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THE WHITE HOUSE

WASHINGTON

June 28, 1995

Ann —
Is Betsy to
write directly
to POTUS? — or
thru you —

JUN 30 1995

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: Betsy Myers Betsy
Director for Women's Initiatives and Outreach

SUBJECT: Connecting with Women on Affirmative Action

I. SUMMARY

I feel very strongly that your upcoming speech on affirmative action is a critical opportunity, not only to inspire women but to garner their support. How you speak about this issue, and whether you include women as an impacted group, will have serious political repercussions far beyond the speech itself. Women all across the country, both Democrats and Republicans, are awaiting your leadership on this issue because it matters deeply to them.

II. DISCUSSION

I have held meetings with women to gauge the depth of feeling about this issue and their expectations concerning the Administration's response. Many national women's organizations have contacted me to provide polling and focus group research on the issue.

The consensus across the country is to urge you to speak in broad principles, not specifics about individual programs. Leave it to the Attorney General to ask the agencies to evaluate their programs in relation to the Adarand decision. Inspire rather than deal with the details. Use your speech to explode some of the myths about what affirmative action is and what it isn't.

Tell the country what affirmative action has accomplished for women. As reflected in the Working Women Count survey, women want to know that you understand the barriers they face in reaching economic parity. They want to believe that you will not abandon them in their daily struggle.

Many women understand what affirmative action has done for their future, their families and children. They share your goal as a parent to provide for your family but also to make sure your daughter has the opportunity to choose her life's course without bumping into any obstacles created by a society which unfortunately still exhibits sexism and racism. Women would like to hear about all these issues in personal terms based on your own life experience which you communicate so well.

Although women have come a long way, barriers based on non-merit issues like gender, skin color and religion still exist. Just four months ago the Glass Ceiling Commission released a report showing that while white men are only 43 percent of the Fortune 2000 workforce, they hold 95 percent of the senior management jobs. The report also showed that companies with strong diversity policies are more profitable.

I will provide statistical information about the economic condition of woman, as well as other research to support these themes. I have forwarded the material to the speech staff.

I hope you will use this opportunity to speak directly to women. I can assure you they will be listening.

cc Leon Panetta, Harold Ickes, George Stephanopoulos, Maggie Williams, Alexis Herman

Affirmative Action: Myth Vs. Reality

AMERICAN
ASSOCIATION OF
UNIVERSITY
WOMEN

Myth: *Minorities and women receive preferences.*

Reality: Affirmative action does not require preferences, nor do women and minorities assume that they will be given preference. Race, gender and national origin are factors to be considered when hiring or accepting qualified applicants. Hiring qualified women and minorities is not dissimilar to the preferences given to veterans in hiring and children of alumni in college admissions. There are other preferences used in selecting qualified candidates. For example, when colleges and universities value geographic diversity on their campuses, it may be easier for an in-state student to be admitted than one from out of state. Some colleges and universities consider athletic abilities and/or evidence of leadership skills in addition to test scores.

Myth: *Affirmative action is really quotas.*

Reality: Affirmative action has never been about quotas. It has always been about providing women and minorities with full educational and workplace opportunities. Under existing law, quotas are illegal. Federal contractors are required to establish goals and timetables and to make a good faith effort to meet them. Race, national origin, and gender are among several factors to be considered, but relevant and valid job or educational qualifications are not to be compromised. Further, the Supreme Court has been clear that the misuses of affirmative action or programs that claim to be affirmative action are illegal if: (1) an unqualified person receives benefits over a qualified one; (2) numerical goals are so strict that the plan lacks reasonable flexibility; (3) the numerical goals bear no relationship to the available pool of qualified candidates and could therefore become quotas; (4) the plan is not fixed in length; or (5) innocent bystanders are impermissibly harmed.

Myth: *Affirmative action leads to reverse discrimination.*

Reality: One should not buy into the myth of reverse discrimination. The evidence demonstrates that reverse discrimination is rare. For example, of the 91,000 employment discrimination cases before the Equal Employment Opportunities Commission, less that 2 percent are reverse discrimination cases. Further, a study conducted by Rutgers University and commissioned by the U.S. Department of Labor found that reverse discrimination is not a significant problem in employment and that a "high proportion" of claims brought by white men are "without merit." What affirmative action does is provide the employer with the largest pool of qualified applicants from which to choose.

Myth: *Title VII alone is sufficient to address discrimination.*

Reality: Affirmative action means taking positive, proactive and preemptive steps to root out discrimination, rather than waiting for after the fact litigation. Title VII is enough to address discrimination, but it will do so only after an instance of discrimination has been claimed. Affirmative action policies are a means to end discrimination in a far less costly and disruptive way than protracted litigation.

Myth: *Unqualified individuals are being hired and promoted for the sake of diversity/affirmative action.*

Reality: It is important to cut through the rhetoric and look at the facts. Only affirmative action plans that do not compromise valid job or educational qualifications are lawful. They must be flexible, realistic, reviewable, and fair. The Supreme Court has found that there are at least two permissible bases for voluntary affirmative action by employers under Title VII: (1) to remedy a clear and convincing history of past discrimination by the employer or union, and **(2) to cure a manifest imbalance in the employer's work force.** No doubt there are instances where poor management practices may have resulted in the hiring of unqualified people; however, these are examples of error and/or abuse of affirmative action which should be considered by the President's review and corrected by additional management training and public education. They do not indict affirmative action itself as a tool for achieving equality of opportunity for all.

Myth: *The federal government should not promote affirmative action through government contracts.*

Reality: Enactment of the 1964 Civil Rights Act created an obligation of the federal government to enforce the principle of equal opportunity in employment embodied in Title VII. One of the enforcement strategies employed by the federal government is to place conditions upon contracts awarded by the federal government involving the expenditure of federal funds. These funds come from taxes paid by women and minorities who are entitled to a fair portion of federal contracts. The original Executive Order and subsequent Executive Orders requiring affirmative action in federal contracts and awards have had bipartisan support from U.S. Presidents and members of Congress, and from leaders in the business community because they have been a reasonable and effective way to enforce the law.

Myth: *Underrepresentation of minorities and women in the corporate world (or other high-paying jobs) is not due to discrimination.*

Reality: Discrimination is not the sole reason for the lack of women and minorities in the corporate world. However, we must deal with history; we must deal with past and present discrimination. A study of the 1982 Stanford MBA graduating class found that after 10 years, 16 percent of men held CEO titles compared to 2 percent of the women. 23 percent of males were corporate vice presidents, compared to 10 percent of women, while 15 percent of men served as directors, compared to 8 percent of women. Obviously barriers to employment and promotion still exist for women and minorities. Affirmative action opens the doors to opportunity and advancement.

Myth: *The pay differences between women and men are not due to discrimination.*

Reality: A 1989 report by the National Research Council of the National Academy of Sciences confirmed earlier research by the National Academy of Sciences in 1981 that found that one half to one fourth of the earnings differential between men and women could not be explained by legitimate differences in education, training, experience, and characteristics of jobs.

A study by Professor Peter Hammerschmidt in the Management Institute of Eckerd College, St. Petersburg, FL found that female managers were paid on average $11,447 less than male managers, even when the women had identical levels of experience, skill, job titles, education, and age.

Myth: *Women benefit more than African-Americans from affirmative action.*

Reality: Both women and minorities benefit from access to full educational and workplace opportunities to redress past discrimination. To pit these groups against each other is wrong. Affirmative action programs give needed opportunities for both women and minorities.

Myth: *Women seem to be doing well in education and in the workforce, therefore affirmative action for women should not be continued. Even the so-called earnings gap between men and women has closed significantly in recent years.*

Reality: In 1993, the total amount of wages women lost due to pay inequity was nearly $100 billion. The average woman loses approximately $420,000 over a lifetime due to unequal pay practices.

Although it is true that in four occupations (women mechanics, registered nurses, pharmacists, and postal workers), women earn at least 90 percent of what men earn, **in the other 86 occupations, tracked by the Bureau of Labor Statistics, women earn 20-35 percent less than men.** For example: women college/university professors earn 77.1 percent of male professors' wages. Women public relations specialists earn 76.7 percent of their male counterparts' wages. Women in securities and financial services/sales earn 65.6 percent of men's wages.

The wage gap between women's and men's earnings widens in the higher-paid occupations. Much of the wage gap is still attributable to the occupational segregation that continues to track women and minorities in the lower paying occupations. Two-thirds of all low-wage workers are women.

Myth: *Most analyses that point to wage differentials between men and women do not take into account differences in hours worked and years of uninterrupted work experience between the sexes. Female earnings are depressed because women work, on average, fewer hours per week than men and have more interruptions over their working lives than do men.*

Reality: The wage inequities most often cited are based on Department of Labor and Census Bureau data on year-round, full-time workers who have a permanent attachment to the work force. This data does not compare full-time male workers to part-time female workers, nor does it compare permanent workers to part-time and contingent workers.

AAUW Program & Policy
April 1995

AMERICAN
ASSOCIATION OF
UNIVERSITY
WOMEN

AFFIRMATIVE ACTION

The American Association of University Women supports affirmative action programs that establish equal opportunity for women and minorities, redress gender, racial and ethnic discrimination, and encourage diversity in the work place and in educational institutions. AAUW's mission to ensure gender equity in education is founded on the belief, stated in AAUW's legislative program in 1939, that all individuals have the right to "full and free opportunity ...intellectually, socially, and economically, including the right to be employed according to abilities without regard to sex." AAUW's policy statements throughout the latter half of the twentieth century have reflected its commitment to end discrimination against women and minorities. Since 1973, AAUW has taken a position in support of affirmative action programs.

Affirmative action programs aim to make educational and work place opportunities available to women and minorities through recruitment, outreach, and training. While AAUW believes that affirmative action programs have begun to break the barriers that confront women and minorities in employment and education, these programs are still critically needed to ensure equal access to all professions at all levels. By providing equal opportunity, affirmative action programs produce benefits for businesses, schools, communities, and families.

Affirmative action programs have successfully begun the process of establishing equal opportunity for women.

- Since affirmative action policies have been implemented, the numbers of women and minorities in certain professions have increased. Between 1970 and 1990, the proportion of women physicians doubled from 7.6 percent to 16.9 percent. From 1976 to 1989, the percentage of medical degrees earned by women jumped from 19 percent to 33 percent.

- Between 1982 and 1987, the number of women-owned businesses rose more than 58 percent, a rate of growth more than four times the rate for all businesses.

AAUW believes that despite the gains of the past 25 years, it is clear that the need for affirmative action continues.

- The U.S. Department of Labor's Glass Ceiling Commission Report, released on March 16, 1995, shows that while white men are only 43 percent of the Fortune 2000 work force, they hold 95 percent of the senior management jobs.

- White men are 33 percent of the U.S. population, but are 65 percent of physicians, 71 percent of lawyers, 80 percent of tenured professors, 80 percent of the House of Representatives, 90 percent of the Senate, and 94 percent of school superintendents.

- In those professions where the number of women are increasing, they are still not well represented in the more senior positions. While women are 40 percent of all college professors, they are only 11 percent of those with tenure. Women are about 50 percent of entry-level accountants but less than 20 percent of accounting firm partners.

- On average, women still earn just over 70 cents for every dollar men earn.

- AAUW has discovered from our research on the status of girls and education that the glass ceiling is constructed in kindergarten. Beginning in grade school, girls are systematically tracked away from the better paying jobs in science and technology into "pink-collar" occupations. As long as women are only 8 percent of engineers, 31 percent of scientists, and 16 percent of physicists, we have much work ahead of us.

Affirmative action policies do <u>not</u> mandate quotas and do <u>not</u> give unqualified candidates job handouts.

- Goals and timetables in affirmative action policies are not quotas. Quotas are illegal. Federal policy on affirmative action specifically states that failure to meet goals and timetables does **<u>not</u>** subject one to sanctions as long as there are "good faith" efforts to meet them.

- Affirmative action, to be permissible, must involve only qualified workers. Legally, affirmative action policies ask employers to consider sex, race, or national origin as one of many factors when reviewing **<u>qualified</u>** job applicants.

By encouraging diversity and expanding opportunities, affirmative action policies benefit businesses, educational institutions, and families.

- The Business Roundtable and the National Association of Manufacturers have supported affirmative action as "good policy." Affirmative action programs expand the pool of talent and bring diverse skills, background and knowledge into the work force.

- Diverse student bodies improve the learning process for all students. In the education profession, affirmative action programs also produce professionals who are attentive to the specific needs of their gender or community.

- Affirmative action policies benefit every family by helping to give wives, mothers and daughters a chance to compete in the workplace and contribute to their family's economic security.

AAUW Program and Policy
April 1995

WOMEN UNITED FOR EQUALITY: NO RETREAT ON AFFIRMATIVE ACTION

MEMORANDUM

TO: Women's and Civil Rights Leaders

FROM: Eleanor Smeal, President, Feminist Majority
Co-Convener, Women United for Equality

RE: EMERGENCY FAX CAMPAIGN TO PRESIDENT CLINTON

DATE: 6/27/95

In light of recent comments from the White House that the Administration is finalizing its review of Affirmative Action after the *Adarand* decision and will be announcing it in a major speech of the President perhaps as soon as mid-July, please immediately call the White House (202-456-1414) or fax the President (202-456-2883) or George Stephanopolus(202-456-6703). The White House needs to know that women's rights and civil rights leaders, women business owners, women professional organizations, women labor organizations, women service groups, women of color, religious groups, and women's education groups are demanding NO RETREAT ON AFFIRMATIVE ACTION! We want the President in his message:

1. To defend unequivocally affirmative action for women and minorities-- to keep the door open-- not to let it slam in our faces.

2. To pledge to fight any attempted rollbacks in Congress on affirmative action. To lead for women and people of color against political opportunists who would risk polarizing our nation and sacrificing a generation of progress for women and minorities for political expediency.

3. To oppose the proposed California initiative which would eliminate all state affirmative action programs and to oppose Governor Wilson's Executive Order eliminating all state affirmative action programs that he could. We need leadership now. The California State Democratic Party has gone on record opposing the proposed initiative and any effort to dismantle affirmative action.

We must convey to the President that it would be catastrophic to retreat or give the appearance of retreating on affirmative action in any way, shape, or form.

For more information, please call Alice Cohan or Dee Martin (202-522-2214) or fax (202-522-2219).

c/o Feminist Majority • 1600 Wilson Blvd., Suite 801 • Arlington, VA 22209 • (703) 522-2214 • (F) (703) 522-2219

July 28, 1995

MEMORANDUM FOR ALEXIS HERMAN

FROM: CHRISTOPHER WAYNE

SUBJECT: AFFIRMATIVE ACTION VIP BOOKLET

The Affirmative Action VIP Booklet will cost the following:

500 copies.... $1,317.00

1000 copies.... $2,277.00

Please advise as to how many copies you feel it would be appropriate for us to print.

We will need to have the approval of Andrea Rutledge in Administration in order to get them printed and I will need you to ask her to sign off on this. I have been calling her for a week and she will not take my calls or return my calls...I would appreciate your help.

The staff has asked for 1000 copies. However, I let them know that this may not be a realistic number.

THE WHITE HOUSE
WASHINGTON

March 27, 1995

MEMORANDUM TO THE PRESIDENT

FROM: MARCIA L. HALE

CC: ERSKINE BOWLES
HAROLD ICKES
ALEXIS HERMAN

RE: AFFIRMATIVE ACTION

Harold has told me of your interest in having a meeting while you are in Atlanta regarding Affirmative Action. I have spoken with both Gordon Giffin and Steve Wrigley (Zell's Chief of Staff) about the possibilities of doing so Tuesday evening.

It has been suggested that you hold the meeting at the Governor's mansion immediately following the reception that Zell is hosting for attendees of the economic conference. The reception is scheduled to end at 8:00 pm.

Gordon has suggested that you keep the meeting moderately small so it can be productive and still leave time for you and Governor Miller to have dinner at a reasonable hour. Suggested attendees are: Andy Young, Maynard Jackson, Bill Campbell, John Lewis (if he's in town), Jeanette Coles and Herman Russell. Is this okay with you?

You suggested to Harold that Ray McClendon be invited as well. You should know that McClendon and Mayor Campbell are in the middle of a disagreement which is playing out in the local press. McClendon is invited to the reception and economic conference, so you will see him while you are in Atlanta even if he is not part of this meeting - which is the suggestion of those consulted.

The Governor would like to know if you want to have dinner at the Mansion or go to a nearby restaurant. I think he would prefer to take you out - another argument for a smaller meeting so that you could leave for dinner around 9:00 pm. Can I tell Governor Miller that dinner at a restaurant is fine with you?

Please let me know if you have any questions.

FOUR MAJOR CONTRACTING SET-ASIDE OPTIONS

Option 1: Status Quo with Repair of Abuses.

- Establish tighter asset-related eligibility rules to prevent the "disadvantaged millionaire" phenomenon; limit the concentration of set-asides in a single region or industry; *initiate a policy process* through the NEC to recommend standards (by business sector and by region) for when goals are met and preferences are no longer necessary.
- Shrink the 9-year graduation requirement in SBA §8(a) to "5 years or 5 contracts," and extend to all the other SDB programs. [**Alternative:** Keep the current 9 year limit.]
- With regard to pre-bid assistance: invest in *new, vigorous* outreach, technical assistance, and surety bonding programs to help level the contracting playing field; continue efforts to "mainstream" MBE/WBEs in SBA's programs.
- ***Message:*** Stay the course. These programs remain the only effective tools available for creating entrepreneurial opportunity in the face of widespread exclusion. But clean them up, including emphasis on their "entryway" or transitional character.

Option 2: Eliminate Racially Exclusive Preferences by Broadening Eligibility

- Include economically disadvantaged whites by broadening SDB eligibility to eliminate the *de facto exclusivity* of minority preferences. Use "reformed" asset limits. Privatize certification, subject to audit.
- Retain flexible *5 % MBE/WBE goals*, but with added management teeth.
- Strengthen race- and gender-specific outreach and pool-building programs; initiate a NEC policy process to recommend standards (by business sector and by region) for when goals are met and preferences are no longer necessary; impose a tight "five-contracts or five-years" graduation requirement.
- *Sunset/safety valve*: Track the results carefully, to make a determination in three years as to whether exclusion is so intractable that racially targeted preferences need to be reintroduced in particular sectors or regions, and if so, in what fashion. Propose that such reintroduction could be done flexibly and by administrative rather than legislative action.
- ***Message:*** End racially exclusionary preferences, but continue and strengthen other approaches to meet flexible goals for opening entrepreneurial opportunity.

Option 3: Use "Distressed Areas" Preference; Eliminate Racial Preferences

- Use new goals plus an 8(a) or SDB-like preference focused on employment and economic development.
- Background: Current law has a bid-price preference for firms performing work in a "Labor Surplus Area," defined expansively by unemployment rates. The program is ineffective: it is over-inclusive and the unemployment measure too volatile.
- Targeting: Amend the current program to focus more narrowly on firms (i) performing the contract in a *severely distressed area*, or (ii) employing more than a threshold level of workers residing in, or recently residing in, such areas. Privatize certification.
- Measures: Use accepted multivariable indices of distress from the policy literature, based on census tract data -- computer-compared with worker addresses.
- Goals: Using a 5% goal would equal roughly $45 billion over five years, generating an amount in profits comparable to the $3.5 billion we will spend on Empowerment Zones.
- ***Message:*** End racially exclusive preferences; continue MBE goals and less exclusionary tools for creating entrepreneurial opportunity. At the same time, leverage Federal procurement dollars to support economic development in distressed rural communities.

Option 4: Eliminate MBE Goals *and* Preferences; Retain Outreach

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Considerations:

1. The clear message of Option 1 is "Status quo"; the clear message of Option 2 is "No racial preferences in procurement." The Option 2 message requires a further explanation that procurement and entrepreneurial opportunity should be handled differently from education, because education is more related to enhancing opportunity rather, while set-asides are designed to assure business success.
2. Without racially targeted preferences the MBE contracting dollars are likely to fall sharply, at least initially, since roughly two-thirds of SDB contracting is accomplished under some form of preference. Keeping the goal but weakening the tools available to meet the goal will be a severe test of management commitment and of the less direct methods of outreach and technical assistance.
3. Because of the risk in Option 2 that MBE numbers will plummet, consider a safety-valve that permits reconsideration and possible reintroduction of preferences, if necessary in specific sectors or regions, based on experience with the less "exclusionary" tools.
4. Because Option 3 addresses economic development rather than entrepreneurship, that option will be attacked as inapposite by the minority business community. Civil rights and anti-poverty advocates are likely to praise it as a helpful jobs measure.
5. Option 4 is an unacceptable GOP alternative likely to be offered in the Appropriations Committees.

I. Framework: Essential Fairness in Affirmative Action

Summary:

- *Discrimination and exclusion remain crucial challenges, and this generation must patiently and wisely renew that struggle, not descend into partisan retrenchment.*
- *Affirmative action has been and remains a valuable tool -- one among several -- when it is done the right way.*
- *When done the right way, affirmative action must not advantage unqualified over qualified persons; must not use race- and gender-conscious tools unless necessary to achieve legitimate goals of remediation or inclusion; must be flexible and transitional; and must meet a test of essential fairness to nonbeneficiaries.*

Testing Affirmative Action Programs for Essential Fairness to All

There remain circumstances today in which to remedy discrimination and exclusion we must, for a time, use race, ethnicity or gender in order to be effective in opening up opportunity. Even when acting with the beneficent purpose of inclusion, however, we must ensure essential fairness:

(1) **No Quotas.** Outisde of exceptional court-ordered remedies, and as a last resort, quotas are wrong.

(2) **Race-Neutral Options.** In a program's design or reconsideration, have options for using various *race-neutral decision factors* been analyzed and reasonably rejected, given the available information and experience, because those alternatives are unlikely to be acceptably effective in advancing the program objectives?

(3) **Flexible.** If race-neutral measures will not work, is the measure applied in a flexible manner, and *less extensive or intrusive uses of race* were (or have been) analyzed and rejected based on a determination that they would not have been acceptably effective?

(4) **Transitional.** Is the measure is of *limited duration*, and does the administering agency periodically reviews the continuing need for the measure?

(5) **Balanced.** Is the *effect on nonbeneficiaries* sufficiently small and diffuse so as not to unduly burden their opportunities.

The President has directed that agency heads continue to be vigilant in testing the operation of their programs, and any new administrative or legislative proposals, against the test above.

PROCUREMENT HILL OPTIONS

1. ***Status Quo with Repair of Abuses:*** Establish tighter asset-related eligibility rules to prevent the "disadvantaged millionaire" phenomenon; limit the concentration of set-asides in a single region or industry; *initiate a policy process* through the National Economic Council to recommend standards (by business sector and by region) for when goals are met and preferences are no longer necessary. Extend SBA's §8(a) graduation requirement to all SDB set-aside programs. Invest in *vigorous* outreach, technical assistance, and surety bonding; continue efforts to "mainstream" MBE/WBEs in SBA's programs.

2. ***Eliminate Racially Exclusive Preferences by Broadening Eligibility*:** Include economically disadvantaged whites by broadening SDB eligibility to eliminate the *de facto exclusivity* of minority preferences. Retain flexible *5 % MBE/WBE goals*, but with added management teeth. Track the results carefully, to make a determination in three years as to whether exclusion is so intractable that racially targeted preferences need to be reintroduced in particular sectors or regions, and if so, in what fashion. Propose that such reintroduction could be done flexibly and by administrative rather than legislative action.

3. ***Use "Distressed Areas" Preference*:** Add §8(a)-type preference program for firms that will perform work in economically distressed areas. Current law has an ineffective bid-price preference for "Labor Surplus Areas," defined by unemployment; that program is over-inclusive. *Goals*: 5% goal would equal roughly $45 billion over five years, generating an amount in profits comparable to the $3.5 billion for Empowerment Zones.

4. ***Eliminate both MBE goals <u>and</u> preferences:*** Retain small business set asides and outreach programs for minorities and women.

5. ***Eliminate programs that deny opportunity on the basis of race (California).***

draft June 19, 1995

OPTION 1: STATUS QUO WITH REPAIR OF ABUSES

1. Tighten the Economic Disadvantage Test

- *Asset Test:* Reform the asset test to count value of personal residence, spouse's investment income from the business, and the value of "passive" investment in the SDB.

2. Tighten Requirements for Graduation

- *Time and Development Criteria:* Apply 8(a)'s 9 year graduation limit to all SDB programs, but then direct the NEC and SBA to establish objective industry-specific criteria for determining when any individual firm "develops" beyond need for sheltered competition.

- *SDB and §8(a) Caps:* Direct the NEC and SBA to establish caps on the dollar value of contracts, plus a cap on the total dollars that may be awarded to a single firm through sheltered competition.

3. Stringent Safeguards Against Fronts and Pass-Throughs

- *Tighten Certification:* Create a uniform, privatized certification process for all SDBs.

- *Audits:* Require that certification audits at first contract and periodically thereafter to verify continuing eligibility and to monitor for "fronts" and "pass-through" companies.

- *Penalties:* Require administrative debarment/suspension of fronts, pass-throughs; increase civil and criminal *fines* (currently up to 10 years and/or $500,000 fine).

4. Sunsets and Caps to Reduce Regional/Industry Concentrations:

- *Industry/Region Caps:* Direct the NEC to formulate industry and regional caps/controls to prevent significant adverse burden on non-SDBs.

- *Sunsets:* Direct the NEC to determine industries/areas where sheltered competition programs may be phased out based upon successful inclusion.

5. Reduce the Concentration of 8(a) Contract Dollars Among a Few Firms

- *Cap contract value and lifetime value of contracts to a firm.*

OPTION 2: BROADEN PREFERENCE ELIGIBILITY TO DE-EMPHASIZE RACE:
INCLUDE DISADVANTAGED INDIVIDUALS & FIRMS

The current SDB/§8(a) preferences would be replaced by a single program for disadvantaged entrepreneurs and firms. There would be three eligibility tracks:

- *Track 1: Socially and Economically Disadvantaged Entrepreneurs* -- The remedial purpose.
  - A reformed version of the current programs.
  - Eligibility based on membership in a group that has been subject to discrimination. Genuinely rebuttable presumption for minorities and women. More realistic opening for white groups.
  - Would include the anti-abuse reforms of *Option 1.*

- *Track 2: Emerging Enterprises*
  - Race-neutral eligibility for very small firms with little or no government experience, and an economically disadvantaged owner.

- *Track 3: Empowerment Contracting: Distressed Area Employers*
  - Preferences to stimulate jobs and development in designated severely distressed areas.
  - Eligibility based on performance of the contract in a distressed zone and/or hiring above a threshold level of employees from a designated area.

- - - - -

- *Goals: Retain Flexible MBE and WBE Goals*

  The SDB and 8(a) programs would widen their eligibility through regulations calibrated to increase women and non-minority participation as much as possible *consistent with having the programs remain effective tools* to help the agencies, in conjunction with outreach and other strategies, achieve their flexible, MBE participation goals.

FOR Jim Lowery

3 pages (faxed)

from Alexis

6/23/95

Affirmative Action: Central Questions

Opportunity -- Results

Opportunity ---------- Results

	Opportunity Enhancing Assistance	Advantages & Flexible Preferences	Set-asides	Quotas	
Education	Compensatory ed; Outreach & recruiting; HBCUs	Multifactor admissions policies: **e.g., UC-Berkeley**	Group-based programs: **e.g., Bannneker; NIH Minority Fellowship; San Bernardino's Bridge Program**	Two-track (i.e., pre-Bakke) admissions	*Issue 4: Minority-only scholarships*
Employment	Outreach & recruiting; Apprenticeships; Second look programs: **e.g., the military**	Multifactor hiring: **e.g., judicial selection; the Chicago police dept.**	Exclusive job listings: **e.g., Ill.State Univ.; anecdotes from academe**	Race-normed tests to ensure proportional representation	*Issues 2 & 3: Preferences in layoff policy*
Contracting & Procurement	Technical assistance; Mentoring; Bonding assistance	10% bid preference; "Subcontractor Compensation program": **e.g., the Adarand case**	8(a) program; Rule of two	Numeric set-asides	*Issue 1: Contracting preferences and set-asides*

Yu Draft/April 13, 1995 AM

Affirmative Action: A Calibrated Approach

Opportunity -- Results

Results - Opportunity

	Opportunity Enhancing Assistance	**Advantages & Flexible Preferences**	**Set-asides**	**Quotas**
Education	Compensatory ed; Outreach & recruiting; HBCUs	Multifactor admissions policies: **e.g., UC-Berkeley**	Group-based programs: **e.g., Bannneker;** **NIH Minority Fellowship;** **San Bernardino's Bridge Program**	Two-track (i.e., pre-Bakke) admissions
Employment	Outreach & recruiting; Apprenticeships; Second look programs: **e.g., the military**	Multifactor hiring: **e.g., judicial selection;** **the Chicago police dept.**	Exclusive job listings: **e.g., Ill.State Univ.;** **anecdotes from academe**	Race-normed tests to ensure proportional representation
Contracting & Procurement	Technical assistance; Mentoring; Bonding assistance	10% bid preference; "Subcontractor Compensation program": **e.g., the Adarand case**	8(a) program; Rule of two	Numeric set-asides

under this approach, shaded policies would be appropriate only as remedies for lingering or ongoing discrimination

Yu Draft/April 13, 1995 AM

Affirmative Action: A Categorical Approach

Opportunity ---------- Results

Opportunity ---------- Results

	Opportunity Enhancing Assistance	**Advantages & Flexible Preferences**	**Set-asides**	**Quotas**
Education	Compensatory ed; Outreach & recruiting; HBCUs	Multifactor admissions policies: **e.g., UC-Berkeley**	Group-based programs: **e.g., Bannneker; NIH Minority Fellowship; San Bernardino's Bridge Program**	Two-track (i.e., pre-Bakke) admissions
Employment	Outreach & recruiting; Apprenticeships; Second look programs: **e.g., the military**	Multifactor hiring: **e.g., judicial selection; the Chicago police dept.**	Exclusive job listings: **e.g., Ill.State Univ.; anecdotes from academe**	Race-normed tests to ensure proportional representation
Contracting & Procurement	Technical assistance; Mentoring; Bonding assistance	10% bid preference; "Subcontractor Compensation program": **e.g., the Adarand case**	8(a) program; Rule of two	Numeric set-asides

under this approach:

shaded policies would be appropriate only as remedies

lined policies would be appropriate methods of inclusion only if narrowly tailored

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