



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
Legal Counsel

October 24, 2019

TRANSMITTED VIA E-MAIL

Lawrence A. Shorty
U.S. Department of Agriculture
Office of Partnerships and Public Engagement
1400 Independence Avenue SW
Mailstop 0601, Room 520-A
Whitten Building
Washington, DC 20250-3700

Re: Request for Comments Regarding the United States Department of Agriculture's 1994 Tribal Scholars Program (OMB No. 0503-0016)

Dear Mr. Shorty:

The U.S. Equal Employment Opportunity Commission (EEOC) submits the information below in response to the Department of Agriculture's (USDA's) request for comments on an information collection regarding the USDA 1994 Tribal Scholars Program.¹ We provide these comments to the extent that program applicants and participants are covered as applicants or employees by federal employment discrimination statutes.

The EEOC enforces the federal laws that prohibit employment discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information.² The laws enforced by the EEOC also prohibit retaliation for filing a charge or complaint of employment discrimination, participating in an employment discrimination proceeding, or opposing such

¹ Notice of Request for an Extension of a Currently Approved Information Collection, 84 Fed. Reg. 44,842 (Aug. 27, 2019) (OMB No. 0503-0016).

² See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq.; Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791; Titles I and V of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.; the Equal Pay Act of 1963, 29 U.S.C. § 206(d); and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq.

discrimination.³ Further, the EEOC coordinates and leads the federal government's efforts to eradicate employment discrimination.⁴

We recommend that USDA add "genetic information" to the list of protected bases on page 5 of the Fellow Experience Program Service Agreement. ("All participants in the USDA 1994 Tribal Scholars Program will receive full consideration without regard to race, color, national origin, religion, sex, age, status, physical or mental disability or political or personal preference.") Pursuant to Title II of the Genetic Information Act of 2009 (GINA), it is illegal for federal agencies and other covered entities to discriminate against applicants or employees based on genetic information.⁵ Protected genetic information under GINA includes, among other things, genetic test results and family medical history.⁶ GINA prohibits federal agencies from using genetic information to make employment decisions; restricts the circumstances under which federal agencies may request, require, or purchase applicants' or employees' genetic information; and requires that federal agencies keep applicants' and employees' genetic information confidential, with limited exceptions, and in separate medical files.⁷

Thank you for the opportunity to provide these comments in response to this information collection. Please feel free to contact me with any questions or comments.

Sincerely,

Lisa Schnall
Senior Attorney Advisor
Office of Legal Counsel
U.S. Equal Employment Opportunity Commission

³ 42 U.S.C. § 2000e-3(a); 29 U.S.C. § 623(d); 29 U.S.C. § 791(g) (incorporating, among other provisions, the anti-retaliation provision of the ADA into the Rehabilitation Act); 29 U.S.C. § 215(a)(3); 42 U.S.C. § 2000ff-6(f).

⁴ Exec. Order No. 12,067, 43 Fed. Reg. 28,967 (June 30, 1978).

⁵ 42 U.S.C. § 2000ff et seq.; 29 C.F.R. pt. 1635; *see also* EEOC, *Genetic Information Discrimination*, <https://www.eeoc.gov/laws/types/genetic.cfm> (last visited Oct. 17, 2019).

⁶ 42 U.S.C. § 2000ff(4); 29 C.F.R. § 1635.3(c).

⁷ 42 U.S.C. §§ 2000ff-1, 2000ff-5; 29 C.F.R. §§ 1635.4, 1635.8, 1635.9.