



June 14, 2004

Honorable Cari M. Domínguez
Chair
U.S. Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20507

Dear Chair Domínguez,

The Federal EEO community, which our Council represents, has spent considerable time and effort reviewing the Instructions to Federal Agencies for Equal Employment Opportunity Management Directive 715 (MD 715). Since the release of these Instructions, the Council has received significant feedback via e-mail messages, formal and informal discussions, and meetings specifically devoted to a discussions of the Instructions – including our last regular session in which Douglas Gallegos, Acting Director, Affirmative Employment Division addressed the Council. We believe that these concerns require EEOC's immediate attention.

Whereby EEOC has faithfully complied with the dictates of Executive Order 12067 by consulting with federal agencies on the draft version of MD 715, it did not consult with all federal agencies prior to issuing the final version of these Instructions. While we are aware that the Executive Order does not require EEOC to coordinate instructions with federal agencies, we feel strongly, in the spirit of transparency, collegiality and interagency cooperation between EEOC and the federal agencies, coordination should have occurred and should occur.

The Instructions were more than “how-to” instructions. They contained policy and guidelines that the agencies should have been given an opportunity to review and comment before they were released in final form. We wonder if the other EEOC Commissioners were also given a chance to review the Instructions. Most importantly, the Instructions substantially influence the manner in which personnel data is gathered and analyzed in federal agencies, and they put the onus on individual agencies to make modifications to databases that are operated through agency personnel offices. The ill will created by the non-coordination of these Instruction is itself a barrier to engendering a willingness on the part of management in agencies to seriously examine agency personnel policies and practices to identify and remove barriers to the advancement of minorities, women, and person with disabilities.

The focus, overall approach, and desired outcome set forth in MD 715 are positive and laudable. However, we believe the method by which the Instructions were issued, as well as portions of their contents, seriously undermine achieving the goals of MD 715.

We take this opportunity to relay the Council's concerns for your consideration:

- The nine occupational categories should be rescinded.

Since EEOC acknowledged in MD 715 that federal agencies should use the statistical information to provide them with just a snapshot of their workforces, it makes more sense to keep the old PATCOB categories. The Office of Personnel Management has announced publicly that it will retain the PATCOB categories. Thus, it is better to continue using the PATCOB categories to facilitate the comparison of statistical information with previous and future OPM reports, as well as with previous EEOC Annual Reports on the Federal Work Force.

Federal agencies get their statistical information from a variety of data source such as the U.S. Department of Agriculture National Finance Center, the Department of the Interior Payroll System, and the Defense Civilian Personnel Data System. Since it is the personnel offices that receive these data dumps and report their statistical information to OPM by using the PATCOB categories, they do not have an incentive to convert this information to the different categories for EEO offices. More importantly, changes to these data systems are expensive and require huge resources expenditures. Nevertheless, EEOC gave little if any thought to these additional expenditures.

Most agencies' EEO Offices are understaffed and underfunded. Human capital staff have been greatly reduced over the past few years. We think that the confusion that these changes would create is highly detrimental to the attainment of equal opportunity within federal agencies. We think that the changes required of the personnel databases, as well as the conflicting reports generated, will exacerbate what in many agencies is already a noncollegial and sometimes acrimonious relationship between EEO and personnel offices.

In the past, EEOC officials have justified these categories by telling us that they would serve to align the federal sector with the private sector. We again re-state our position that the roles that the federal and the private sectors play are totally different, whether you are referring to affirmative action or the complaints process.

- The seven race and national origin (RNO) categories should be discontinued.

Since EEOC is not using the RNO that the Census Bureau and the Office of Management and Budget approved, it should allow federal agencies to retain the RNO categories that they were previously using. To get any meaningful data, federal agencies would have to resurvey their staffs by using the new categories. Again, EEOC has not given sufficient consideration to the cost and manpower needs that would be needed. We reject the proposition that federal agencies could apply the new categories just to new hires. We think that the maintenance of two data systems would be more costly and provide unreliable data.

- The collection of applicant flow data is good.

We feel, however, that EEOC should design a uniform form for this purpose and get it approved by the Office of Management and Budget. Requiring each agency to collect this data, knowing that each agency would have to design a form and get OMB approval, would demonstrate a lack of EEOC leadership and a disregard for the resources of the EEO community.

We have been informed that the meeting that you were going to have with the private sector organizations on June 4, 2004, had to be cancelled because of concerns that these organizations had with your proposed changes. We are glad that the federal agencies and organizations are not the only ones taking issue with the MD 715 Instructions, and we think that EEOC issued these Instructions prematurely.

We opine that failure to adopt these recommendations will result in the inability by the majority of federal agencies to complete their reports to EEOC by the January 30, 2005 due date. This would be a shame since federal agencies did not have prepare a report last year. Moreover, considering that EEOC has trained many EEO managers on these Instruction recently, we think that the adoption of our recommendations need to be placed on a fast track.

If you would like to discuss this letter with us, you can reach us at jorgeponce@aol.com and djohnso@ibb.gov, or by phone at (202) 612-5157.

Sincerely,

Jorge E. Ponce & Delia L. Johnson
Co-Chairs
Council of Federal EEO and Civil Rights Executives