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GUIDANCE

The End of the Uniform Guidelines?

What the EEOC's Pending Rescission of the Uniform Guidelines Means for Employers

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This article builds on our recent guidance, Navigating Evolving Title VII Standards, which examined changing federal perspectives on disparate impact discrimination.

Since then, another potentially significant development has emerged: the Equal Employment Opportunity Commission (EEOC) has announced plans to rescind its codified version of the Uniform Guidelines on Employee Selection Procedures (UGESP).

While this proposal is likely to generate considerable discussion within the talent assessment community, employers should be careful not to overinterpret what is changing and, perhaps more importantly, what is not changing.

Disclaimer: We are Industrial-Organizational (I-O) psychologists, not attorneys, and this article does not constitute legal advice.

Rather, we aim to provide practical guidance grounded in decades of I-O psychology research and practice to help organizations implement effective, predictive, and defensible selection processes.

A POTENTIALLY SIGNIFICANT REGULATORY SHIFT

According to the EEOC's Unified Agenda entry (RIN 3046-AB43), the agency intends to rescind the interpretive rulemaking portions of UGESP, codified at 29 CFR Part 1607, along with its accompanying appendix. The EEOC cites subsequent statutory and judicial developments—specifically including the Civil Rights Act of 1991—as part of its rationale.

The action is listed in the final rule stage, targeted for final action in November 2026 with an anticipated effective date in January 2027, although those dates are subject to change.

For nearly 50 years, UGESP has served as the primary framework organizations have used to evaluate employment assessments and other selection procedures. Although often viewed primarily as a compliance requirement, UGESP has also provided employers with a practical roadmap for developing defensible selection systems.

Bottom line: Employers will still need to demonstrate that employment selection procedures are job-related and consistent with business necessity when challenged, even if the EEOC rescinds UGESP.

WHAT IS ACTUALLY CHANGING?

The pending rescission is noteworthy, but it is important to keep it in perspective.

Most importantly, the proposal does **not** eliminate Title VII of the Civil Rights Act, disparate impact liability, or the requirement that employers demonstrate that selection procedures are job-related and consistent with business necessity when challenged. Those obligations are rooted in federal statute, not solely in the UGESP.

However, one practical consequence may be reduced federal enforcement activity around selection procedures. Although reduced federal enforcement may lessen some legal risk, it is more likely to redistribute that risk than eliminate it. Disparate impact liability remains part of Title VII, and private plaintiffs, state regulators, and state courts may continue to scrutinize selection procedures with disproportionally adverse outcomes for protected groups. The most likely end result is that risk shifts from federal enforcement to private litigation and state-level compliance requirements.

More broadly, the proposed rescission appears consistent with a wider federal shift away from reliance on UGESP. As a result, employers may face a period of increased uncertainty as expectations evolve across federal agencies, state regulators, courts, and private litigants.

In short, employers should not view this development as the end of validation, adverse impact analysis, or evidence-based selection practices. Instead, it represents a shift in the sources of authority, enforcement priorities, and professional standards that guide those activities.

VALIDATION IS NOT GOING AWAY

One of the greatest risks organizations face is concluding that if the UGESP is rescinded, validation is no longer necessary.

That conclusion would be misguided.

As we discussed in our previous article, organizations should resist the temptation to lower standards in response to changing regulatory signals. Selection procedures that merely satisfy a minimum legal threshold may fail to meaningfully predict job performance, support workforce quality, or drive business outcomes.

Validation serves a broader purpose than legal compliance. Well-designed validation studies help organizations answer fundamental business questions:

- Are we measuring capabilities that matter for success?
- Are our hiring decisions improving workforce quality?
- Are our promotion decisions identifying future leaders?
- Are our selection procedures producing desired organizational outcomes?

Validation is the process of gathering and documenting evidence that a selection procedure (e.g., test, interview, work sample, or other hiring tool) is **job-related and consistent with business necessity**.

Meaning it accurately measures characteristics that are important for successful job performance and supports employment decisions.

Those questions remain just as important regardless of changes in the regulatory landscape.

Organizations should therefore continue investing in rigorous job analyses, validated selection tools (e.g., pre-employment tests, structured interviews, behavioral simulations) that demonstrate long-term impact on key performance indicators, and other evidence-based practices supported by appropriate validity evidence.

PROFESSIONAL STANDARDS MAY BECOME EVEN MORE IMPORTANT

If the EEOC rescinds UGESP, we may see increased reliance on professional and scientific standards to evaluate selection procedures.

For decades, I-O psychologists have relied on sources of authority such as:

- The *Principles for the Validation and Use of Personnel Selection Procedures* published by the Society for Industrial and Organizational Psychology (SIOP).
- The *Standards for Educational and Psychological Testing* published by AERA, APA, and NCME.

In many respects, these professional standards reflect decades of psychometric, measurement, and validation research that have evolved beyond the frameworks originally incorporated into UGESP. Practitioners already use these frameworks as the foundation for developing and evaluating modern assessments.

As a result, organizations may find that professional standards increasingly become the primary benchmark used by experts, courts, and other stakeholders when evaluating the quality of selection systems.

The practical result may be a greater role for expert testimony, professional standards, and case-specific evidence in determining what constitutes sufficient validation support.

REGULATORY FRAGMENTATION REMAINS A CHALLENGE

Another implication of the pending rescission is continued regulatory fragmentation. Employers already face a patchwork of federal, state, and local requirements, including emerging regulations governing AI-enabled selection technologies.

Organizations operating across jurisdictions should be prepared for differing expectations and legal standards. For many employers, the most practical strategy will be maintaining a consistent, high-quality validation framework that can withstand scrutiny across multiple jurisdictions.

VENDOR CLAIMS SHOULD RECEIVE GREATER SCRUTINY

The pending rescission also creates important considerations for organizations that rely on third-party assessment vendors.

Historically, many vendors have represented that their solutions are “UGESP compliant.” If UGESP is no longer maintained as an EEOC regulation, some vendors may place less emphasis on maintaining rigorous validation studies and supporting documentation.

This makes it even more important for employers to evaluate the quality of the underlying evidence rather than relying on compliance-related marketing claims.

Organizations should ensure that vendors can provide:

- Job analysis documentation
- Validation evidence
- Adverse impact analyses
- Technical manuals
- Documentation regarding the use of AI and algorithmic decision-making, where applicable

The focus should be less on labels and more on the quality of the underlying science. Employers should be cautious of claims that an assessment is "validated" without evidence supporting its use for their specific jobs and workforce.

Validation evidence that is persuasive for one employer may not automatically generalize to another.

WHAT SHOULD EMPLOYERS DO NOW?

Although considerable uncertainty remains, several practical recommendations stand out:

1. **Continue conducting formal job analyses.** A clear understanding of job requirements remains the foundation of defensible selection practices.
2. **Maintain validation efforts.** Continue collecting and documenting evidence supporting the use of assessments, interviews, simulations, and other selection procedures.
3. **Monitor adverse impact.** Organizations should continue monitoring selection procedures for adverse impact under attorney-client privilege to manage litigation exposure proactively.
4. **Review vendor documentation.** Ensure external providers can support claims regarding validity, fairness, and business relevance.
5. **Work closely with legal counsel.** Regulatory interpretations will continue to evolve, particularly for organizations operating across multiple jurisdictions.
6. **Stay informed.** The current proposal may evolve before implementation, and additional guidance from federal agencies or the courts may emerge.

FINAL THOUGHTS

The rescission of UGESP represents one of the most significant developments in selection and assessment regulation in decades. But organizations should not read it as a signal to reduce compliance efforts or lower scientific standards.

The most effective talent practices have never been valuable simply because regulators expected them. They are valuable because they help organizations identify talent accurately, make better hiring decisions, and improve organizational performance.

As we noted in our previous guidance, periods of uncertainty are not a reason to abandon rigor. If anything, they are a reason to strengthen it.

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