening the policewoman's role in Miami; the agency believes that policewomen can be valuable in patrol service functions related to family crisis situations, dependent children, emergency medical services, and social service referrals.

In 1968, Indianapolis, Ind., assigned two women to a patrol car without benefit of special training or preparation. These women learned the intricacies of patrol as they worked and in effect trained themselves. Initially assigned only routine calls, they eventually gained the experience and knowledge available only in the field. The women have proved their worth by their performance in the field and have gradually gained acceptance within the ranks. In February 1970, two more policewomen were assigned to patrol; presently, eight women perform uniformed patrol functions. The program appears to have withstood the test of time and has gained approval of male officers, the public, and the agency staff.

Expansion of Women's Duties

There is, of course, much resistance to expansion of the woman's role from practitioners at every level within the police service. Many believe that police work requires a degree of strength and physical ability greater than that possessed by most women.

The Los Angeles, Calif. Police Chief recognizes that women can perform some jobs better than men, and suggests that few women have the strength to perform many of the difficult tasks that are required of patrol officers. The same argument may apply to professional football players. Therefore, he argues, the lumping of both sexes into the patrolman classification, while retaining separate physical standards for women, will limit deployment flexibility since they cannot be used interchangeably.

The personnel director of a police department in Illinois points out that "if we allow the shorter and lighter women to become patrol officers and they do well, then there is no reason why we shouldn't allow shorter and lighter men." For that reason, some contend, physical standards should not be altered to bring women into the service. But if standards are not altered, the only women entering the police service will be recruited from the larger women, who represent 3.5 percent of the eligible female population. Statistics show that of U.S. women between the ages of 18 and 34, over 96 percent are shorter than 5 feet 8 inches, and 98 percent weigh less than 140 pounds.

Some women within the police service also express varying degrees of skepticism relative to a woman's ability to handle patrol assignments. One woman, assigned to uniformed patrol in Washington, D.C., was injured in an altercation involving police officers and an unruly crowd of 200 people on her fourth night on patrol. She regards her experience as a predictable part of her job, although she admits that "most of the guys are quite apprehensive about women being on the street, but ever since the fight, they don't worry about me at all." Others are not so philosophical. Another Washington policewoman tendered her resignation after her second night in the field, and another expressed her concern that policemen will get hurt because of their concern for the safety of female partners.

The Los Angeles, Calif., Sheriff's Department, which employs more female deputies than any other agency in the country, launched a program in 1972 using women in patrol, investigation, and traffic enforcement. However, the sheriff emphasized the experimental nature of the plan: "I'm somewhat skeptical about the performance of women in all patrol functions but I'm willing to try . . ."

Another problem that concerns police administrators is the ability of women to supervise male officers. The commissioner of the Philadelphia Police Department feels that all female supervisors should be assigned to the Juvenile Aid Division where they will supervise only policewomen. Some supervisors express the feeling that specific women supervisors are too lenient with their men, do not have the respect of patrolmen, and fail to get voluntary compliance from subordinates.

Some police officials claim deployment of women limits their command flexibility. Social, domestic, and disciplinary problems are anticipated as a result of "coeducational cop cars" by those who oppose the practice.

Organizational Segregation of Women

One reason for the limited scope of a policewoman's duties in many agencies is the existence of a separate women's bureau or division. The major argument against separate women's bureaus is the resulting inefficiency. A policewoman must be loaned from her division for a normally routine task, such as monitoring an interview, searching a female, or calming a distraught child.

If the assignment is of greater magnitude or involves a tactical operation, she is rarely included in the planning stages of the assignment. This can turn out to be very dangerous. The policewoman, unaware of the complete picture, is sometimes left with little or no back-up and must take unnecessary risks. On the other hand, inadequate planning may result in shoddy investigations or foiled arrests due to overconcern for the female decoy's safety.

The trend toward deemphasizing women's bureaus has also been due to limitations in job opportunities available to women under the system. In 1966, the President's Commission on Crime in the District of Columbia stated:

> The Woman's Bureau performs duties not ordinarily interpreted as part of the police function. It engages in investigations—which are social welfare responsibilities and should be conducted by representatives of the welfare agencies—Policewomen possess special education, training, and abilities which can be utilized to a greater extent in achieving police objectives.

In 1967, the woman's bureau in Washington was disbanded and the number of policewomen has since tripled. The Metropolitan Police Department is now able to recruit women with diversified, rather than specific, job interests.

Proponents of this organizational structure, many of whom are women, feel that such a system allows women to concentrate their unique abilities on the service and protection aspects of police work, especially in relation to women and children. Sergeant Mavis Wessen of the Women's Protective Division in Portland, Ore., claims that policemen do not consider protective work police work and seem unwilling to participate. Others advocate exclusive female partnerships and female supervision of policewomen.

The separate women's bureau is usually supported by men because it prevents competition for assignments between men and women and assures policemen of male supervision. It further frees the male officer from duties he considers to be more social work than police work. Female advocates of the system usually are assured of keeping their specialized positions and do not feel as if they are merely being "tolerated" by male partners. These women have resigned themselves to the limited promotional opportunities inherent in this system.

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Selected Portions of Recommendations
of the National Advisory Commission
Criminal Justice Standards and Goals

CORRECTIONS TASK FORCE REPORT

Standard 14.1
Recruitment of Correctional Staff

Correctional agencies should begin immediately to develop personnel policies and practices that will improve the image of corrections and facilitate the fair and effective selection of the best persons for correctional positions.

To improve the image of corrections, agencies should:

1. Discontinue the use of uniforms.

2. Replace all military titles with names appropriate to the correctional task.

3. Discontinue the use of badges and, except where absolutely necessary, the carrying of weapons.

4. Abolish such military terms as company, mess hall, drill, inspection, and gig list.

5. Abandon regimented behavior in all facilities, both for personnel and for inmates.

In the recruitment of personnel, agencies should:

1. Eliminate all political patronage for staff selection.

2. Eliminate such personnel practices as:

a. Unreasonable age or sex restrictions.

b. Unreasonable physical restrictions (e.g., height, weight).

c. Barriers to hiring physically handicapped.

d. Questionable personality tests.

e. Legal or administrative barriers to hiring ex-offenders.

f. Unnecessarily long requirements for experience in correctional work.

g. Residency requirements.

3. Actively recruit from minority groups, women, young persons, and prospective indigenous workers, and see that employment announcements reach these groups and the general public.

4. Make a task analysis of each correctional position (to be updated periodically) to determine those tasks, skills, and qualities needed. Testing based solely on these relevant features should be designed to assure that proper qualifications are considered for each position.

5. Use an open system of selection in which any testing device used is related to a specific job and is a practical test of a person's ability to perform that job.

Commentary

The image of corrections as regimented and military in nature is discouraging to the recruitment of the very types of persons most needed. Corrections must abandon the appearances, terminology, and practices that have contributed to this image. These changes will make corrections a more attractive career field to the young, to educated and talented people, to minorities, women, etc.

Many problems must be overcome for the successful recruitment of highly qualified staff. Prospective staff often are driven from this field because of poor personnel policies and practices that select out or repel applicants.

Selection through political patronage results in the accumulation of employees who are poorly qualified or motivated for correctional work. The practice is also discouraging to employees who prepared themselves for correctional careers and who wish to improve the status and effectiveness of the field.

Correctional agencies traditionally have preferred to hire only males of mature age who met rigid and arbitrary requirements as to height and weight and who were free of physical defect. Agencies also have administered personality tests that were not originally designed for correctional recruitment and barred the employment of persons who had ever been arrested or convicted of even the most minor offenses. None of these practices is based upon the realities of correctional work. They have operated effectively to bar persons with skills and talents that can be put to good use in corrections. Instead of closing the doors of corrections to these people, agencies should make an active and enlightened effort to recruit them.

Announcements of positions available rarely get beyond the bulletin board of the State personnel office. They never reach the inner city or other places where qualified persons could apply if they knew about job openings.

Some widely used requirements for jobs in corrections select out applicants because they do not have extensive experience in specific correctional work. This requirement is most widely used for supervisory or administrative positions and results in perpetuation of a questionable seniority system. In many cases it works against bringing into management new employees with new ideas and the courage to champion change rather than perpetuate the status quo.

Residency requirements in this highly mobile society are counterproductive and have been ruled unconstitutional in many cases. Yet they persist in several States as requirements for some correctional positions.

A challenge to unfair testing procedures for employment was upheld in the Supreme Court on March 8, 1971, in the decision regarding *Griggs* v. *Duke Power Company* (401 U.S. 424, 1971). The court held that selection processes must be specifically job related, culture fair, and validated. Most selection processes used by personnel offices throughout the country, and specifically in corrections, do not meet these standards. To rectify these poor personnel practices, the National Civil Service League proposed the Model Public Personnel Administration Law of 1972, which concerns these and other issues.

A task analysis of each job should be required to produce a job-related test. For example, the task analysis approach was used by the Western Interstate Commission on Higher Education for the job of parole agent. Each task was isolated, defined, and related to the total job function. The skills needed were identified, and the appropriate training for each skill proposed. The report on the task analysis outlined the following method:

> In order to observe a number of parole agents in the performance of their jobs in a relatively short period a fairly simple approach for the collection of job data is required. It can best be described as a three-step analysis:
>
> (1) Meet the parole agent and inquire about his background and his personal approach to job performance.
>
> (2) Observe activities of the agent for a period of time and literally walk or ride with him and even participate in the performance of his task when possible.
>
> (3) Record the type of task performed, how often he performs it, the duration of the task, and the degree of difficulty involved in performing it.

If such a task analysis were made of each major job in corrections, adequate predictive instruments could be developed to test applicants for job-related skills and knowledge.

Most written tests do little more than assess the applicant's vocabulary and grammar and test his comprehension with rudimentary exercises in logic. They rarely ask job-related questions, and almost none has been validated to determine whether the test actually does select persons whose adequate job performance was predicted by that test.

Careful task analysis in other human service agencies has shown that many tasks traditionally assigned to professional workers can be done, and done well, by persons with less than a college education. Corrections has done very little with reassignment of tasks and restructuring of jobs so that nonprofessional workers can take some of the load now carried by professionals and thus spread scarce professional services. Moreover, many persons with less than a college education can be of special use in corrections, since they understand the problems of offenders who are likewise without higher education.

Recruiting such personnel will help to reverse the racial and sexual discrimination that has occurred in staffing corrections. Recruitment efforts also should be directed toward hiring younger people who are finishing their education and interested in entering corrections as a career. This would reverse the current trend of hiring people who have entered corrections as career of second, third, or last choice.

Consideration should also be given to hiring staff on a part-time basis. Most correctional jobs today are full-time positions. If part-time employment were

available, qualified individuals, particularly women, could be recruited. Part-time employees, properly utilized, could render valuable service in corrections as they do in other social agencies. Part-time staff could be most easily recruited for community-based programs such as probation, where they could ease current workloads and make real contributions as members of the community into which offenders need to be reintegrated.

Recruitment of qualified personnel is restricted by lack of opportunity for lateral entry into the correctional system in many States. While no one would challenge the merits of promotion from within, it is also obvious that oftentimes it is desirable to hire a specially qualified person from another jurisdiction. If lateral entry is forbidden, such hiring is impossible. As the Joint Commission on Correctional Manpower and Training pointed out, prohibition of lateral entry is one of the factors that helps make corrections a closed system. Such a system contributes to "a stagnant, rather than a dynamic, work force."

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Related Standards

The following standards may be applicable in implementing Standard 14.1.

8.4 Juvenile Intake and Detention Personnel Planning.
9.6 Staffing Patterns.
10.4 Probation Manpower.
12.2 Parole Authority Personnel.
13.3 Employee-Management Relations.

Standard 14.2

Recruitment from Minority Groups

Correctional agencies should take immediate, affirmative action to recruit and employ minority group individuals (black, Chicano, American Indian, Puerto Rican, and others) for all positions.

1. All job qualifications and hiring policies should be reexamined with the assistance of equal employment specialists from outside the hiring agency. All assumptions (implicit and explicit) in qualifications and policies should be reviewed for demonstrated relationship to successful job performance. Particular attention should be devoted to the meaning and relevance of such criteria as age, educational background, specified experience requirements, physical characteristics, prior criminal record or "good moral character" specifications, and "sensitive job" designations. All arbitrary obstacles to employment should be eliminated.

2. If examinations are deemed necessary, outside assistance should be enlisted to insure that all tests, written and oral, are related significantly to the work to be performed and are not culturally biased.

3. Training programs, more intensive and comprehensive than standard programs, should be designed to replace educational and previous experience requirements. Training programs should be concerned also with improving relationships among culturally diverse staff and clients.

4. Recruitment should involve a community relations effort in areas where the general population does not reflect the ethnic and cultural diversity of the correctional population. Agencies should develop suitable housing, transportation, education, and other arrangements for minority staff, where these factors are such as to discourage their recruitment.

Commentary

The point need not be labored that a correctional population where minority groups are highly overrepresented can hardly be well served by a staff that is overwhelmingly white. But most correctional personnel today are white.

In 1969, the Joint Commission on Correctional Manpower and Training reported that of the total number of correctional employees (111,000) only 8 percent were blacks, 4 percent Chicanos, and less than 1 percent American Indians, Puerto Ricans, or Orientals. All institution administrators in the adult correctional system were white. Since 1969, some changes have been noted. A few blacks now serve in administrative roles in adult corrections, but their number is greatly disproportionate to the black proportion of the population, let alone the black proportion of the correctional population.

Startlingly small numbers of minority group mem-

bers were found among managers, rehabilitation specialists, and line workers in 1969. It is impossible to state an ideal figure for a national standard in minority recruitment because of the array of programs and the varying number of minority clients and community residents. Judgments need to be made in each case, but the overwhelming evidence is that an imbalance exists and must be remedied.

The qualifications set by State and local personnel offices should be reexamined when there are problems in obtaining minority staff. New criteria might be used, such as years of service in ghetto programs, "self-help" efforts, and community service. The prerequisite of long years in correctional systems may be the least valuable of all requirements. It is certain to eliminate most minority applicants.

Excuses often are given that qualified members of minority groups cannot be found. One State administrator from the Southwestern region told the press recently: "Of the 128 women inmates, 48 are black. There are no Negro matrons on the staff. We simply have no black applicants, or they don't meet the qualifications." Such remarks no longer can go unchallenged.

There are other problems regarding recruitment of minority staff. In the past, those few who were brought into the system felt pressure to become like their white counterparts. By doing so, they suffered an identity crisis with minority offenders. As black, Chicano, and Indian offenders have become politicized, they increasingly have rejected traditional minority staff. Extreme conflict has resulted in some institutions. Black inmates want black staff with whom they can identify. The same is true of Chicano and Indian inmates, probationers, and parolees.

Correctional agencies must become sensitive to this issue. They should abandon policies and practices that weaken identification between members of these groups and launch programs that capitalize on cultural differences as opportunities to improve their programs rather than as problems to contend with.

The need for a role model to admire and emulate undeniable. All youth need heroes. So do adults. Corrections should provide them among its staff, rather than weed them out. Both white and minority staff must be trained to accept this program goal.

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Related Standards

The following standards may be applicable in implementing Standard 14.2.

10.4 Probation Manpower.
12.8 Manpower (Parole).

Standard 14.3

Employment of Women

Correctional agencies immediately should develop policies and implement practices to recruit and hire more women for all types of positions in corrections, to include the following:

1. Change in correctional agency policy to eliminate discrimination against women for correctional work.

2. Provision for lateral entry to allow immediate placement of women in administrative positions.

3. Development of better criteria for selection of staff for correctional work, removing unreasonable obstacles to employment of women.

4. Assumption by the personnel system of aggressive leadership in giving women a full role in corrections.

Commentary

The Joint Commission on Correctional Manpower and Training pointed out in 1969 that while women make up 40 percent of the national work force, they account for only 12 percent of the correctional work force. The majority of women work in adult and juvenile institutions that are segregated by sex; that is, they usually work in institutions for female offenders. In most State and Federal institutions for males, the only women employees are clerks and secretaries.

Discrimination against women as employees in correctional institutions for males has had serious implications for other correctional roles. The traditional tendency of corrections to select its managers and administrators from the ranks of institutional personnel (i.e., working up from guard to administrator), combined with the fact that the number of institutions for males is much larger than the number of institutions for females, has meant that women have been effectively eliminated from management and administrative positions. The few women correctional administrators serve only as wardens of female institutions.

The time is long overdue for a careful inspection of the assumptions and biases that have barred women from most positions in corrections. Correctional agencies must take a careful look at the tasks to be performed for each occupational category in their system to see if sex alone constitutes a bona fide occupational qualification.

In interpreting the prohibition against discrimination on the basis of sex in Title VII of the Civil Rights Act of 1964, the courts have given force to the guidelines of the Equal Employment Opportunity Commission of the Civil Service Commission. The Commission has put forth these guidelines:

The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception: (1) the refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general, (2) the refusal to hire an individual based on stereotyped characterizations of the sexes.

Thus the principle of nondiscrimination recognizes that persons must be considered on the basis of individual capabilities and not on the basis of any stereotyped characteristics attributed to particular groups. In the area of corrections employment, the guidelines as specified by the commission should be given considerable weight.

These guidelines make clear that women should be hired for virtually any position in corrections. However, given the current situation in most institutions, sex may be a consideration in making certain assignments.

Serious objections to implementing this standard are anticipated. Prejudices run deep, particularly in the adult institutional field. Correctional administrators must take a strong leadership role in seeing that policies, practices, and attitudes are changed substantially. Corrections must become an equal opportunity employer.

References

1. *Criminal Justice Universe Conference: Proceedings.* Washington: Law Enforcement Assistance Administration, forthcoming.
2. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
3. Glaser, Daniel. "Changes in Corrections During the Next Twenty Years." Unpublished paper prepared for Project STAR, American Justice Institute, 1971.
4. *We Hold These Truths,* Proceedings of the National Conference on Corrections. Richmond: Virginia Department of Justice and Crime Prevention, 1972. (See particularly the presentation by William Nagel.)

Related Standards

The following standards may be applicable in implementing Standard 14.3.

8.4 Juvenile Intake and Detention Personnel Planning.
9.6 Staffing Patterns.
10.4 Probation Manpower.
11.6 Women in Major Institutions.
12.2 Parole Authority Personnel.
16.5 Recruiting and Retaining Professional Personnel.

APPENDIX U

CENSUS BUREAU DATA SOURCES

LEAA/IAOHRA TRAINING SESSION FOR SPA PERSONNEL

November 14-16, 1973--Chicago

(Material presented by the Bureau of the Census, Washington, D.C.)

The Census Bureau publications which should be useful to you in providing the type of information and statistics required in Sub part E--

Reports from the 1970 Census

1) Volume I - Characteristics of the Population

2) Volume I - Census Tract Reports

3) Volume II - Subject Reports

Current Population Reports

Special publications (Maps, press releases)

A brief description of these publications is presented on the subsequent pages.

I. Volume I, Characteristics of the Population

Volume I consists of separate reports for these areas: Each State, the District of Columbia, and the United States.

Data were first published in the form of four separate paperbound chapters identified as A, B, C, and D for each of the areas. The four chapters for each area were then assembled and issued in hardcover form.

Chapter A, Series PC(1)-A, Number of Inhabitants. -- Includes population counts for States, counties, standard metropolitan statistical areas, and places.

Chapter B, Series PC(1)-B, General Population Characteristics. -- Counts of the following racial groups are provided:[1]

White	Chinese
Negro or Black	Filipino
American Indian	All other
Japanese	

These counts are shown for the States, SMSA's, places, and counties.

For the white and black populations statistics on age, marital status, and household relationship are presented for these areas: State, SMSA, and places of 10,000 or more.

All data in Chapter B are based on 100 percent information.

The attached tables 17, 23, and 24 are from Chapter B.

Chapter C, Series PC(1)-C, Social and Economic Characteristics.-- The subjects covered in this chapter are age, years of school completed, school enrollment, marital status, family status, place of birth, employment status, veteran status, work experience, occupation, industry, class of worker (government, private or self-employed), income and low income (poverty status), etc.

These characteristics are shown for the white and black populations and for persons of Spanish language at the State level.[2]

[1]See attachment "Definitions and Explanations" for identifiers of the Spanish ancestry population.

[2]Ibid.

Also, for the black population, data (with the exception of age) are presented for smaller areas -- SMSA's, places, and counties with 400 or more blacks.

For the Spanish language population, data are also shown for SMSA's, places, and counties with 400 or more persons of Spanish language.

The data in Chapter C are based on a sample. Excerpts from tables 49, 53, 92, and 98 in this chapter are attached.

Chapter D, Series PC(1)-D, Detailed Characteristics. -- Subjects presented in Chapter D are shown in more detail and in some cases, cross-classified with other characteristics. For example, employment status is cross-classified by age.

Characteristics are shown for black and Spanish language populations for larger areas only -- States, SMSA's of 250,000 and cities of 100,000 or more.

The data in Chapter D are based on a sample. Excerpts from table 173 are attached.

II. Volume I, Census Tract Reports

A Census Tract Report was published for each SMSA. The data are similar to those presented in Chapters B and C of Volume I.

The count of white, black, and Spanish language persons is shown for each census tract. In addition, for those tracts with 400 or more blacks, data similar to those contained in Chapters B and C are presented for the black population.

Comparable statistics on the Spanish language population are shown for tracts with 400 or more persons of Spanish language.

III. Volume II, Subject Reports

Subject Reports concentrate on a particular population group or subject and generally provide detailed information and cross-relationships for them.

Some Subject Reports which may be relevant to your work are listed below. Most of the data in these reports are at the national level. Most of the reports on the ethnic and racial groups contain data for smaller areas: States, SMSA's, and places.

1970 Census of Population: PC(2) Subject Reports (Volume II)
(Partial Listing)

Ethnic and Racial Groups

1A. National Origin and Language
1B. Negro Population
1C. Persons of Spanish Origin
1D. Persons of Spanish Surname
1E. Puerto Ricans in the United States
1F. American Indians
1G. Japanese, Chinese, and Filipinos in the United States

Education

5A. School Enrollment
5B. Educational Attainment
5C. Vocational Training

Employment

6A. Employment Status and Work Experience
6B. Persons Not Employed
6D. Journey to Work

Occupation and Industry

7A. Occupational Characteristics
7C. Occupation by Industry

CURRENT POPULATION REPORTS

Current Population Reports covering a population group or subject are published annually by the Bureau of the Census. The Current Population Survey is a national sample of about 50,000 households.

Three Current Population Reports published on racial and ethnic groups are:

Series P-23, No. 46 - The Social and Economic Status of Blacks in the United States: 1972

Series P-20, No.250 - Persons of Spanish Origin: March 1972 and 1971

Series P-20, No.249 - Characteristics of the Population by Ethnic Origin: March 1972 and 1971.

Current counts on black, white, and Spanish origin populations ar the national level can be derived from these CPS reports. Also, these reports feature the social and economic characteristics of the given racial or ethnic group.

ATTACHMENT A

Definitions and Explanations

Racial Groups

The major racial groups identified separately in the Census reports are as follows: White, Negro or Black, American Indian, Japanese, Chinese, Filipino, and all other. All other is a residual category including Korean, Hawaiian, Aleuts, Eskimos, etc.

In most Census reports, the data are shown primarily for the white and Negro populations. In some tables, statistics are given for the category "Negro and other races"; this category consists of persons of all races other than white.

The terms "Negro" and "black" are used interchangeably by the Bureau.

Spanish Ancestry Population

The 1970 census used four identifiers to provide statistical information for persons of Spanish ancestry. The four identifiers are based on origin, surname, language, and birthplace. This information is derived independently of that on the race of the individual. Persons of Spanish ancestry may be of any race -- white, Negro, American Indian, Filipino, etc.

1. One identifier asks for the birthplace of the individual and his parents. From these questions, information is available concerning the number of persons born in Mexico, Cuba, or any other Spanish-speaking country, and persons who were native but have at least one parent born in Mexico or Cuba.

2. The second measure is the identification in terms of Spanish surname. In the five Southwestern States -- Arizona, California, Colorado, New Mexico and Texas -- all persons of Spanish surname have been separately identified.

3. The third measure asked for the language spoken in the person's home in early childhood (mother tongue). In Census reports, persons who reported "Spanish" as their mother tongue, and all other persons living in families in which the head or wife reported Spanish as the mother tongue were added to give a total which is designated as "persons of Spanish language."

4. The fourth measure asked persons whether they considered themselves to be Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin.

Basic counts for all four measures may be found in Chapters C and D of the Volume I reports. However, social and economic statistics in in Chapters C and D of Volume I reports are shown for the following measures according to geographical areas:

Five Southwestern States -- Arizona, Colorado, California, New Mexico or Texas -- Spanish language or Spanish surname.

New York, Pennsylvania, and New Jersey -- Persons of Puerto Rican birth or parentage.

Remaining 42 States and District of Columbia -- Persons of Spanish language.

ATTACHMENT B

DATA SOURCES

Census Bureau reports may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Was ington, D.C. 20402

RESOURCE PERSONNEL

For information about Census reports or assistance, you may contact one of the following:

U.S. Bureau of the Census, Washington, D.C. 20233

Population Division --

Mr. Edward Fernandez -- Spanish Origin Statistics
Telephone (301) 763-5219

Mrs. Nampeo McKenney) -- Racial Statistics
Mrs. Patricia Berman)
Telephone (301) 763-7572

Mr. Elmore Seraiel -- Ethnic Origin Statistics
Telephone (301) 763-7571

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END

7 tables/annexes