

OPM 99-02

January 12, 1999

TO: All Appointing Authorities

FROM: Oscar B. Jackson, Jr., Administrator
and Cabinet Secretary for Human Resources

SUBJ: Declaratory Ruling Regarding Affirmative Action Plans

Recently, the Office of Personnel Management (OPM) has received a question regarding the interpretation of the Merit Rules regarding affirmative action plans. Specifically, a question has arisen regarding whether the inclusion of additional information indicating the specific degree of underutilization in the affirmative action plan is proper under the Merit Rules. In order to resolve this question and clarify the interpretation of the Merit Rules as they apply to this situation, I am issuing this declaratory ruling pursuant to Section 307 of Title 75 of the Oklahoma Statutes and OAC 530:1-1-20.

Issue: A state agency authorized less than 200 full-time-equivalent employees (FTE) has completed a utilization analysis using the "80% method." The state agency has completed the utilization analysis form to determine underutilization (a "yes" or "no" as determined using the "80% method"), but has also included a number in the affirmative action plan indicating the specific *degree of underutilization*. Is this allowed under the Merit Rules?

Analysis: Merit Rule 530:10-3-33.7 states in pertinent part:

(a) Affirmative action plans for agencies authorized **15** or more full-time-equivalent employees shall include an analysis of the utilization of minorities and females in the agency's workforce for June 30th of each year. A second utilization analysis for December 31st of each year shall be submitted separately to the Office of Personnel Management by March 1st of each year.

(b) Appointing Authorities shall use a commonly-recognized statistical method to determine if underutilization exists, i.e., there are fewer minorities or women in a particular job group than would reasonably be expected by their availability.

(1) Agencies authorized less than **200** full-time-equivalent employees shall use the "80% method" to determine underutilization, unless another method is approved by the Administrator. The "80% method" declares underutilization to exist if the females or minorities in a job group are less than 80% of their availability or if the number of females or minorities in a job group is zero.

. . .

(c) Appointing Authorities shall complete a form prescribed or approved by the Administrator to show a comparison of the actual employment of minorities and women with their relative availability in the applicable job groups. The form shall provide spaces for summary information, including but not limited to: total staffing, numbers of minorities and females, final availability percentages, job group percentages, and determination of underutilization.

According to the *OPM Manual for Affirmative Action Plans in Oklahoma State Government* (revised June 1998), the utilization analysis "serves as the basis for setting minimum goals and establishing timetables."

Merit Rule 530:10-3-33.11 states:

Affirmative action plans for agencies authorized **15** or more full-time-equivalent employees shall include flexible goals and timetables for job groups in the agency's workforce that show underutilization. Agencies using the "80% method" are not required to establish hiring goals for females and each minority group that is underutilized within a job group. For each job group in which underutilization is found for minorities or females, an Appointing Authority shall consider affirmative action to increase the representation of the group that is underutilized. An Appointing Authority shall:

- (1) List job groups that show underutilization and the number of new hires projected during the affirmative action plan period;
- (2) Set goals for job groups showing underutilization; and
- (3) Complete a form prescribed or approved by the Administrator which shall include but not be limited to spaces for job groups, minorities and females, projected appointments, annual placement goals for new hires and promotions (optional) and for ultimate goals (optional).

According to the Merit Rules, a state agency authorized 15 or more FTE is required to include in its affirmative action plan an analysis of the utilization of minorities and females in the agency's workforce. [Merit Rule 530:10-3-33.7(a)] Unless the Administrator approves another method, an agency authorized 200 or fewer FTE must use the "80% method" to determine underutilization. [Merit Rule 530:10-3-33.7(b)(1)] A state agency must complete a form which includes *but is not limited to* information on total staffing, numbers of minorities and females, final availability percentages, job group percentages, and a determination of underutilization. The Merit Rules on affirmative action establish the minimum requirements for affirmative action plans. Nothing in statute or rule prohibits a state agency from including additional information in the affirmative action plan in general.

Ruling: A state agency authorized 15 or more FTE must include a utilization analysis in its affirmative action plan. If the state agency is authorized between 15 and 200 FTE, the agency must use the "80% method" *to determine whether underutilization exists*, unless the Administrator approves another method. However, nothing prohibits a state agency from including additional information, such as a determination of the *degree of underutilization*. A state agency may use the "Final Availability" from the "Availability Analysis", in determining the degree of underutilization. A determination of the degree of underutilization is not required by the Merit Rules, but may be helpful to state agencies in setting appropriate goals and timetables as required by Merit Rule 530:10-3-33.11.