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COMMISSION**

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**QUESTIONS AND
ANSWERS ON THE
FEDERAL EXECUTIVE
AGENCY GUIDELINES ON
EMPLOYEE SELECTION
PROCEDURES**

DEPARTMENT OF JUSTICE

Office of the Deputy Attorney General

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ON EMPLOYEE SELECTION PROCEDURES

Introduction

NOTE: This document is issued jointly by the Department of Justice, the Department of Labor, and the Civil Service Commission. It was originally published in the FEDERAL REGISTER of Wednesday, January 19, 1977, and is reprinted here for the convenience of users who may be following the issuances of the Department of Labor and the Civil Service Commission on the assigned day of the week publication schedule (see 41 FR 32914, Aug. 6, 1976).

The problems addressed by the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51734 et seq., Nov. 23, 1976) are numerous and important, and some of them are complex. The history of the development of those guidelines is set forth in the introduction to them (41 FR 51734-35). The experience of the Department of Labor in administering its earlier Testing and Selection Order (41 CFR Part 60-3) has been that a series of answers to commonly asked questions is helpful in providing guidance not only to employers and other users, but also to psychologists and others who are called upon to conduct validity studies, and to compliance officers and other Federal personnel who have enforcement responsibilities.

The three Federal agencies issuing the guidelines—the Departments of Justice and Labor and the Civil Service Commission—seeking to benefit from the experience of the Department of Labor, and recognizing that the goal of a uniform position on these issues can best be achieved through a common interpretation of the same guidelines, have decided to issue the following Questions and Answers. The material included is intended to interpret and clarify the provisions of the guidelines. The questions selected are commonly asked questions in the field and those suggested by the guidelines themselves and by the extensive comments received on the various sets of proposed guidelines prior to their adoption. Terms are used in the questions and answers as they are defined in the guidelines.

The three agencies recognize that additional questions may be appropriate for similar treatment at a later date, and contemplate working together to provide additional guidance in interpreting the guidelines. Users and other interested persons are invited to submit additional commonly recurring questions they believe warrant answers, and any comments on the questions and answers set

forth below to the appropriate issuing agency.

HAROLD R. TYLER, Jr.,
Deputy Attorney General.

LAWRENCE Z. LORBER,
Deputy Assistant Secretary, Director,
Office of Federal Contract Compliance Programs.

JAMES C. SPRY,
Executive Assistant to the
Commissioners, United States
Civil Service Commission.

JANUARY 17, 1977.

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

A. The Guidelines are designed to aid in the achievement of our Nation's goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin, by providing a set of principles governing use of employment selection procedures that is consistent with applicable legal and psychological standards, is workable, and which the adopting agencies will apply in the discharge of their respective responsibilities. The Guidelines deal only with this one aspect of the overall equal employment opportunity question and do not purport to provide guidance for anything other than use of selection procedures.

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

A. Selection procedures which have an adverse impact on members of a racial, sex or ethnic group and thus operate to exclude them disproportionately are unlawfully discriminatory unless the user validates the procedure in accord with the Guidelines, or the user otherwise justifies them in accord with Federal law. See § 3. The basis for this principle was adopted by the Supreme Court unanimously in *Griggs v. Duke Power Co.*, 401 U.S. 424, and was ratified and endorsed by the Congress when it passed the Equal Employment Opportunity Act of 1972.

3. Q. What is adverse impact, and how is it measured?

A. Adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision) which works to the disadvantage of members of a racial, sex or ethnic group. § 4b. Rate of selection for each group is determined by dividing the number of applicants selected from that group by the total number of applicants from that group and by comparing the results with

¹ Section references throughout these questions and answers are to the Sections of the Federal Executive Agency Guidelines on Employee Selection Procedures (herein referred to as "Guidelines") that were published by the Department of Labor, Department of Justice and the U.S. Civil Service Commission on November 23, 1976, at 41 FR 51734 et seq. In the Department of Labor issuance, the section references are preceded by an additional reference to "§ 60-3" (thus, the reference here to § 3 refers to § 60-3.3 in the Labor Department's issuance).

the result derived in the same way for the group with the highest selection rate. For example, a user may have had over a six month period 120 applicants, 80 white, and 40 black; of whom 60 were hired, 48 whites, and 12 blacks. The selection rate for white applicants was thus 48/80=60%; while that for black applicants was 12/40=30%. In this example, the selection process adversely affected the employment opportunities of blacks because their selection rate (30%) was only one half that of whites (60%).

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

A. The Guidelines adopt a 4/5 (80%) Rule of thumb for guidance and operational use. See § 4b. If the selection rate for a group is within 4/5 or 80% of the rate for the group with the highest rate, the enforcement agency will generally not consider adverse impact to exist. In the prior example, the selection rate for blacks was 30%, while that for whites was 60%; so that the black selection rate was 1/2 or 50% of the highest group and there was adverse impact. If, on the other hand, there were 120 applicants, of which 80 were white and 40 black, and the user had selected 42 whites and 18 blacks, the selection rate for blacks would be 18/40 or 45%, while that for whites would be 42/80 or 52.5%. Because the selection rate for blacks as compared to that for whites is 45/52.5 or 85.4% (i.e., more than 80% (or 4/5)), the difference in impact would not be regarded as substantial in the absence of additional information.

5. Q. Does the 4/5 rule of thumb mean that the Guidelines will tolerate up to 20% discrimination?

A. No. The 4/5 rule of thumb speaks only to the question of adverse impact, and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. The 4/5 rule merely establishes a numerical basis for drawing initial inference and for requiring additional information.

With respect to adverse impact, the Guidelines expressly state (§ 4b) that differences in selection rates of less than 20% may still amount to adverse impact where the differences are significant in both statistical and practical terms. In the absence of differences which are large enough to meet the 4/5ths rule of thumb or a test of statistical significance, there is no reason to assume that the differences are reliable, or that they are based upon anything other than chance.

Two examples will be illustrative. If, for the sake of illustration we assume that nationwide statistics show that use of an arrest record would disqualify 10% of all Spanish-surnamed persons but only 4% of all Anglo persons, the "selection rate" for that selection procedure is 90% for Spanish-surnamed Americans and 96% for Anglos. There-

fore, the 4/5 rule of thumb would not indicate the presence of adverse impact (90% is approximately 94% of 96%). But in this example, the sample is large enough to be statistically significant, and the difference (Spanish-surnamed Americans are 2½ times as likely to be disqualified as Anglos) is large enough to be practically significant. Thus, the enforcement agencies would consider use of arrest record alone as having an adverse impact. See *Gregory v. Litton Industries*, 472 F.2d 631 (9th Cir., 1972).

Similarly, a difference of more than 20% in rates may not provide a basis for finding adverse impact if the numbers are very small. For example, if the employer selected three men and one woman from an applicant pool of 20 men and 10 women, the 4/5 rule would indicate adverse impact (selection rate for women is 10%; for men 15%; 10/15 or 66⅔% is less than 80%), yet the numbers are so small that a difference in one person hired would show an adverse impact the other way. In these circumstances, the enforcement agency would not require validity evidence in the absence of additional information.

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

A. Adverse impact is determined first for the overall selection process for each job category. If there is no adverse impact from the selection process, there is no obligation under the Guidelines to validate the selection procedures used for that job. If the overall selection process has an adverse impact, the adverse impact of the individual selection procedures should be analyzed. For any selection procedure in the process having an adverse impact which the user continues to use, the user is expected to have evidence of validity satisfying the guidelines. § 4b and § 5c.

7. Q. If adverse impact is determined initially on the basis of the overall selection process, does this allow discrimination in one selection procedure to be balanced by another discriminatory procedure?

A. No. As shown above (see answer to Question 5), discrimination and adverse impact have different meanings; and these Guidelines do not permit any kind of discrimination. There are, moreover, many methods of determining proficiency. In some cases, proficiency may be best demonstrated by a written examination, while for others a review of experience or an interview, or a combination of all three may be best. Many employers and other users are utilizing alternative or combinations of approaches. Where the overall selection process of a user results in equal employment opportunities for members of racial, sex or ethnic groups for a job, the Guidelines reflect the position that it would be inappropriate for the federal enforcement agencies to expend their limited enforcement resources examining the validity of each procedure utilized in the process.

8. Q. Is the user obliged to keep records which show whether its selection

procedures have an adverse impact on race, sex or ethnic groups?

A. Yes. Under the Guidelines the user is obliged to maintain evidence indicating the impact (if any) which their selection procedures have on identifiable racial, sex or ethnic groups. § 4 a and b. If the selection procedure does have an adverse impact on one or more such groups, the user is expected to maintain documentation evidence showing the validity of the procedure. § 13a.

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

A. The two subjects are different, although related. The Guidelines state that compliance with these Guidelines does not relieve users of any affirmative action obligations they may have. § 11. The Guidelines, however, encourage the development and effective implementation of affirmative action plans or programs in two ways. First, the Guidelines state (§ 4c) that in determining whether to institute action against a user on the basis of a selection procedure which has adverse impact and which has not been validated, the enforcement agency will take into account the general equal employment opportunity posture of the user with respect to the job classifications for which the procedure is used and the progress which has been made in carrying out any affirmative action program. If the user has demonstrated over a substantial period of time that it is in fact providing equal employment opportunity in the job or job groups in question, the enforcement agency will generally exercise its discretion by not initiating enforcement proceedings. Secondly, the Guidelines encourage affirmative action programs by stating (§ 11) that nothing in them is intended to preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives.

10. Q. Does the language of § 4c and § 11 concerning non-discrimination in the making of employment decisions prevent the adoption of effective affirmative action programs?

A. No. The Equal Employment Opportunity Coordinating Council has adopted a policy statement on affirmative action programs (41 Fed. Reg., Sept. 13, 1976). A copy of that statement is attached hereto and incorporated herein. The language of § 4c and § 11 is based upon and merely intended as a reminder of the non-discrimination provisions contained in Title VII and Executive Order 11246. The policy statement on affirmative action contains a similar prohibition for the same reason. The kind of color conscious affirmative action steps outlined in the Coordinating Council's policy statement do not, in the judgment of the enforcement agencies, violate the language of § 4c or § 11 of the Guidelines. This view is consistent with the well established principle that affirmative action programs of this kind do not violate the comparable anti-preference provisions of Title VII or Executive Order 11246.

11. Q. If it is not feasible or appropriate to validate a selection procedure, what obligations does the user of such a procedure have?

A. The Guidelines recognize that it is not always feasible or appropriate to utilize the validation techniques of the psychological profession as contemplated by the Guidelines. If the procedure cannot be validated because it is informal, unstandardized or unscored, the user should insofar as possible eliminate adverse impact, or if feasible modify the procedure to one which is formal, scored or quantified, and then validate the procedure in accord with these Guidelines. If it is not feasible to validate a standardized selection procedure, the user should either adopt an alternative procedure to eliminate adverse impact or modify the procedure to eliminate the adverse impact. The continued use of either a standardized or unstandardized procedure may also be permitted if the user can otherwise justify such use in accord with the federal law. See § 3b.

12. Q. How can users justify continued use in accord with federal laws of a procedure which has an adverse impact and which it is not feasible or appropriate to validate?

A. That subject is one to which the Guidelines are not addressed. In *Griggs v. Duke Power Co.*, 401 U.S. 424, the Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a "business necessity" for its continued use. The federal agencies will consider evidence which shows "business necessity" to justify continued use of a selection procedure. Evidence of any other justification would have to be considered on a case by case basis.

13. Q. Do the Guidelines apply to the selection procedures utilized by state and local government licensing and certification boards and agencies?

A. The Guidelines neither broaden nor narrow the coverage of the underlying federal law. The Guidelines state however that licensing and certification are employment decisions to the extent that they may be covered by federal law. The courts are divided on that question. The Department of Justice has taken the position that at least some kinds of licensing and certification which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended. See, *United States v. North Carolina*, 400 F. Supp. 343 (E.D. N.C. 1975) (three judge court) (certification of teachers).

14. Q. Where can a user obtain a "certification of validity"?

A. The federal enforcement agencies do not recognize any certification of validity or validation. See § 7a. If a user's selection procedures have an adverse impact, the user is expected to produce evidence of the validity of the procedure, not a certificate that they have been validated. Thus, the assertion by anyone, including a State employment service representative, that a test battery or other selection procedure has been vali-

dated is not sufficient to satisfy the Guidelines.

15. Q. What is the relationship between the Guidelines and other statements of psychological principles, such as the Standards for Education and Psychological tests published by the American Psychological Association (Wash., D.C., 1974) (hereinafter "APA Standards")?

A. The Guidelines are designed to be consistent with the generally accepted standards of the psychological profession. However, to the extent that there may be differences between particular provisions of the Guidelines and expressions of principles found elsewhere, the Guidelines will be given precedence by the enforcement agencies. With respect to any matters not addressed by the Guidelines, users are, of course, free to follow the standards of the profession so long as doing so is consistent with applicable equal employment opportunity requirements.

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

A. The Guidelines call for a validation study whenever a selection procedure has adverse impact on any racial, sex or ethnic group. If a selection procedure has adverse impact, its use in making employment decisions without adequate evidence of validity would be inconsistent with the Guidelines. Waiting until a selection procedure is challenged increases the risk that the user will be found to be discriminating and be liable for back pay awards, plaintiffs' attorneys fees, loss of Federal contracts or grants and the like. Validation studies begun on the eve of litigation have seldom been found to be adequate. Users of selection procedures should consider the potential benefit to their employment systems and the savings in resources which can result from having a validation study completed or well under way before the procedures are administered for use in employment decisions. Public merit systems typically have a special obligation to validate selection procedures regardless of any expectation that adverse impact may result.

17. Q. Are there any special requirements as to who is allowed to perform a validity study?

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

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

A. Yes. Differences in job duties, locations or study samples can affect validity, so that a selection procedure found to have validity in one situation may not have validity in different circumstances. Conversely, a selection procedure not found to have validity in one situation

may have validity in different circumstances.

19. Q. Does the way a selection procedure is used affect its validity?

A. Yes. Selection procedures which have been properly validated can be used in improper ways. For this reason selection procedures must be administered and scored in a standardized manner during the research and must continue to be administered and scored in the same way while being used operationally. § 5d. A selection procedure which has been validated as predicting success on one job might be invalid for predicting success on another job.

Even if the selection procedure is properly administered and scored and the same job is involved, it may be used improperly. For instance, it would be improper to use a selection procedure to rank applicants if the validity study only supported the use of minimum acceptance levels ("pass/fail"). The validity study should reflect the way the selection procedure will be used in practice.

20. Q. Is the user of a selection procedure required to develop the procedure from scratch?

A. No, a selection procedure developed elsewhere may be used. However, the user has the obligation to show that its use for the job in question is consistent with the Guidelines.

21. Q. Is evidence that a selection procedure which has been validated in one context has validity in another context (validity generalization) alone sufficient justification for its use elsewhere (transportability)?

A. No. The conditions governing transportability are stated in § 6 of the Guidelines. While some degree of validity generalization is necessary for transportability, it is not sufficient.

Validity generalization refers to the degree to which the results of a criterion-related validity study conducted on a selection procedure in one situation lead to inferences concerning the degree of validity of that selection procedure or similar selection procedures in other situations. Transportability refers to the permissible use of a selection procedure in more than one context. Validity generalization is a statistical concept concerning validity evidence, while transportability is a judgment concerning use of selection procedure.

22. Q. Under what circumstances can a criterion-related validity study done elsewhere be used as sufficient validity evidence to meet the Guidelines (on other than an interim basis)?

A. A validity study done elsewhere may be used as sufficient evidence if four conditions are met (see § 6b):

1. The weight of the evidence from one or more studies must show that the procedure was valid in its use elsewhere.
2. The job(s) for which the selection procedure will be used must closely match the job(s) in the original study as shown by a comparison of results (in terms of job duties) of the job analyses in both contexts.
3. A fairness study must be contained in the original evidence for those groups constituting a significant factor in the

user's labor market (see Answer to Questions 31-34 below).

4. There are no variables in the other study or studies which are likely to affect validity or fairness significantly (see Answer to Question 23 below).

23. Q. Under what circumstances can a selection procedure supported either by criterion-related validity evidence obtained elsewhere or by a partially completed validity study be used on an interim basis?

A. Interim use of criterion-related validity evidence is permitted in three situations:

1. If it is technically feasible for a user to conduct an internal validity study and there are significant differences between the research sample in a study done elsewhere and the user's job applicants in terms of such variables as age, education, job experience, etc., the selection procedure may only be used on an interim basis pending an internal validity study.

2. If validity evidence obtained elsewhere does not contain an investigation of fairness the selection procedure may only be used on an interim basis until evidence of fairness or unfairness is shown either from other sources or the user's own study.

3. If a user has substantial validity evidence either from other sources or from studies being conducted by or for the user, but which are not in complete compliance with the Guidelines, the selection procedure may be used only on an interim basis pending completion of validity studies.

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

A. The fact that the Guidelines permit interim use of a selection procedure does not immunize the user from liability for back pay, attorney fees and the like, should use of the selection procedures later be found to be in violation of the Guidelines (e.g., because of a showing of unfairness), and for this reason users should take steps to come into full and complete compliance with the guidelines as soon as possible. It is also appropriate for users to consider ways of minimizing adverse impact during the period of interim use.

25. Q. Under what circumstances may a validity study conducted cooperatively among users or in different units of a multi-unit organization be used in locations not included in the validity study?

A. A selection procedure supported by validity evidence obtained from a cooperative or multi-unit study may be used in new situations where the conditions described in the answer to Question 22 are met, and where there are no significant differences between the applicant populations and the research subjects in such characteristics as age, education, job experience, or the like.

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

A. A user should select the validation strategy which is most appropriate for the type of selection procedure, the job, and the employment situation. Con-

tent validity by itself is inappropriate where the selection procedures are measures of aptitude or personality traits, and for jobs in which the employee is expected to gain the measured skills or knowledges while on the job. In such circumstances criterion-related or construct validation strategies should be used. On the other hand where the selection procedures are work samples or measures of fully developed skills or knowledges, content validity is appropriate although criterion-related validation techniques could be used where technically feasible. Where a sample of sufficient size cannot be obtained, where appropriate measures of employee proficiency to be used as criteria cannot be developed, or where there is a severe range restriction in scores on selection procedures, and this range restriction cannot be reduced or appropriately corrected, criterion-related validity may be technically infeasible.

27. Q. Why don't the Guidelines contain a preference for criterion related validity over content or construct validity?

A. Generally accepted principles of the psychological profession do not recognize any such preference, but contemplate the use of criterion related, content, or construct validity strategies as appropriate. APA Standards, E, pp. 25-26; *Washington v. Davis*, --- U.S. ---, 44 U.S.L.W. 4789, fn. 13. Moreover, the Guidelines normally require criterion related evidence as a component part of any construct validity study § 12d. With respect to content validity, where the content of the selection procedure closely matches the behaviors or activities required for job performance, as in a typing test for typists or a truck driving test for truck drivers, a content validity approach is the most appropriate way of showing validity. Because the Guidelines make it clear that content validity by itself is not appropriate for aptitude, intelligence, personality or interest tests (§ 12c(1)), and that evidence of content validity depends upon the closeness of the resemblance between work behavior and the selection procedure, there is no need or justification for a general preference for criterion related validity over content validity. All three strategies are empirically based. Construct validity requires empirical research evidence, which is normally criterion-related, linking the selection procedure to the job, while content validity requires a factually based linkage of the selection procedure to the activities of the job.

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

A. No. The Guidelines state (§ 12c(1)) that content validity is not appropriate where the selection procedure involves knowledges, skills, or abilities which the employee will be expected to learn "on the job." The phrase "on the job" is intended to apply to training which occurs after hiring, promotion or the like.

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

A. It is required for all content and construct studies, but not for all criteria in a criterion related study. See § 12a, and § 12b(3). Proper measures of the results or outcomes of job behaviors such as production rate or error rate may be used without a full job analysis where a review of information about the job shows that these criteria are important to the employment situation of the user. Similarly, measures such as absenteeism, tardiness or turnover may be used if these behaviors are shown by a review of information about the job to be important in the specific situation. A standardized rating of overall job performance may be used if the user can demonstrate its appropriateness for the specific job and employment situation through a study of the job. Measures of overall job performance should be carefully developed and standardized, and their use should be carefully controlled. See, *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

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

A. Success in training is an appropriate criterion when: (1) The job analysis shows that success in training is necessary for successful job performance or related to increasing proficiency on the job; and (2) training success is properly measured. § 12b(3). Where the measure of success in training is a paper and pencil test, the measure should be carefully developed to ensure that factors which are not job related do not unfairly inflate or depress the measures of training success and to ensure that the measures are in fact job related. § 12b(3).

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

A. When a specific score on a selection procedure has a different meaning in terms of expected job performance for members of one racial, sex or ethnic group than the same score does for members of another group, the use of that selection procedure may be unfair for members of one of the groups. See § 14(k). For example, if members of one group have an average score of 40 on the selection procedure, but perform on the job as well as another group which has an average score of 50, then the selection procedure is unfair to the members of the lower scoring group. (The concept of test fairness has sometimes been referred to as differential validity or differential prediction).

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

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

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

A. The consequences of using unfair selection procedures are severe in terms of discriminating against applicants on the basis of race, sex or ethnic group membership, or in terms of perpetuating the effects of past discrimination. Accordingly, these studies should be per-

formed routinely where technically feasible and appropriate, even if the probability of finding unfairness is small. See *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 435. Moreover, the APA Standards published in 1974 call for the investigation of test fairness in criterion related studies wherever feasible (pp. 43-44).

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

A. The user has three options. See, § 12b(7)(iv). First, the selection instrument may be replaced by another validated instrument which is fair to all groups. Second, the selection instrument may be revised to eliminate the sources of unfairness. For example, certain items may be found to be the only ones which cause the unfairness to a particular group, and these items may be replaced by others. Finally, revisions may be made in the use of the selection procedure to ensure that the probability of being selected is compatible with the probability of successful job performance.

35. Q. If there are not enough members of an adversely affected race, sex or ethnic group in the potential research sample to make it feasible to study test fairness, should the group still be included in the sample?

A. Yes, normally the study should be conducted on a sample which is representative of the expected candidates for the job in question. However, there may be situations in which the members of the race, sex or ethnic group available for the study are so dissimilar from other persons in the sample that the information should not be combined for data analyses.

36. Q. Do the Guidelines require a search for alternative selection procedures?

A. The Guidelines provide that while a validity study is being conducted, the user should attempt to find and apply procedures that have as little adverse impact as possible. However, once that effort has been made and the chosen procedure has been studied and shown to be valid, the Guidelines do not require the user to search further for alternative procedures. The Guidelines do call for a user to take steps to ensure that selection procedures are kept current, and to investigate any alternative procedures shown to have at least equal validity and less adverse impact. The obligation to investigate alternative procedures is greater when the user is in an interim use status.

37. Q. What does a user do if there are not enough persons in a job to conduct a criterion related study?

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

1. Changing the procedure so as to eliminate adverse impact;

2. Validating the procedure through a content validity strategy, if appropriate (see § 12c and answer to Question 25 and 27);

3. Using a selection procedure validated elsewhere in conformity with the

Guidelines (see § 6 and answers to Questions 22-24);

4. Engaging in a cooperative study with other facilities or users (in cooperation with such users either bilaterally or through industry or trade association), or participating in research studies conducted by the state employment security system. Where different locations are combined, care is needed to insure that the jobs studied are in fact the same and that the study is adequate and in conformity with the Guidelines (see § 6);

5. Combining essentially similar jobs into a single study sample may in some circumstances be consistent with the Guidelines (see § 5g and § 12b).

38. Q. If a user has previously engaged in discrimination against members of a

racial, sex or ethnic group, is the user precluded from making its selection procedures more stringent?

A. In such circumstances, the Guidelines provide (§ 9) that the user should afford those members of the group discriminated against, who were available in the relevant job market during the period of discriminatory practices, an opportunity to qualify under the less stringent procedures, unless the user demonstrates that the more stringent procedures are required for the safety or efficiency of the operation. The user is not precluded from using the more stringent procedures for all other persons.

39. Q. If a user has all selection procedures administered by an employment

agency or a consultant, does that relieve the user of responsibilities under the Guidelines?

A. No. The user remains responsible for the selection procedures utilized by others on behalf of the user. It is therefore expected that the user will have sufficient information available to show: (a) what selection procedures are being used on its behalf; (b) the adverse impact of those procedures, and evidence of the validity of any such procedures; and (c) the number of persons by race, sex and ethnic group referred, and the total number considered for referral or for job applications.

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**Title 41—Public Contracts and Property
Management**

**CHAPTER 60—OFFICE OF FEDERAL
CONTRACT COMPLIANCE PROGRAMS,
EQUAL EMPLOYMENT OPPORTUNITY,
DEPARTMENT OF LABOR**

**PART 60-3—GUIDELINES ON EMPLOYEE
SELECTION PROCEDURES**

CROSS REFERENCE: For a document issued by the Department of Justice, the Department of Labor, Office of Federal Contract Compliance Programs, and the Civil Service Commission on the subject of questions and answers on the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51744) see FR Doc. 77-1932 also appearing in this Part VI of the issue.

NOTICES

**CIVIL SERVICE COMMISSION
EMPLOYEES SELECTION PROCEDURE
GUIDELINES****Appendices to Federal Personnel Manual
Supplements**

CROSS REFERENCE: For a document issued by the Department of Justice, the Department of Labor, Office of Federal Contract Compliance Programs, and the Civil Service Commission on the subject of questions and answers on the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51752) see FR Doc. 77-1932 also appearing in this Part VI of the issue.