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Contacts: Jorge Ponce E-MAIL: jorgeponce@aol.com
Delia Johnson E-MAIL: djohnso@ibb.gov

***COUNCIL OF FEDERAL EEO AND CIVIL RIGHTS
EXECUTIVES ISSUES A POSITION PAPER ON THE
CONTROVERSIAL MANAGEMENT DIRECTIVE 715***

WASHINGTON, DC – On December 5, 2004, the Council of Federal EEO and Civil Rights Executives issued a position paper on Management Directive 715 (MD-715) – a highly controversial directive prepared by the Equal Employment Opportunity Commission (EEOC). MD-715 replaced three previous Management Directives (712, 713, and 714) which were released in the 1980's. This position paper is based on the results of a survey that the Council used to poll its members regarding their views on MD-715. Fifty-four survey results were received, which is a very representative sample of the Federal EEO community.

Whereas MD-712, 713, and 714 addressed affirmative action programs for minorities, women, and people with disabilities, the goal of MD-715 is the maintenance of effective affirmative programs of equal employment opportunity. This obvious shift in emphasis has caused quite a stir in the civil rights community as the Congressional intent for the major civil rights law, the Civil Rights Act of 1964, was “to improve the economic and social conditions of minorities and women by providing equality of opportunity in the work place.” While the goal of affirmative action remains the attainment of equal opportunity for all groups, it is a fact that minorities and women have not attained a level playing field in the federal workforce. By discarding the term “minorities and women” from the text of MD-715, EEOC is giving the false impression that the Federal Government has reached a level playing field.

Similarly, by omitting the term “underrepresentation,” MD-715 asks federal agencies to identify barriers that have impeded the progress of certain employees, but offers no guidance to these agencies regarding what remedies to adopt for employees who have been adversely impacted by these past barriers. The Instructions to MD-715 stipulate that “... the purpose of Title VII is equal employment opportunity, not parity or proportional representation.”

MD-715 requires federal agencies to use nine occupational categories when describing their workforce statistical information. Prior to MD-715, these agencies relied on the PATCOB categories that the Office of Personnel Management (OPM) and EEOC shared in common. OPM has stated that it will continue to use the PATCOB categories in a post MD-715 environment. Thus, it will be much more difficult to compare OPM/EEOC statistical information in pre-MD-715 and post-MD-715 environments – a serious challenge for litigants in EEO and class action complaints. In addition, there are significant costs involved in converting the agencies' statistical information to the new occupational categories, a fact clearly demonstrated in that thirty-five (65%) survey respondents indicated that they had not executed this conversion.

In addition, MD-715 requires federal agencies to adopt seven race and national origin (RNO) to describe their statistical information. However, the Office of Management Budget indicated that it and EEOC are still negotiating on the proper RNO categories to use. By not informing federal agencies that these negotiations are still ongoing, EEOC is placing federal agencies who choose to convert their statistical information now in harm's way by having to re-convert the data after EEOC and OMB reach a consensus on this issue. The main area of contention remains that EEOC has not asked federal agencies to collect racial information for the Hispanic category – which could lead to an undercount of Hispanics. It will be ironic if the latter undercount is allowed to take place at a time when the EEOC Chair is a Hispanic.

Federal agencies have complained bitterly that EEOC did not consult them when issuing the Instructions to MD-715, as EEOC should have done in accordance with Executive Orders 12067 and 12866. Even the Reorganization Plan No. 1 of 1978 requires the EEOC to consult affected agencies before taking any action related to standardized data collection procedures. EEOC also did not consult with civil rights organizations and the public, as required per Executive Order 12067. Moreover, federal agencies are saying that instead of providing unneeded guidance on the creation of a model EEO program, EEOC should have updated the regulations for the Uniform Guidelines on Employee Selection Procedures (which have not been updated since 1978!) (29 C.F.R. 1607) and the affirmative action programs (29 C.F.R. 1608).

Federal agencies have to submit their first MD-715 report to EEOC by January 31, 2005. The Council members recommended that EEOC should hold this requirement in abeyance to give EEOC ample time to resolve its differences with OPM, OMB, the Census Bureau, and the EEO community.