



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

November 15, 2007

MEMORANDUM FOR CHIEF HUMAN CAPITAL OFFICERS

FROM: LINDA M. SPRINGER
Director

A handwritten signature in blue ink, appearing to read "LMS", with a long horizontal flourish extending to the right.

Subject: Outstanding Scholar and Bilingual/Bicultural Authorities

This memorandum provides guidance to agencies regarding use of the Outstanding Scholar program and Bilingual/Bicultural hiring authority in light of the recent decisions by the Merit Systems Protection Board in *Dean v. Department of Agriculture* and *Olson v. Department of Veterans Affairs*.

Background

A 1981 consent decree issued by a Federal court in *Luevano et al v. Campbell* established the Outstanding Scholar and Bilingual/Bicultural hiring authorities. The *Luevano* plaintiffs challenged the implementation and use of the Professional and Administrative Career Examination (PACE), an assessment tool used by the Office of Personnel Management (OPM) to identify qualified individuals for employment into certain entry level positions in the Federal service. Plaintiffs alleged that the PACE violated Title VII of the Civil Rights Act of 1964 because it had an adverse impact on blacks and Hispanics.

In the consent decree that resolved *Luevano*, the Government agreed to eliminate the PACE and develop alternative examining procedures. The decree also established the Outstanding Scholar and Bilingual/Bicultural hiring authorities as a supplement to (not a replacement for) the competitive examining process in situations where adverse impact continued. These programs were to be used where traditional competitive examining procedures produced adverse impact to try to help improve diversity in the occupations covered by the decree.

Guidance

Agencies are no longer required to use the Outstanding Scholar program or the Bilingual/Bicultural hiring authority, under any circumstances. The circumstances under which the consent decree did require use of these authorities are no longer applicable. Accordingly, the consent decree no longer mandates use of the Outstanding Scholar and Bilingual/Bicultural hiring authorities.

In light of a recent decision by the Merit Systems Protection Board, OPM strongly

advises against further use of the Outstanding Scholar and Bilingual/Bicultural hiring authorities. In October 2006, in *Dean v. Department of Agriculture* and *Olson v. Department of Veterans Affairs*, the MSPB determined it is unlawful to use the Outstanding Scholar hiring authority (and, by implication, the Bilingual/Bicultural authority) without applying veterans' preference. It does not appear possible for agencies to use the Outstanding Scholar or the Bilingual/Bicultural hiring authorities and also comply with the veterans' preference provisions in title 5 as the MSPB now requires.

Accordingly, OPM believes that agencies should discontinue their use of these special hiring authorities. OPM has conferred with the Department of Justice and DOJ concurs with these recommendations.

This guidance in no way affects use of the Administrative Careers With America (ACWA) examining instruments.