



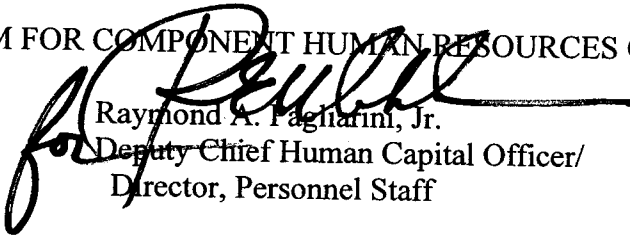
U.S. Department of Justice
Justice Management Division
Personnel Staff
Web Site: <http://www.usdoj.gov/jmd/ps>

NOV 26 2007

Washington, D.C. 20530

MEMORANDUM FOR COMPONENT HUMAN RESOURCES OFFICERS

FROM:


Raymond A. Pagliarini, Jr.
Deputy Chief Human Capital Officer/
Director, Personnel Staff

SUBJECT:

Use of the Outstanding Scholar and Bilingual/Bicultural Hiring
Authorities and Administrative Careers With America (ACWA)
Examining Instruments

This memorandum provides guidance to components regarding the use of the Outstanding Scholar and Bilingual/Bicultural hiring authorities. The Merit Systems Protection Board (MSPB) recently issued decisions in *Dean v. Department of Agriculture* and *Olson v. Department of Veterans Affairs* in which they determined that it is unlawful to use the Outstanding Scholar hiring authority (and, by implication, the Bilingual/Bicultural hiring authority) without applying veterans' preference. Specific information regarding the *Dean v. Department of Agriculture* and *Olson v. Department of Veterans Affairs* can be found at the following MSPB website:

<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=248169&version=248441&application=ACROBAT>.

Because it does not appear possible for agencies to use these hiring authorities and remain in compliance with the veterans' preference provisions in Title 5 as the MSPB now requires, the Office of Personnel Management (OPM) is strongly advising against further use of the Outstanding Scholar and Bilingual/Bicultural hiring authorities in the attached memo dated November 15, 2007. As a result of this OPM recommendation, the Department of Justice will no longer support the use of these authorities and all components are required to immediately cease their utilization.

Please keep in mind that this guidance in no way affects the use of the ACWA examining instruments. Components can and must use ACWA for testing designated positions unless they have an approved alternative assessment tool. A list of the testing designated positions can be found in the OPM Operating Manual Qualification Standards for General Schedule Positions at the following website: <http://www.opm.gov/qualifications/sec-v/sec-v.asp>.

Any questions regarding the discontinued use of these hiring authorities or the use of ACWA should be referred to Donna Jacob, HR Specialist, HR Policy, on (202) 353-3186 or via electronic mail at Donna.Jacob@usdoj.gov or Cindy Westray, HR Specialist, HR Policy, on (202) 305-1757 or via electronic mail at Cindy.Westray@usdoj.gov.

Attachment



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 dark ink, appearing to be "LMS", is written over the name "Linda M. Springer".

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.