



December 5, 2007

Mr. Stephen Llewellyn  
Executive Officer, Executive Secretariat  
Equal Employment Opportunity Commission  
10<sup>th</sup> Floor  
1801 L Street, NW  
Washington, DC 20507

Dear Mr. Llewellyn,

Enclosed are the comments of the Council of Federal EEO and Civil Rights Executives to the Equal Employment Opportunity Commission's Notice of Information Collection regarding demographic information on applicants for federal employment, which was published in the Federal Register on November 15, 2007.

While the Council applauds EEOC for embracing its recommendation sent by letter dated June 14, 2004, regarding having EEOC develop a generic applicant-flow form and getting it approved by the Office of Management and Budget, we recognize that this decision has been overtaken by events. Therefore, the Council will take these new developments into account when assessing the impact that the EEOC's Notice of Information Collection will have in the operation of EEO programs in the federal sector.

#### **APPLICANT-FLOW FORM**

The U.S. Government Accountability Office published a report in June 2006 entitled "Equal Employment Opportunity: Improved Coordination Needed between EEOC and OPM in Leading Federal Workplace EEO," GAO-06-214. OPM took the position that "agencies collecting applicant data could involve significant legal risks – such collection could be construed as pressuring agencies to engage in preferential treatment in order to achieve "results" in terms of workforce composition, as suggested by certain recent discrimination cases." On the opposite side, EEOC, in MD-715, requires agencies to analyze data on race, national origin, gender, and disabilities provided by job applicants in order to identify areas where barriers may be excluding certain groups. GAO suggested that EEOC and OPM must work together to improve their collective guidance, feedback, and assistance to other agencies on EEO. While the Council is not taking sides with OPM or EEOC regarding this issue, it agrees with this GAO recommendation and suggests that EEOC should meet with OPM to address this policy disagreement before going any further with this form.

Moreover, OPM officials stated at the November 27, 2007 Council meeting that federal agencies were authorized to collect demographic information only from employees, but not from applicants. They indicated that to collect this information from applicants would be in violation of laws like the Privacy Act. While these officials are aware of a few federal agencies that collect this kind of data from applicants who use the USAJOBS database, they indicated that these agencies do so at their own risk. With advice like this, the Council opines that EEOC and OPM should iron out their disagreements before putting other federal agencies in legal jeopardy.

## **DESCRIPTIONS USED IN APPLICANT-FLOW FORM**

The descriptions that EEOC uses in this form are taken from OPM's Standard Form 256 (Self-Identification of Handicap), instead of using its own descriptions for targeted disabilities. We note that this form was last revised in 1987, and uses the term "handicap" – which was replaced by "disability" by the Rehabilitation Act Amendments of 1992 (Public Law 102-569). Once again, we urge EEOC to embrace the GAO recommendation to cooperate with OPM and adopt the same descriptions.

Thanks for offering us the opportunity to comment on the proposed applicant-flow form. If you have any questions about this letter, you may contact us at (202) 482-8185 (Jorge) or at (202) 619-5157 (Delia).

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

Enclosures:

June 14, 2004 Letter (click on <http://www.fedcivilrights.org>, go to the What's New directory, go to the Council Issues the Long Awaited Position Paper on MD-715 on December 5, 2004, and click on the "MD715InstructionsLetter" file) or <http://www.fedcivilrights.org/www.fedcivilrights.org/MD%20715%20Instructions%20Letter.pdf>

November 27, 2007 Minutes (click on <http://www.fedcivilrights.org>, and go to the Minutes directory) or <http://www.fedcivilrights.org/www.fedcivilrights.org/Minutes%201107.htm>