

FEDERAL REGISTER

Friday
May 2, 1980

Part IV

**Equal Employment
Opportunity
Commission**

**Office of Personnel
Management**

**Department of
Justice**

**Department of the
Treasury**

Department of Labor
Office of Federal Contract Compliance
Programs

**Adoption of Additional Questions and
Answers to Clarify and Provide a
Common Interpretation of the Uniform
Guidelines on Employee Selection
Procedures**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1607

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

DEPARTMENT OF JUSTICE

28 CFR Part 50

DEPARTMENT OF THE TREASURY

31 CFR Part 51

DEPARTMENT OF LABOR**Office of Federal Contract Compliance Programs**

41 CFR Part 60-3

Adoption of Additional Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures

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

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

SUMMARY: The agencies which issued the Uniform Guidelines on Employee Selection Procedures (43 FR 38290 et seq., August 25, 1978 and 43 FR 40223, Sept. 11, 1978, 29 CFR Part 1607, 41 CFR Part 60-3, 28 CFR 50.14, 5 CFR 300.103(c), and 31 CFR 51.53) have previously recognized the need for a common interpretation of the Uniform Guidelines, as well as the desirability of providing additional guidance to users, psychologists and enforcement personnel, by publishing Questions and Answer (44 FR 11996, March 2, 1979). These Additional Questions and Answers are intended to provide additional guidance in interpreting the Uniform Guidelines.

EFFECTIVE DATE: May 2, 1980

FOR FURTHER INFORMATION CONTACT: Pamela Dillon, Chief, Branch of Special Analyses, Room N5718, Office of Federal Contract Compliance Programs, Department of Labor, Washington, D.C. 20210, 202-633-6924.

Frederick Dorsey, Director, Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506, 202-634-7060.

A. Diane Graham, Assistant Director, Affirmative Employment Programs, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, 202-632-4420.

James Hellings, Special Assistant to the Assistant Director, Intergovernmental Personnel Programs, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, 202-632-6248.

Arnold Intrater, Chief Counsel, Office of Revenue Sharing, Department of the Treasury, 2401 E Street, N.W., Washington, D.C. 20220, 202-634-5182.

Kenneth A. Millard, Chief, State and Local Branch, Personnel Research and Development Center, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20414, 202-632-6238.

David L. Rose, Chief, Federal Enforcement Section, Civil Rights Division, Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530, 202-633-3831.

Donald J. Schwartz, Personnel Research Psychologist, Office of Systemic Programs, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506, 202-634-6960.

Introduction

Because of the number and importance of the issues addressed in the Uniform Guidelines on Employee Selection Procedures (43 FR 38290), and the dual needs of providing a common interpretation and providing guidance to employers and other users, psychologists and others who are called upon to conduct validity studies, and Federal personnel who have enforcement responsibilities, the five issuing Federal agencies adopted and issued Questions and Answers (44 FR 11996, Mar. 2, 1979) to clarify and interpret the Uniform Guidelines. The issuing agencies recognized that it might be appropriate to address additional questions at a later date.

By letter dated October 22, 1979, the American Psychological Association, acting through its Committee on Psychological Tests and Assessment, brought to the attention of the government concerns as to the consistency of the Uniform Guidelines with the "Standards for Educational and Psychological Tests," referred to in the guidelines as the "A.P.A. Standards". The Committee noted in its letter of

October 22, 1979, that it had found a high degree of consistency between the proposed Uniform Guidelines and the A.P.A. Standards on February 17, 1978, and that an attempt to resolve remaining inconsistencies was made in the published Uniform Guidelines. Stressing the view that the real impact of the Guidelines can only be fully assessed after agency instructions have been issued and applied, and after court rulings, however the Committee raised areas of possible inconsistency between the Uniform Guidelines, as applied, and the A.P.A. Standards. In particular, the letter raises (among others) three specific concerns: (1) that the Guidelines might call for "a more rigid demand for a search for alternatives than we would deem consistent with acceptable professional practices"; (2) that, with respect to criteria for criterion related validity studies, the Guidelines failed adequately to recognize that "a total absence of bias can never be assured" and that the standards of the profession required only that "there has been a competent professional handling of this problem"; and (3) for criterion related validity studies "in some circumstances there may exist just one or two critical job duties, and that in such cases sole reliance on such a single selection procedure relevant to the critical duties would be entirely appropriate".

Staff of the Federal agencies responded, by letter of January 17, 1980, that "some of the problems discussed in your letter may be due to a lack of a clearly articulated position of the Federal agencies on these matters, rather than to actual differences between the Uniform Guidelines and professional standards." The letter of January 17, 1980, enclosed a draft of three additional Questions and Answers designed to clarify the agencies' interpretation of those three issues, and requested comments on the additional Questions and Answers, and on the consistency of the Uniform Guidelines so interpreted with professional standards. By letter of February 11, 1980, the American Psychological Association, acting through its Committee on Psychological Tests and Assessment, found each of the Questions and Answers to be helpful and has judged, "given the accuracy of our interpretation of these Q's and A's, that these guidelines have attained consistency with the Standards in those areas in which comparisons can now be meaningfully made."

The validation provisions of the Uniform Guidelines are intended to reflect the standards of the psychological profession (Section 5C,

Uniform Guidelines). The issuing agencies are of the view that the three additional Questions and Answers accurately reflect the proper interpretation of the Uniform Guidelines with respect to the three areas of concern raised by the A.P.A. Accordingly, the agencies hereby adopt the three Questions and Answers set forth below to clarify and provide a common interpretation of the Uniform Guidelines. These three additional Questions and Answers supplement the original Questions and Answers published on March 2, 1979. (44 FR 11996). As with the originals, these Questions and Answers use terms as they are defined in the Uniform Guidelines, and are intended to interpret and clarify, but not to modify, the provisions of the Uniform Guidelines.

Questions and Answers 91 and 92 are published exactly as written and attached to the letter of January 17, 1980. As the letter from the A.P.A. correctly noted, the Answer to Question 91 implies that the obligation of a user to study unpublished, professionally available research reports is dependent not only on the degree of adverse impact, but also upon the absolute number of persons who might be adversely affected. Where the number of persons affected is likely to be large, a thorough inquiry into unpublished sources is likely to be appropriate, but where the number is small, a cursory review may be sufficient.

The answer to Question 93 has been modified by the addition of an example, as suggested by the letter from A.P.A., and by clarifying language at the end of the last sentence.

The agencies recognize that additional questions may arise at a later date that warrant a formal, uniform response, and contemplate working together to provide additional guidance interpreting the Uniform Guidelines.

Supplemental Questions and Answers

91. Q. What constitutes a "reasonable investigation of alternatives" as that phrase is used in the Answer to Question 49?

A. The Uniform Guidelines call for a reasonable investigation of alternatives for a proposed selection procedure as a part of any validity study. See Section 3B and Questions 48 and 49. A reasonable investigation of alternatives would begin with a search of the published literature (test manuals and journal articles) to develop a list of currently available selection procedures that have in the past been found to be valid for the job in question or for similar jobs. A further review would then be required of all selection

procedures at least as valid as the proposed procedure to determine if any offer the probability of lesser adverse impact. Where the information on the proposed selection procedure indicates a low degree of validity and high adverse impact, and where the published literature does not suggest a better alternative, investigation of other sources (for example, professionally-available, unpublished research studies) may also be necessary before continuing use of the proposed procedure can be justified. In any event, a survey of the enforcement agencies alone does not constitute a reasonable investigation of alternatives. Professional reporting of studies of validity and adverse impact is encouraged within the constraints of practicality.

92. Q. Do significant differences between races, sexes, or ethnic groups on criterion measures mean that the criterion measures are biased?

A. Not necessarily. However, criterion instruments should be carefully constructed and data collection procedures should be carefully controlled to minimize the possibility of bias. See Section 14B(2). All steps taken to ensure that criterion measures are free from factors which would unfairly alter the scores of members of any group should be described in the validation report, as required by Section 15B(5) of the Guidelines.

93. Q. Can the use of a selection procedure which has been shown to be significantly related to only one or two job duties be justified under the Guidelines?

A. Yes. For example, where one or two work behaviors are the only critical or important ones, the sole use of a selection procedure which is related only to these behaviors may be appropriate. For example, a truck driver has the major duty of driving; and in addition handles customer accounts. Use of a selection procedure related only to truck driving might be acceptable, even if it showed no relationship to the handling of customer accounts. However, one or two significant relationships may occur by chance when many relationships are examined. In addition, in most practical situations, there are many critical and/or important work behaviors or work outcomes. For these reasons, reliance upon one or two significant relationships will be subject to close

review, particularly where they are not the only important or critical ones.

Eleanor Holmes Norton,
Chair, Equal Employment Opportunity Commission.

Alan K. Campbell,
Director, Office of Personnel Management.

Drew S. Days III,
Assistant Attorney General, Civil Rights Division, Department of Justice.

Weldon J. Rougeau,
Director, Office of Federal Contract Compliance Programs, Department of Labor.

Kent A. Peterson,
Acting Director, Office of Revenue Sharing.

(FR Doc. 80-13345 Filed 5-1-80; 8:45 am)

BILLING CODE 6570-06-M