
TITLE
IX
INITIATIVE

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Executive Order

NONDISCRIMINATION ON THE BASIS OF RACE, SEX, COLOR, NATIONAL
ORIGIN, DISABILITY, RELIGION, AGE, SEXUAL ORIENTATION,
AND STATUS AS A PARENT IN FEDERALLY CONDUCTED EDUCATION
AND TRAINING PROGRAMS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921-932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 et seq., of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

Section 1. Statement of policy on education programs and activities conducted by executive departments and agencies.

1-101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities that it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities -- including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 et seq., as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-17, as amended, discrimination on the basis of race, color, national origin or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d, and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. Through this Executive order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual

* orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1-102. No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

Sec. 2. Definitions.

2-201. "Federally conducted education and training programs and activities" includes programs and activities conducted, operated, or* undertaken by an executive department or agency.

* 2-202. "Education and training programs and activities" include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and programs to train teachers.

2-203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training programs and activities covered by this order, under subsection 2-202, or is excluded from coverage, under section 3.

2-204. "Military education or training programs" are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2-205. "Armed forces" means the Armed Forces of the United States.

2-206. "Status as a parent" is defined as follows: an individual has the status of a parent, if, with regard to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, that individual has the status of :

- (a) a biological parent;
- (b) an adoptive parent;

- (c) a foster parent;
- (d) a stepparent;
- (e) a custodian of a legal ward;
- (f) a person who is actively seeking legal custody or adoption; or
- (g) a person who stands in loco parentis to such an individual.

Sec. 3. Exemption from coverage.

3-301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination which are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3-302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3-303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program limited by Federal law, or a program established consistently with Federal law, to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.

3-304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. "Culturally relevant" refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3-305. This order does not apply to (a) selections based on national origin of foreign nationals to

participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered education or training programs made by entities outside the Executive Branch. It shall be the policy of the Executive Branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3-306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security.

Sec. 4. Administrative enforcement.

4-401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive order.

4-402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate

officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4-403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111.

Sec. 5. Implementation and Agency Responsibilities.

5-501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

- a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2-202, or excluded from coverage, under section 3 of this order;
- b. examples of discrimination conduct;
- c. applicable legal principles;
- d. enforcement procedures with*respect to complaints against employees;
- e. remedies;
- f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and
- g. such other matters as deemed appropriate.

5-502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5-503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5-504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5-505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

Sec. 6. Reporting Requirements.

6-601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number of nature of complaints filed with the agency and the disposition of such complaints. For the first three years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every three years and with 90 days of the end of each three-year period.

Sec. 7. General Provisions.

7-701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250.

Sec. 8. Judicial Review.

8-801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, et seq.

THE WHITE HOUSE,

Title IX Initiative: Invigoration of Title IX and Inventory of Federally Conducted Education and Training Programs

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1. President Clinton's memorandum to agencies, June 17, 1997
2. Status of agency submissions of inventory of federally conducted education and training programs
3. Legal and policy issues associated with proposed executive order
4. Outline of types of federally conducted education and training programs
5.
 - a. Memorandum to General Counsels from Isabelle Katz Pinzler, Acting Assistant Attorney General, Civil Rights Division, dated July 14, 1997
 - b. Distribution list of July 14, 1997 memorandum (Executive and independent agencies)
 - c. Memorandum to General Counsels from Isabelle Katz Pinzler, Acting Assistant Attorney General, Civil Rights Division, dated July 24, 1997
 - d. Distribution list of July 14, 1997 memorandum (Independent agencies)
6.
 - a. Letters to the Equal Employment Opportunity Commission and Department of Education soliciting comments on draft Notice of Proposed Rulemaking, September 22, 1997
 - b. September 15, 1997 draft, Notice of Proposed Rulemaking of common rule for enforcement of Title IX
7. Delegation Agreement Between All Executive Departments and Agencies that Conduct Federally Assisted Programs to Delegate to the Department of Education, the Department of Health and Human Services, and the Department of Veterans Affairs Certain Title VI and Title IX Compliance Responsibilities with Respect to Certain Educational Institutions, draft August 14, 1997

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THE WHITE HOUSE
WASHINGTON

June 17, 1997

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Strengthening Title IX Enforcement and Addressing Discrimination on the Basis of Sex, Race, Color, and National Origin in Federally Conducted Education Programs and Activities

As we commemorate the 25th anniversary of Title IX of the Education Amendments of 1972, we should pause to recognize the significant progress our Nation has made in increasing educational possibilities for women and girls and recommit ourselves to the goals of this important legislation. Title IX has broken down barriers and expanded opportunities -- opening classroom doors, playing fields, and even the frontiers of space to women and girls across this country.

My Administration is working hard to expand further opportunities for women and girls. We have stepped up enforcement of civil rights statutes in areas such as access to advanced math and science programs. We have issued policy guidance on racial and sexual harassment and on ensuring equal opportunities in intercollegiate athletics. We have aggressively litigated cases presenting significant issues of discrimination, including cases challenging the exclusion of women from the Virginia Military Institute and the Citadel. My Administration has also sponsored an education campaign to help young girls build skills, confidence, and good health. Finally, my Administration has reaped the benefits of an ever-increasing pool of superbly qualified women, making it possible for me to appoint record numbers of women to my Cabinet, judicial posts, and to high levels of decision-making throughout the Federal Government.

Yet more needs to be done. Our Nation can reach its full potential only when all of our citizens have the opportunity to reach their full potential and contribute to our society. Today, I am announcing two important next steps in our fight to reach true equality in education.

First, I am directing executive departments and agencies to develop vigorous, new Title IX enforcement plans. We must ensure that all Federal agencies that provide financial assistance to education programs or activities take all necessary steps to ensure that programs and institutions receiving Federal money do not discriminate on the basis of sex.

I therefore direct all heads of executive departments and agencies that provide financial assistance to education programs or activities, following consultation with the Attorney General, to report to me within 90 days on measures to ensure effective enforcement of Title IX. This should include a description of department or agency priorities for enforcement, methods to make recipients of Federal financial assistance aware of their obligation not to discriminate, and grievance procedures to handle Title IX complaints. In accordance with Executive Order 12250, the Attorney General should coordinate implementation of these measures.

Second, I am asking executive departments and agencies to take appropriate action against discrimination in education programs or activities conducted by the Federal Government. Currently, Title IX generally prohibits discrimination based on sex -- and Title VI of the Civil Rights Act of 1964 generally prohibits discrimination on the basis of race, color, or national origin -- in education programs or activities that receive Federal financial assistance. However, these laws do not apply to comparable education programs or activities that are conducted by the Federal Government. I believe it is essential that the Federal Government hold itself to the same principles of nondiscrimination in educational opportunities that we now apply to education programs and activities of State and local governments and private institutions receiving Federal financial assistance.

Applying these principles to appropriate Federally conducted education programs and activities will complement existing laws and regulations that prohibit other forms of discrimination in Federally conducted education programs -- including discrimination against people with disabilities (prohibited by the Rehabilitation Act of 1973) and discrimination based on race, color, religion, sex, or national origin against Federal employees (prohibited by Title VII of the Civil Rights Act of 1964).

I therefore direct all heads of executive departments and agencies to report to the Attorney General within 60 days:

(1) identifying and describing education programs or activities conducted by the executive department or agency (including the approximate budget and size of the program). An education program or activity includes any civilian academic, extracurricular, research, occupational training, or other education activity conducted by the Federal Government. Examples of Federally conducted education programs would include elementary and secondary schools operated by the Department of Defense for dependent children of eligible personnel; Federally conducted educational research; and educational fellowships awarded directly by Federal agencies to students; and

(2) describing any substantive or procedural issues that might arise under these education programs or activities related to prohibiting discrimination based on sex, race, color, and national origin in the program or activity, in order to aid in determining where application of remedial efforts would be appropriate.

On the basis of these reports, I intend to issue an Executive order implementing appropriate restrictions against sex, race, color, and national origin discrimination in Federally conducted education programs. I direct the Attorney General to report to me within 60 days after receiving these reports with the results of her review and a proposal for an appropriate and effective Executive order.

William A. Clinton

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STATUS OF AGENCY'S SUBMISSION OF INVENTORY OF FEDERALLY CONDUCTED EDUCATION PROGRAMS

On June 17, 1997, President Clinton directed Federal agencies to prepare an inventory of federally conducted education and training programs within 60 days, and to submit such inventory to the Department of Justice (Department). The Department was directed to review such material and to submit a "proposal for an appropriate and effective Executive order" within 60 days of receipt of such inventories. It is expected that an Executive order will prohibit discrimination on the basis of race, color, national origin, and sex.

In mid-July, the Department issued guidance and instructions to the agencies on how to prepare the inventories. Consistent with the President's directive, we asked that agencies submit such material by mid-August. In fact, however, we are continuing to receive materials from independent agencies. In addition, we received submissions from executive agencies as late as September 11, 1997, and some reports are incomplete.

Agency responses vary in the level of detail of descriptions of the programs. Many descriptions are incomplete or unclear as to the nature of the program. In addition, budget data for programs varies.

Set forth below is a chart that identifies each agency, the date a response was received by the agency, and a notation of incomplete status based on one of two criteria; either the agency has not provided data on all components of the agency and/or the agency has not identified in writing "impediments" as to coverage of certain programs under a future Executive order. We have not identified agencies that have failed to provide complete descriptions of programs. With respect to independent agencies, we have noted when an agency reported that they are not subject to the President's memorandum, that they have no responsive programs, or only a few programs.

<u>DEPARTMENTS</u>	<u>DATE RECEIVED</u>	<u>STATUS</u>
Agriculture	August 20, 1997	
Commerce	September 9, 1997	
Defense	August 28, 1997	Incomplete; data not provided on all components, additional information needed on impediments
Education	August 20, 1997	
Energy	September 11, 1997	

HHS	August 27, 1997	
HUD	August 19, 1997	4 programs by Training Academy
Interior	September 10, 1997	Incomplete; supplement needed on scope of BIA programs and impediments concerning BIA programs
Justice		Due September 8, 1997 per Attorney General's Memo; data not provided by all components
Labor	August 18, 1997	
State	August 29, 1997	
Transportation	September 4, 1997	Incomplete; data not provided on all components, additional information may be needed on impediments
Treasury	August 18, 1997	
Veterans Affairs	August 19, 1997	3 programs

INDEPENDENT AGENCIES

DATE RECEIVED

STATUS

Adv. Comm'n on Intergov. Relations		No covered programs (oral statement; letter to follow)
Adv. Council on Historic Preservation	August 22, 1997	1 program
African Development Foundation	August 5, 1997	No covered programs
AID		T/C 9/22: EO office checking status of survey response

Amer. Battle Monuments Commission	August 25, 1997	No covered programs
Appalachian Regional Commission	August 22, 1997	2 programs
Access Board	August 22, 1997	1 program
Arms Control and Disarmament Agency	August 22, 1997	3 programs
Assassination Records Review Board	August 5, 1997	No covered programs
Central Intelligence Agency	August 15, 1997	5 programs
Commission on Civil Rights	September 19, 1997	2 programs
Commission of Fine Arts	September 3, 1997	No covered programs
Commission on Immigration Reform	August 20, 1997	Not subject to President's memo, no covered programs
Commission on Risk Assessment & Management		Out of business 8/31/97 (oral statement)
Commodity Futures Trading Commission	August 15, 1997	Annual seminar only
Consumer Product Safety Commission	August 21, 1997	1 program
Corp. for National and Community Service	August 18, 1997	7 programs
Defense Nuclear Facilities Safety Board	August 15, 1997	1 program

Delaware River Basin Commission	September 10, 1997	Not subject to President's memo (Also see letter from Susquehanna River Basin Commission)
Environmental Protection Agency	September 24, 1997	Incomplete (missing reports from some offices)
EEOC	September 19, 1997, supplemented September 26, 1997	
Export-Import Bank of the US	September 2, 1997	
Fannie Mae	August 11, 1997	Not subject to President's memo; not an executive department or agency
Farm Credit Administration	August 13, 1997	No covered programs
Fed. Communications Commission		T/C 9/18: Memo faxed to agency
Fed. Deposit Insurance Corporation	August 15, 1997	
Fed. Election Commission	September 3, 1997	2 programs
Fed. Emergency Management Agency	September 2, 1997	4 programs
Fed. Home Loan Mortgage Corp (Freddie Mac)	August 13, 1997	Not subject to President's memo; a private corporation, not an executive agency
Fed. Housing Finance Board	August 18, 1997	No covered programs
Fed. Labor Relations Authority	August 26, 1997	8 programs

Fed. Maritime Commission	August 5, 1997	No covered programs
Fed. Mediation and Conciliation Service		9/24 T/C: Training office first received memos 9/18; will try to submit response by October 1-3.
Fed. Mine Safety and Health Rvw Comm'n	August 5, 1997	No covered programs
Fed. Reserve System	August 29, 1997	Not subject to President's but will conduct a review and would like to receive guidance (internships and internal training provided)
Fed. Retirement Thrift Investment Board		T/C 9/18 (GC secretary): Faxed copy of memo
Fed. Trade Commission	August 22, 1997	
General Services Administration	August 18, 1997	8 programs
Holocaust Memorial Council		Voice mail 9/18 for counsel
Institute of Museum and Library Sciences	August 13, 1997	No covered programs
Inter-American Foundation		T/C 9/19: Faxed copy of memo to GC secretary
International Trade Commission	September 2, 1997	1 program
Legal Services Corporation	September 17, 1997	Not subject to President's memo
Merit Systems Protection Board	September 19, 1997	1 program

NASA	August 15, 1997	4 programs
National Archives and Records Admin.		T/C 9/18: Will submit by 9/25
National Capital Planning Commission	September 5, 1997	No covered programs
National Com'n on Lib. & Info. Science	August 5, 1997	No covered programs
National Council on Disability	August 20, 1997	1 program
National Credit Union Administration	August 29, 1997	6 programs
National Endowment for the Arts	August 18, 1997	Incomplete; Letter reports this is preliminary; will be supplemented
National Endowment for the Humanities	August 13, 1997	3 programs
National Labor Relations Board	August 26, 1997	2 programs
National Mediation Board		
National Science Foundation	August 20, 1997	
National Transportation Safety Board	September 24, 1997	1 program
Neighborhood Reinvestment Corporation		T/C 9/18 (GC Secretary): faxed copy of memos
Nuclear Regulatory Commission	August 20, 1997	5 programs

Occup. Safety and Health Rvw Comm'n	August 5, 1997	No covered programs
Office of Government Ethics	August 19, 1997	1 program
Office of Personnel Management	August 22, 1997	1 program
Office of the Special Counsel	September 5, 1997	No covered programs
OPIC (part of IDCA)	August 13, 1997	1 program
Panama Canal Commission	August 22, 1997	
Peace Corps	August 29, 1997	
Pension Benefit Guaranty Corporation	September 9, 1997	No covered programs
Postal Rate Commission	August 6, 1997	No covered programs
Postal Service		T/C 9/18: Will submit by 9/25
Railroad Retirement Board	August 4, 1997	No covered programs
Securities and Exchange Commission	September 7, 1997	T/C 9/23; Training office has no programs; will consult with others prior to agency response
Selective Service System	September 5, 1997	No covered programs
Small Business Administration	August 19, 1997	
Social Security Administration	August 27, 1997	No covered programs (Kits that explain SSA programs, benefits are prepared for distribution to any entity/person that requests material)

Susquehanna River Basin
Commission

August 5, 1997

Not subject to memorandum;
not a federal agency

Tennessee Valley
Authority

August 26, 1997

5 programs

Trade and Development
Agency

August 11, 1997

No covered programs (although
mentions 1 volunteer internship)

United States Enrichment
Corporation

T/C 9/22: Oral statement no
programs covered, will submit
in writing

United States Information
Agency

August 25, 1997

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Control

Red preferences

9/30/97

A1-7

B1

C1+2

Legal and Policy Issues Associated with Proposed Executive Order Prohibiting
Discrimination in Federally Conducted Education and Training Programs

Thus far, we have identified a number of policy and legal issues associated with drafting an executive order. Set forth below is a summary of issues that we need to resolve in order to proceed with the task at hand. Additional issues likely will arise as we continue to work on this project.

↓
A. Who is subject to this order?

1. Scope of coverage for independent agencies
 - a. Objective: language will be general in order to promote, but not require, adherence by independent agencies
 - b. Issues of inclusion/exclusion apply to independents (e.g., Peace Corps; therefore, specificity in EO may raise issues of authority of EO (see A5))
2. Scope of coverage under Title VII, whether/how an Executive order may serve such persons (See Item D1)
 - a. Employees of Agency A have Title VII rights against Agency B
 - b. Do student volunteers to agencies (e.g., STEP program) have Title VII rights?
 - c.
3. Authority to prohibit discrimination in federally conducted programs conducted overseas
 - a. Need to consider scope of authority under program statutes (e.g., DoD schools, statutes that identify foreign participants in overseas programs, 22 U.S.C. § 4021)
 - b. Peace Corps operations (See A5) *Statute → do volunteers need to comply w/ foreign customs*
4. Whether to provide protections to foreign nationals who attend federally conducted programs
 - a. Whether protections, if any, should depend on whether training is conducted in the US or abroad (E.g., Title VII does not extend protections to aliens who are employed outside the United States, 42 U.S.C. § 2000e-16(a))
 - b. No interference with selection of participants by foreign countries, entities (See C4)
5. Exclusion/Inclusion for Peace Corps (initial issue: Reach of EO to independents)
Status of volunteers: by statute, 22 U.S.C. § 2504, volunteers are only considered employees of the Federal Government for specified purposes
 - a. Issues relating to alleged discriminatory conduct by volunteer:
 - i. Even if volunteers are not federal employees, are they operating a federally conducted program? (akin to a contractor)
 - ii. If programs controlled by foreign governments, are they fed. conducted?
 - iii. (If protections of Executive order extend to aliens abroad,) need to examine whether an Executive order is consistent in imposing nondiscrimination obligations on volunteers (§ 2504(a))

what's in relation to Title VII? what kind of employees?
foreign nationals
anything in relation to Title VII?

- iv. Do statutory limits on damages for real property damage/death of aliens caused by volunteer or employee restrict the potential for relief under an executive order for alleged discriminatory practices of a volunteer? (22 U.S.C. § 2509(b))
- v. (If protections of Executive order extend to aliens abroad,) allowances for cultural norms of host country; distinct from actions by volunteer
- b. Issues relating to claims asserted by volunteers against agency staff
- i. Given unique status, will volunteers have additional rights, similar to the public, to pursue claims against employees of the Peace Corps under an Executive order? (Volunteers have rights under FTCA and "any other Federal tort liability statute," § 2504(h); may not include Title VII, although agency practice may accept complaints)

6. Extent of exclusion for "military" programs (Different treatment under Titles VI and VII, and 504)

- a. define by program (Note: some "military" programs allow civilians)
- b. define by employee status
- c. Merchant marines, coast guard
- d. Public health service hospitals

7. Application of order's prohibitions to Federal government contractors (e.g., Department of Energy M&O contractors and its employees)

- a. Presume students/third parties have rights against the government because of actions of contractors, such as M&O contractor employees.
- b. Presume contractor employees will have rights against government employees under Executive order

8. Extent of exclusion/inclusion for tribal education programs

- a. Distinction between BIA-operated schools (82) and tribally-run schools (105)
- b. Potential exclusion for programs that conform to tribal custom and may be contrary to principles of EO

9. National security concerns raised by the State Department, other agencies (E.g., State Department training program for foreign governments on security matters)

10. Whether employees who serve as volunteer mentors or provide other educational services on a voluntary basis should be exempt from coverage under the order (not "federally conducted" operations, even if on government time?) (See EO 12820, promotes volunteerism by Federal workforce and EO 12999, promotes giving of computers, volunteer assistance in schools, specific text on lack of enforceable rights)

11. Further details needed to determine status of programs for coverage/exclusion:
- "Adopt-a-school" programs
 - USDA Graduate School (unclear if "federally conducted")
 - SBA-funded programs (SCORE, Small business development centers, women's business demonstration programs)
 - EEOC revolving fund program

12. Presume coverage for training and seminars that address agency operations, agency enforcement or program statutes, industry regulations, or other training to ensure compliance with grants. What distinction, if any, for speeches, panel participation, etc. by agency employees to discuss agency operations?

list of
exclusion
threshold

13. Extent of exclusion/inclusion for prisoners (504/federally conducted regulations require that prisoners first exhaust BOP administrative procedures before pursuing complaint system under 504.)

B. What are the rights protected?

1. Same or different language than Title IX, Title VI, and/or 504/Federally conducted? - Scope -
2. Relationship to existing programs that include preferences or considerations based on race and/or gender (Presumption that the executive order will not impinge or impact on programs that lawfully provide preferences or special considerations based on race, ethnicity, or gender, although EO may apply to actions in program apart from selection.) - surface -
grant
scheme -
in damages -
3. Extent of allowance, as with Title IX, for single-sex programs if reasonably comparable programs are provided to members of both sexes. - 504 -
men -
women -
4. No infringement on existing Executive orders that promote education (E.g., support for HBCUs (12876), Education technology/grant of computers (12999), Presidential Scholars program (11155), Education Excellence for Hispanic Americans (12900))
5. Selection of participants for Federally conducted education programs: Assumption that order will not reach selection practices of foreign countries/entities that restrict participation in federally conducted programs based on race or gender. Similarly, we assume that individuals may pursue Title VII claims against US employers, or Titles VI, IX complaints if the selecting entity is a recipient of Federal financial assistance.

C. How are the rights protected? What remedies and means of enforcement?

1. Same/different from 504 federally conducted enforcement? (If follow 504/federally conducted enforcement scheme, this is similar (but not identical) to structure for Title VII claims by employees; therefore, no additional administrative enforcement protections would exist for such persons.)

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2. Extent of authority for agencies to issue regulations based on EO
3. Authority/resources for investigation and enforcement: Should responsibilities be assigned to agency civil rights offices to investigate itself, or other office/agency?
4. Relief available: limitation to injunctive relief, corrective action, potential discipline of offending employee, no allowance for damages
5. Likelihood of no private right of action, although potential for judicial review of agency action

D. Process of drafting the Executive order, additional materials

1. Extent of consultation by the Department of Justice and/or WH with agencies that raise issues (share drafts?)
2. Timetable for submission of an Executive order, inventories by the Department of Justice
3. Need to develop implementing regulations for Executive order (agencies to promulgate regulations as drafted by the Department of Justice)?
4. Additional interpretive guidance for agencies?

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4

Divider Title: _____

9/30/97

Categories of Education and Training Programs

This document identifies examples of the types of education and training programs reported by agencies in their respective inventories of federally conducted education programs. This is not a comprehensive list of all agencies that operate the type of program identified.

1. Formal training centers/academies

Attorney General's Advocacy Institute/Legal Education Institute
Labor/National Veteran's Training Institute (\$1M budget)
State Department Foreign Service Institute
State Department Office of Professional Development/Diplomatic Security
Federal Law Enforcement Training Center (Operated by Treasury)

2. Educational facilities operated by the Federal government

DoDDS (DoD overseas program, (\$856.3M)
DDESS (DoD domestic program, (\$349.1M)
BIA operated schools (not contract schools)
ED funding of "bypassed" districts to provide education to disadvantaged students

3. Training for targeted populations/programs to discuss agency programs, laws

Agriculture
Commerce
Energy
HHS
Interior
Justice
Labor, BLS, OSHA, Mine Safety, etc., training for industry
Labor, Veterans Employment and Training Service: workshops on job seeking strategies
Transportation Safety Institute
Treasury, BATF (multiple training programs for federal, state and local law enforcement; training for industry members on law and regulations relating to alcohol, tobacco, and firearms)
Treasury, U.S. Secret Service
Veteran's Administration
Advisory Council on Historic Preservation
EPA
Export-Import Bank
FDIC
FLRA
ITC
National Credit Union Association
NRC
SBA

4. Training of foreign nationals (in US and overseas)

Commerce

DoD/Security Institute

Justice

Labor

State

Treasury

CFTC

EPA

FTC

GSA

ITC

NRC

OPM

Peace Corps

5. Scholarships/Fellowships

Agriculture

DoD/Navy, NSA, DIA

Education

Energy

HHS (NIH, various components)

Interior

Justice

Corporation for National Service

Panama Canal Commission

6. Internships

Energy

Justice

Transportation

Consumer Product Safety Commission

EPA

NSA

7. Short term research opportunities with agency

DoD

Energy

8. Academic credit for employment

Interior

Justice

Commission on Civil Rights
GSA
NLRB
Peace Corps

9. Student volunteers at agency

DoD/Navy
Justice
State
Transportation
EPA
NEA
OPIC

10. Educational research

ED/OERI research of educational issues
ED/NCES - surveys, statistical data collections

11. Summer camp programs

DoD/NSA
Appalachian Regional Commission

12. Teacher improvement programs

DoD/NSA
Energy
Interior
EPA
NASA
USIA

13. Federal employee workshops, presentations, lectures, career day in schools, K-12

Agriculture
Commerce
DoD
Energy
HHS
Interior
Transportation
Treasury, Bureau of Alcohol, Tobacco, and Firearms.
EPA

14. **Employee participation at conferences, industry meetings, speeches, etc.**
Commerce
HHS/FDA
Justice
15. **Funding student competitions**
Energy
NASA
16. **Resource centers**
SBA (for businesses)
NASA (for teachers)
17. **Website/Brochures/TV programs/Satellite education/Videos**
Education
HHS/FDA
Justice
Social Security
18. **Education campaigns**
HHS/HCFA (mammography)
Treasury/IRS (tax instruction by volunteers)
19. **Adopt-a-School**
Treasury/Bureau of Public Debt, Bureau of Engraving
GSA
20. **Student shadows**
Treasury/Bureau of Engraving
HHS/FDA

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Divider Title: _____



U.S. Department of Justice

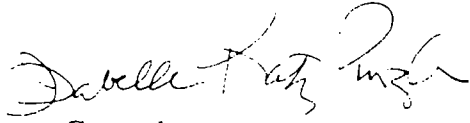
Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

July 14, 1997

Memorandum for General Counsels

From: Isabelle Katz Pinzler 
Acting Assistant Attorney General

Subject: Inventory of Federally Conducted Education and Training Programs

On June 17, 1997, the 25th anniversary of Title IX, President Clinton announced his intention to issue an executive order that would expand the prohibitions of discrimination on the basis of sex, race, color, and national origin to Federally conducted education programs. In order to lay the foundation for this Executive Order, the President directed that all agencies submit to the Department of Justice an inventory of Federally conducted education programs and a statement as to what factors may affect whether or not to include such programs in the scope of the intended order. The purpose of this memorandum is to provide guidance and instructions on the format of your agency's submission to us. As directed by the President's memorandum, this information must be submitted to the Department of Justice by close of business on **August 18, 1997**.

Scope of Programs Covered

Consistent with the President's directive, the inventory should include data on the following types of programs:

1. *civilian academic programs*: This category includes:
 - a. schools operated by the Federal government in the United States, its territories, and/or abroad (e.g., Department of Defense dependent schools, Bureau of Indian Affairs schools, Department of State schools).
 - b. Federally conducted scholarship and fellowship programs addressed to students. This category includes programs where students are solicited to apply for scholarships directly from the agency (or its contractor), and includes, but is not limited to, scholarship and fellowship programs that have an employment element or obligation. For example, an agency may condition an undergraduate scholarship on the student's commitment to work at the agency for a set period

of time upon graduation. Please note that this category does not include grants to colleges or universities which, in turn, award scholarships to students: this would be a Federally assisted program.

- c. After-school or summer enrichment camps that focus on academic subjects.
2. *extracurricular programs*: This category includes activities other than academic programs operated by the agency that are part of a formal academic school system or program, including athletic, cultural, music, and arts programs.
3. *research programs*: This category includes internships, fellowships and other similar research opportunities addressed to educational issues that are conducted by the agency.
4. *occupational training programs*: This category includes any training program conducted by the agency that includes participants who are persons other than employees of the sponsoring agency, whether they are employees from other Federal agencies, employees of State or local agencies, and/or the public. At this time, if a training program is limited entirely to employees of the sponsoring agency, the program need not be reported on the inventory.
5. *other educational programs*: We expect that agencies will have a wide array of educational programs besides the general categories identified above, and agencies should err on the side of inclusion. For example, an internship program for students that includes an education or training element in addition to temporary employment at the agency, e.g., weekly seminars, a speaker series, or other educational opportunities beyond those offered to all agency employees should be reported. Other examples include, but are not limited to, education programs conducted by the agency in local schools or universities, technical assistance or training in specific fields for targeted audiences, lecture series, and other educational programs by agencies that are offered to the public. All of these types of programs should be reported.

Data for Inventory

With respect to each Federally conducted education and training program, please provide:

1. The name of the education or training program.
2. A general description of the program. This description need not be more than a few sentences.
3. The authority for the program, i.e., a complete citation to a statute, regulation, executive order, or other authority that authorizes the creation or establishment of the

identified program, and the regulations, directives, or other authorities that implement and define the scope and operation of this program. This information should include any materials (internal agency directives, memoranda, manuals, etc.) that provide guidance or otherwise address discrimination (or nondiscrimination) or explain any role that gender plays in selection for participation in the program's operations.

4. Whether participants include:
 - a. Federal employees of other agencies,
 - b. State and local government personnel,
 - c. others (e.g., the general public, private employees, students, family members of employees), or
 - d. any combination of groups (a), (b), and (c).
5. The number of participants in the program for FY 1997. The total number of students who participate in all classes offered by the same general program, rather than the number of students who participate in each class, should be identified. For example, a formal institute may teach 25,000 individuals in FY 1997; the institute should not identify the number of students who participated in a particular course.
6. The amount of funding allocated for FY 1997. If participants pay to attend such programs, also identify the total amount of payments received in FY 1997 thus far, and whether such payments supplement the total expenditures by the agency or reimburse the agency for fund outlays.
7. Any legal, substantive, or procedural issues that you believe present impediments to subjecting the particular program to an executive order. In addressing this issue, please provide as much detail and documentation, including memoranda, regulations, policies, etc., as is available since such information is essential to our evaluation and report to the President. We do not expect that there will be many instances where such impediments exist.

To the extent you are unsure of whether a program should be identified in the inventory, you should err on the side of inclusion. We recognize that some programs identified for the Department of Justice as part of the post-Adarand review will also be included in this inventory. Given that we ask for information that is different from the Adarand inventory, and that agencies are in the best position to identify whether a program is Federally conducted, agencies should include all relevant programs in this inventory. It is important to remember that this inventory serves several critical functions, and it is particularly significant that as part of this process you raise questions or issues regarding whether a program should be considered exempt from a future executive order.

To assist us, we ask that you provide the requested information in the format provided on the sample inventory report. We would like the data in hard copy as well as diskette (3 1/2"), in WordPerfect format version 5.2 or 6.1.

This inventory should be delivered to:

Merrily A. Friedlander
Chief, Coordination and Review Section
Civil Rights Division
1425 New York Avenue, N.W., Room 4013
Washington, D.C. 20035-5968

Finally, a note on how we will handle the information that you provide. If the Justice Department receives a Freedom of Information Act (FOIA) request for any documents that you provide to us for purposes of this review, we will follow standard FOIA practice and refer the request to you for response.

A copy of this memorandum has been provided to your agency's head of the office of civil rights, as appropriate.

Again, please take whatever steps are necessary to ensure that your inventory is completed by **August 18, 1997**. If you have any questions, they may be directed to Jennifer Levin, an attorney in the Division's Coordination and Review Section, at (202) 305-0025, Linda Thome, an attorney in the Division's Appellate Section, at (202) 514- 4706, or Merrily Friedlander at (202) 307-2222.

Thank you for your continued assistance and cooperation. We look forward to working with you during this process.

Attachment

Name of Agency: _____

Name of Program	FY 1997 Funding Level ¹	Number and Type of Participants ²	General description of program	Authority, Policies, and Possible Impediments
	\$ _____		Provide general description of program (2-3 sentences)	Identify source of authority for program (statutory, regulatory, agency directive); policies on nondiscrimination, and note if impediments exist (impediments to be described in separate document)

¹ Identify funding allocated by the agency. If participants pay to attend the program, identify the total amount of payments received thus far, including whether funds received constitute reimbursement for the agency's expenses (R) or are a supplement to agency expenditures (S).

² Identify whether participation, apart from the sponsoring agency's employees, is (a) open to Federal employees from other agencies ("federal"), (b) open to State and local government employees ("state/local"), and/or (c) open to others (e.g., the general public, private employees, students, family members) ("other"). If more than one group participates, identify the name of each group. In addition, identify the total number (actual or estimated) of participants in FY 1997, and qualify whether such figure is actual "A" or estimated "E."

The following agencies were sent a copy of a memorandum addressed to General Counsels from Isabelle Katz Pinzler, Re: Inventory of Federally Conducted Education and Training Programs, dated July 14, 1997, by first class mail, postage pre-paid, on July 15, 1997. Envelopes were addressed to each agency's general counsel and head of the office of civil rights. Copies of the memorandum will also be sent by facsimile to both agencies' addressees on July 16, 1997. The President's memorandum of June 17, 1997, will be included in the facsimile to the agencies marked with an asterisk.

NOTE: There was no distribution within the Department of Justice as it is intended that such distribution will be by memorandum from the Attorney General.

The Departments

Agriculture
Commerce
Defense
Education
Energy
Health and Human Services
Housing and Urban Development
Interior
Labor
State
Transportation
Treasury
Veterans Affairs

Independent Agencies

*Agency for International Development
*Corporation for National & Community Service
Environmental Protection Agency
Federal Emergency Management Agency
General Services Administration
*Institute for Museum and Library Sciences
*National Aeronautics and Space Administration
*National Endowment for the Arts
*National Endowment for the Humanities
*National Science Foundation
*Nuclear Regulatory Commission
Small Business Administration
*Tennessee Valley Authority
United States Information Agency



U.S. Department of Justice

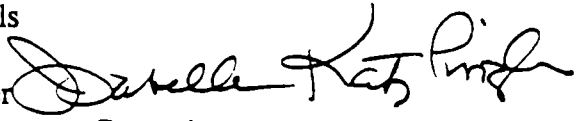
Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

July 24, 1997

Memorandum for General Counsels

From: Isabelle Katz Pinzler 
Acting Assistant Attorney General

Subject: Inventory of Federally Conducted Education and Training Programs

On June 17, 1997, the 25th anniversary of Title IX, President Clinton requested executive departments and agencies to take appropriate action against discrimination on the basis of sex, race, color, and national origin in education programs conducted by the Federal Government. (A copy of the President's memorandum is attached.) To implement the President's directive and help achieve the goals of Title IX, the Department of Justice has been charged with coordinating responses throughout the executive branch and to that end, the Department is seeking an inventory of Federally conducted education programs and a statement as to what factors may affect whether or not to include such programs within the scope of an intended executive order. In view of the likelihood that your agency has a training or education program which is covered by the President's request, the Department offers the following guidance and instructions on the format of your anticipated submission to us. Consistent with the President's memorandum, please submit this information to the Department of Justice by **August 22, 1997**.

Scope of Programs Covered

Consistent with the President's directive, the inventory should include data on the following types of programs:

1. *civilian academic programs*: This category includes:
 - a. schools operated by the Federal government in the United States, its territories, and/or abroad (e.g., Department of Defense dependent schools, Bureau of Indian Affairs schools, Department of State schools).
 - b. Federally conducted scholarship and fellowship programs addressed to students. This category includes programs where students are solicited to apply for scholarships directly from the agency (or its contractor), and includes, but is not limited to, scholarship and fellowship programs that have an employment

element or obligation. For example, an agency may condition an undergraduate scholarship on the student's commitment to work at the agency for a set period of time upon graduation. Please note that this category does not include grants to colleges or universities which, in turn, award scholarships to students: this would be a Federally assisted program.

- c. After-school or summer enrichment camps that focus on academic subjects.
2. *extracurricular programs*: This category includes activities other than academic programs operated by the agency that are part of a formal academic school system or program, including athletic, cultural, music, and arts programs.
3. *research programs*: This category includes internships, fellowships and other similar research opportunities addressed to educational issues that are conducted by the agency.
4. *occupational training programs*: This category includes any training program conducted by the agency that includes participants who are persons other than employees of the sponsoring agency, whether they are employees from other Federal agencies, employees of State or local agencies, and/or the public. At this time, if a training program is limited entirely to employees of the sponsoring agency, the program need not be reported on the inventory.
5. *other educational programs*: We expect that agencies will have a wide array of educational programs besides the general categories identified above, and agencies should err on the side of inclusion. For example, an internship program for students that includes an education or training element in addition to temporary employment at the agency, e.g., weekly seminars, a speaker series, or other educational opportunities beyond those offered to all agency employees should be reported. Other examples include, but are not limited to, education programs conducted by the agency in local schools or universities, technical assistance or training in specific fields for targeted audiences, lecture series, and other educational programs by agencies that are offered to the public. All of these types of programs should be reported.

Data for Inventory

With respect to each Federally conducted education and training program, please provide:

1. The name of the education or training program.
2. A general description of the program. This description need not be more than a few sentences.

3. The authority for the program, i.e., a complete citation to a statute, regulation, executive order, or other authority that authorizes the creation or establishment of the identified program, and the regulations, directives, or other authorities that implement and define the scope and operation of this program. This information should include any materials (internal agency directives, memoranda, manuals, etc.) that provide guidance or otherwise address discrimination (or nondiscrimination) on the basis of gender and/or race.
4. Whether participants include:
 - a. Federal employees of other agencies,
 - b. State and local government personnel,
 - c. others (e.g., the general public, private employees, students, family members of employees), or
 - d. any combination of groups (a), (b), and (c).
5. The number of participants in the program for FY 1997. The total number of students who participate in all classes offered by the same general program, rather than the number of students who participate in each class, should be identified. For example, a formal institute may teach 25,000 individuals in FY 1997; the institute should not identify the number of students who participated in a particular course.
6. The amount of funding allocated for FY 1997. If participants pay to attend such programs, also identify the total amount of payments received in FY 1997 thus far, and whether such payments supplement the total expenditures by the agency or reimburse the agency for fund outlays.
7. Any legal, substantive, or procedural issues that you believe present impediments to subjecting the particular program to an executive order. In addressing this issue, please provide as much detail and documentation, including memoranda, regulations, policies, etc., as is available since such information is essential to our evaluation and report to the President. We do not expect that there will be many instances where such impediments exist.

To the extent you are unsure of whether a program should be identified in the inventory, you should err on the side of inclusion. We recognize that some programs identified for the Department of Justice as part of the post-Adarand review will also be included in this inventory. Given that we ask for information that is different from the Adarand inventory, and that agencies are in the best position to identify whether a program is Federally conducted, agencies should include all relevant programs in this inventory. It is important to remember that this inventory serves several critical functions, and it is particularly significant that as part of this process you raise questions or issues regarding whether a program should be considered exempt from a future executive order.

To assist us, we ask that you provide the requested information in the format provided on the sample inventory report. We would like the data in hard copy as well as diskette (3 1/2"), in WordPerfect format version 5.2 or 6.1.

This inventory should be delivered to:

Merrily A. Friedlander
Chief, Coordination and Review Section
Civil Rights Division
1425 New York Avenue, N.W., Room 4013
Washington, D.C. 20035-5968

Finally, a note on how we will handle the information that you provide. If the Justice Department receives a Freedom of Information Act (FOIA) request for any documents that you provide to us for purposes of this review, we will follow standard FOIA practice and refer the request to you for response.

A copy of this memorandum has been provided to your agency's head of the office of civil rights, as appropriate.

Again, please take whatever steps are necessary to ensure that your inventory is completed by **August 22, 1997**. If you have any questions, they may be directed to Jennifer Levin, an attorney in the Division's Coordination and Review Section, at (202) 305-0025, Linda Thome, an attorney in the Division's Appellate Section, at (202) 514- 4706, or Merrily Friedlander at (202) 307-2222.

Thank you for your continued assistance and cooperation. We look forward to working with you during this process.

Attachment

Name of Agency: _____

Name of Program	FY 1997 Funding Level ¹	Number and Type of Participants ²	General description of program	Authority, Policies, and Possible Impediments
	\$ _____		Provide general description of program (2-3 sentences)	Identify source of authority for program (statutory, regulatory, agency directive); policies on nondiscrimination, and note if impediments exist (impediments to be described in separate document)

¹ Identify funding allocated by the agency. If participants pay to attend the program, identify the total amount of payments received thus far, including whether funds received constitute reimbursement for the agency's expenses (R) or are a supplement to agency expenditures (S).

² Identify whether participation, apart from the sponsoring agency's employees, is (a) open to Federal employees from other agencies ("federal"), (b) open to State and local government employees ("state/local"), and/or (c) open to others (e.g., the general public, private employees, students, family members) ("other"). If more than one group participates, identify the name of each group. In addition, identify the total number (actual or estimated) of participants in FY 1997, and qualify whether such figure is actual "A" or estimated "E".

This list identifies the independent agencies that were sent the memorandum for General Counsels from Isabelle Katz Pinzler, Acting Assistant Attorney General, Civil Rights Division, dated July 24, 1997, regarding an inventory of federally conducted education programs, and a copy of the President's memorandum of June 17, 1997. Both memoranda were sent by regular mail, and the Department of Justice memorandum was also sent by facsimile.

Advisory Commission on Intergovernmental Relations
Advisory Council on Historic Preservation
African Development Foundation
American Battle Monuments Commission
Appalachian Regional Commission
Architectural and Transportation Barriers Compliance Board (Access Board)
Arms Control and Disarmament Agency
Assassination Records Review Board
Central Intelligence Agency
Commission on Civil Rights
Commission of Fine Arts
Commission on Immigration Reform
Commission on Risk Assessment and Risk Management
Commodity Futures Trading Commission
Consumer Product Safety Commission
Defense Nuclear Facilities Safety Board
Delaware River Basin Commission
Equal Employment Opportunity Commission
Export-Import Bank of the United States
Fannie Mae
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Home Loan Mortgage Corporation (Freddie Mac)
Federal Housing Finance Board
Federal Labor Relations Authority
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Mine Safety and Health Review Commission
Federal Reserve System
Federal Retirement Thrift Investment Board
Federal Trade Commission
Holocaust Memorial Council
Institute of Museum and Library Sciences
Inter-American Foundation
International Trade Commission
Legal Services Corporation
Merit Systems Protection Board

National Archives and Records Administration
National Capital Planning Commission
National Commission on Libraries and Information Science
National Council on Disability
National Credit Union Administration
National Labor Relations Board
National Mediation Board
National Transportation Safety Board
Neighborhood Reinvestment Corporation
Occupational Safety and Health Review Commission
Office of Government Ethics
Office of Personnel Management
Office of the Special Counsel
Overseas Private Investment Corporation (part of IDCA)
Panama Canal Commission
Peace Corps
Pension Benefit Guaranty Corporation
Postal Rate Commission
Postal Service, United States
Railroad Retirement board
Securities and Exchange Commission
Selective Service System
Small Business Administration
Social Security Administration
Susquehanna River Basin Commission
Trade and Development Agency
United States Enrichment Corporation

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6

Divider Title: _____



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 22 1997

Ms. Ellen J. Vargyas
Legal Counsel
Equal Employment Opportunity Commission
1801 L Street, N.W., Room 6002
Washington, D.C. 20507

Ellen
Dear Ms. Vargyas:

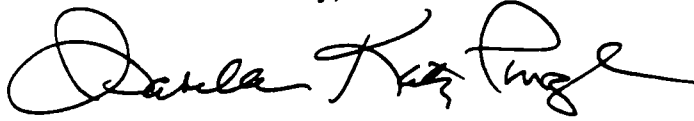
Pursuant to Executive Order 12067, we are submitting for review by the Equal Employment Opportunity Commission (EEOC) a draft notice of proposed rulemaking (NPRM) of a common rule prepared by the Department of Justice to implement Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681-1688. All of the 24 agencies that have federally assisted education programs and currently do not have a Title IX regulation are participating in this common rule. In addition, we intend that the four agencies that have Title IX regulations (the Departments of Education, Energy, Agriculture, and Health and Human Services) will modify their regulations to conform to the final version of the common rule.

We are providing this to you in draft form as we wish to receive the EEOC's views before the rule is submitted to the participating agencies for review. As you know, the common rule is based on the Department of Education's (ED's) Title IX regulations. To assist your review, our modifications to the ED regulation are reflected by shading for additions of new text and ~~strike-outs~~ for deletions of existing text. In addition, this draft does not include the portion of the common rule that includes each agency's adoption of the common rule text or agency-specific inserts. Agency-specific language will include designation of an agency official for various responsibilities identified in the common rule, such as approval of assurance forms and initial determinations of recipient compliance, and an agency's adoption of that portion of its Title VI regulations that addresses enforcement procedures. Two agencies that do not have Title VI regulations will include the text of procedures that are identical to other agencies' Title VI procedures.

We also are submitting this draft to the Department of Education for comment, and a similar draft has been submitted to the Office of Federal Register (OFR) for review of the notice's format and consistency with OFR requirements. In addition, you should note that this draft has not been formally reviewed by the Department's Office of Legal Counsel (OLC). We will inform you of any changes of substance rather than format. Given our interest in publication of this NPRM at the earliest possible date, and notwithstanding the potential for amendment to this draft, your prompt review of this draft would be appreciated greatly.

If you have any questions regarding this document, feel free to contact Merrily Friedlander, Chief, Coordination and Review Section, at 307-2222, or Jennifer Levin, an attorney in the Coordination and Review Section, at 305-0025.

Sincerely,

A handwritten signature in black ink, appearing to read "Isabelle Katz Pinzler", written in a cursive style.

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosure



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 22 1997

Ms. Jamienne S. Studley
Acting General Counsel
Department of Education
600 Independence Avenue, S.W., Room 5400
Washington, D.C. 20202-2110

Dear Ms. Studley:

I have enclosed for your review a draft notice of proposed rulemaking (NPRM) of a common rule prepared by the Department of Justice to implement Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681-1688. All of the 24 agencies that have federally assisted education programs and currently do not have a Title IX regulation are participating in this common rule. In addition, it is intended that the Department of Education, and other three agencies that have Title IX regulations (the Departments of Energy, Agriculture, and Health and Human Services) will modify their regulations to conform to the final version of the common rule.

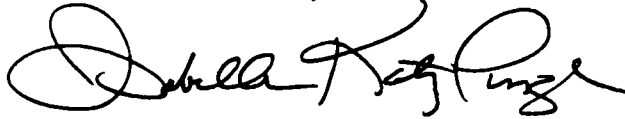
We are providing this to you in draft form as we wish to receive ED's views before the rule is submitted to the participating agencies for review. As you know, the common rule is based on your agency's Title IX regulations. To assist your review, our modifications to the ED regulation are reflected by **shading** for additions of new text and **strike-outs** for deletions of existing text. In addition, this draft does not include the portion of the common rule that includes each agency's adoption of the common rule text or agency-specific inserts. Agency-specific language will include designation of an agency official for various responsibilities identified in the common rule, such as approval of assurance forms and initial determinations of recipient compliance, and an agency's adoption of that portion of its Title VI regulations that addresses enforcement procedures. Two agencies that do not have Title VI regulations will include the text of procedures that are identical to other agencies' Title VI procedures.

We also are submitting this draft to the Equal Employment Opportunity Commission for comment pursuant to Executive Order 12067, and a similar draft has been submitted to the Office of Federal Register (OFR) for review of the notice's format and consistency with OFR requirements. In addition, you should note that this draft has not been formally reviewed by the Department's Office of Legal Counsel. We will inform you of any changes of substance rather than format. Given our interest in publication of this NPRM at the earliest possible date, and notwithstanding the potential for amendment to this draft, your prompt review of this draft would be appreciated greatly.

- 2 -

If you have any questions regarding this document, feel free to contact Merrily Friedlander, Chief, Coordination and Review Section, at 307-2222, or Jennifer Levin, an attorney in the Coordination and Review Section, at 305-0025.

Sincerely,

A handwritten signature in black ink, appearing to read 'Isabelle Katz Pinzler', with a large, stylized initial 'I'.

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Ms. Norma Cantu
Assistant Secretary for Civil Rights

Draft 9/15/97

[DOUBLE SPACE DOCUMENT FOR FEDERAL REGISTER]

[ADD remaining participating agencies and CFR cite for reg in order of CFR volume]

DEPARTMENT OF STATE

22 CFR Part 146

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3

DEPARTMENT OF JUSTICE

28 CFR Part 42

DEPARTMENT OF LABOR

29 CFR Part 36

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 18

NUCLEAR REGULATORY COMMISSION

10 CFR Part 4

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1253

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 7

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 19

42

NATIONAL SCIENCE FOUNDATION

45 CFR Part 618

Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance

AGENCIES: Department of Commerce, Department of Defense, Department of Housing and Urban Development, Department of Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of Treasury,

Department of Veterans Affairs, Agency for International Development, Corporation for National & Community Service, Environmental Protection Agency, Federal Emergency Management Agency, General Services Administration, Institute for Museum and Library Sciences, National Aeronautics and Space Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Nuclear Regulatory Commission, Small Business Administration, Tennessee Valley Authority, United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation, presented as a common rule, provides for the enforcement of Title IX of the Education Amendments of 1972, as amended ("Title IX") by the agencies identified above. Title IX prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance.

DATES: Comments must be received on or before (Insert date 60? days after date of publication in the FEDERAL REGISTER).

ADDRESSES: Interested parties should submit written comments on this notice of proposed rulemaking to Merrily A. Friedlander, Chief, Coordination and Review Section, P.O. Box 65960, Washington, D.C. 20035-6560, facsimile (202) 307-0595. See Supplementary Information Section for comments regarding the availability of this document in alternative formats.

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, (202) 307-2222.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed common rule is to provide for the enforcement of Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681, *et seq.*) ("Title IX"), as it applies to educational programs and activities that receive Federal financial assistance from the agencies participating in this notice. Because the proposed standards to be established are the same for all of the participating agencies, they are publishing this notice of proposed rulemaking jointly. The procedures for how an agency will enforce Title IX, including the conduct of investigations and compliance reviews, also follow the same structure; all agencies except the Department of Treasury (Treasury) and the U.S. Information Agency (USIA) are incorporating their respective procedures under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, which are virtually identical. Title IX is modeled after Title VI and the statutes have the same

statutory enforcement mechanisms. Although Treasury and the USIA do not have Title VI regulations, they are establishing enforcement procedures, as set forth below, that are akin to other agencies' Title VI procedures for enforcement. The final rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations as indicated in this notice.

During the early 1980s, several agencies published notices of proposed rulemaking for Title IX, but the proposed rules were never issued as final rules. For example, on June 17, 1980, the Department of Justice published a notice of proposed rulemaking. *See* 45 Fed. Reg. 41001 (1980). **ADD** other agency citations. By participating in this notice of proposed rulemaking, these agencies are initiating a new rulemaking proceeding.

Additional Comment Information

Copies of this notice are available, upon request, in large print and electronic file on computer disk. Other formats will be considered upon request.

Overview

As set forth in this proposed rule, the substantive nondiscrimination obligations of the agencies, for the most part, are identical to those established by the Department of Education (ED) under Title IX. *See* 34 CFR Part 106. ED's regulations are the model for this notice for several reasons; the history of public participation in the development, and congressional approval of ED's regulations, ED's role in Title IX enforcement, judicial interpretations of ED's regulations, familiarity by recipients, and an interest to maintain consistency of interpretation of regulations enforcing Title IX. The regulations, initially issued by the former Department of Health, Education, and Welfare (and adopted by ED upon its establishment in 1980), are the result of an extensive public comment process and congressional review. HEW received and considered more than 9700 comments before drafting its final regulations. Further, after the final regulations were issued, but before they became effective, Congress held five days of hearing to determine whether the regulations were consistent with the statute. *Sex Discrimination Regulations: Hearings before the Subcommittee on Postsecondary Education of the House Committee on Education and Labor*, 94th Cong., 1st Sess. (1975).

In addition, under Executive Order 12250, the Department of Justice is responsible for the "consistent and effective implementation" of several civil rights laws, including Title IX. Using the ED regulation as the basis for the agencies participating in this common rule promotes consistency and efficiency not only for agencies but for the recipient community. ED is the lead agency for enforcement of Title IX through its guidance, interpretations, and technical assistance, investigative

expertise, and resources committed. As the vast majority of recipients of Federal assistance from the identified agencies also receive assistance from ED, recipients should be subject to a single set of obligations with respect to Title IX.

Further, both Congress and the courts have taken action with respect to or interpreted Title IX and various provisions of ED's regulations. For example, in 1974, Congress amended the statute because of its disagreement with provisions in ED's proposed rule. See 20 U.S.C. 1681(a)(6). As mentioned, Congress also held hearings prior to its approval of the final regulations by HEW. In addition, in 1982, the Supreme Court upheld that portion of ED's regulations that prohibit discrimination by a recipient on the basis of sex in its employment practices. See *North Haven v. Bell*, 456 U.S. 512 (1982). As discussed below, Congress also passed the Civil Rights Restoration Act of 1987 (CRRRA), in large part, to reverse the Supreme Court's decision in *Grove City College v. Bell*, 465 U.S. 555 (1984). See S. Rep. No. 64, 100th Cong., 2d Sess. 2, reprinted in 1988 U.S.C.C.A.N. 3, 3-4. The recipient community, Federal agencies, and the courts should continue to have the benefit and continued reliance on past interpretations of Title IX and its regulations, and using the ED regulation as the model for other agencies promotes that consistency.

As mentioned, the proposed regulations are not an exact duplication of ED's regulations as this proposal addresses several statutory changes that are not reflected in the existing (but soon to be modified) ED regulation. A detailed discussion of these changes is set forth below.

Upon the issuance of final regulations by the participating agencies, beneficiaries and affected parties will have more opportunities to file complaints or seek information regarding Title IX enforcement from various agencies. The agencies intend to develop a means of sharing enforcement responsibilities and information to ensure that the most effective action is pursued, at the same time as avoiding both duplication of inquiries by the Federal government and any undue burden on recipients due to multiple inquiries.

Summary of Regulation

As stated, Title IX prohibits discrimination on the basis of sex in educational programs or activities that receive Federal financial assistance. Specifically, the statute states, "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, . . ." with specific exceptions for various entities, programs and activities. 20 U.S.C. 1681(a). This statute was modeled after Title VI, which prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance. The goal of Title IX is to ensure that Federal funds are not utilized for and do not support gender

based discrimination, and that individuals have equal opportunities, without regard to gender, to pursue, engage or participate in, and benefit from academic, extracurricular, research, occupational training, employment, or other educational programs and activities. For example (and without limitation), subject to exceptions described in this regulation, Title IX prohibits a recipient from discriminating on the basis of sex in: student admissions, scholarship awards and tuition assistance, recruitment of students and employees, the provision of courses and other academic offerings, the provision of and participation in athletics and extracurricular activities, and all aspects of employment, including, but not limited to, selection, hiring, compensation, benefits, job assignments and classification, promotions, demotions, tenure, training, transfers, leave, layoffs, and termination. All provisions of the regulation are to be interpreted consistent with existing case law.

It should be noted that we have retained sections from the ED regulation that impose deadlines for action by recipients. For example, section _____.3 includes a deadline for education institutions to conduct a self-evaluation and section _____.16 includes a time table for completion of transitions by an education institution eliminating its single-sex status. We have included these and other provisions to allow for the possible but rare instance where such sections may continue to be relevant for certain recipients. If a recipient of assistance from a participating agency also receives funding from ED or another agency with an existing Title IX regulation, however, the deadlines, as interpreted by the ED or other agency's regulation, as applicable, continue to govern. Further, to the extent a recipient has conducted an evaluation or established procedures to conform to the ED or another agency's Title IX regulation, the recipient need not repeat such action in order to conform to the regulations adopted by the participating agencies. For example, if a recipient has established grievance procedures, it need not modify such procedures or establish other procedures to comply to these regulations in the absence of guidance or instructions from a participating agency that modification or other action is necessary. Similarly, if a recipient already has conducted a self-evaluation under Title IX, it need not conduct a new self-evaluation as a result of receiving funds from a participating agency, but need only take action if such evaluation or implementation is found to be incomplete or not in compliance with the regulations.

Subpart A sets forth definitions as well as provisions concerning remedial action and affirmative action, required assurances, adoption of grievance procedures, and notification of nondiscrimination policies. The effect of State and other laws and other requirements is also explained.

Subpart B addresses the scope or coverage of Title IX. Subject to specific exceptions for institutions or activities, any educational program or activity, any part of which receives or benefits from Federal financial assistance, is subject to Title IX.

Modifications of ED's existing regulation to conform to the statutory amendments to Title IX are addressed in this subpart. Section ____ .12 is amended to incorporate the expanded exemption for entities controlled by religious institutions. Under the CRRA, any operation of an entity may be exempt from Title IX due to control by a religious organization with tenets that are not consistent with the provisions of Title IX. See 20 U.S.C. 1687. The exemption is no longer limited to only educational institutions that are controlled by religious organizations with tenets contrary to Title IX. Further, the exemption would apply to a particular program(s) operated by a recipient if this separate program is subject to religious tenets that are not consistent with Title IX. A recipient may apply for an exemption from the funding agency(ies). If a recipient has obtained an exemption from ED, such exemption may be submitted to another funding agency as a basis for an exemption from it.

While it is not expected that educational institutions will have a transition plan, we have retained the text of sections ____ .16 and 17. In addition, the text of ____ .16 has been slightly modified to require that any transition plans be submitted solely to the Department of Education.

A new section, ____ .18, addresses all other statutory amendments. See 20 U.S.C. 1681(a)(7)-(9), 1687, 1688. Three exemptions to Title IX's coverage are identified in ____ .18(a) based on amendments passed in 1976. 20 U.S.C. 1681(a)(7)-(9). Congress exempts activities undertaken by the American Legion to operate Boy's State, Girl's State, Boy's Nation, and Girl's Nation, and any promotional activity or selection of participants for such programs by educational institutions. 20 U.S.C. 1681(a)(7). In addition, father-son and mother-daughter activities that are sponsored by educational institutions are similarly exempt from coverage, with the condition that if such activities are conducted, reasonably comparable activities must be provided for students of the opposite sex. 20 U.S.C. 1681(a)(8). Third, educational institutions may provide scholarships or other benefits to persons who participate in single sex contests where personal appearance is a basis for reward, what is commonly referred to as "beauty pageants." 20 U.S.C. 1681(a)(9).

As part of the CRRA, Congress also added a definition of "program or activity." See 20 U.S.C. 1687. Congress took this action in order to reverse the meaning and consequences of the Supreme Court's decision in *Grove City College, supra*, which defined "program or activity" in restrictive terms. 465 U.S. at 572-74; S. Rep. No. 64 at 11-16, *reprinted in* 1988 U.S.C.C.A.N. at 13-18. The Court concluded in *Grove City College* that Federal student financial assistance provided to a college established Title IX jurisdiction only over the college's financial aid office, not the entire college. *Ibid.* The "program or activity" was the financial aid program. This interpretation significantly narrowed the prohibitions of Title IX and its counterparts, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*, the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, and Section 504 of the

Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. See S. Rep. No. 64, 100th Cong., 2d Sess. at 2-3, 11-16, *reprinted in* 1988 U.S.C.C.A.N. at 3-4, 13-18.

By statutory amendment, and as set forth in ____ 18(b), Congress restored the broad interpretation accorded the phrase "program or activity" prior to *Grove City College*. The provision addresses the scope of coverage for four broad categories of recipients; State or local entities, educational institutions, private entities, and an entity that is a combination of any of the aforementioned groups. The scope of coverage is no longer limited to the exact purpose or nature of the Federal funding. If, for example, a State or local agency receives Federal assistance for one of many functions of the agency, all of the operations of the *entire* agency are subject to the nondiscrimination provisions of Title IX. 20 U.S.C. 1687(1)(A). Further, if the aid is distributed to an entity or unit of government that subsequently distributes the assistance to a second agency, the entire agency to which the assistance was initially allocated is subject to Title IX. See 20 U.S.C. 1687(1)(B); S. Rep. No. 64 at 16, *reprinted in* 1988 U.S.C.C.A.N. at 18. With respect to educational institutions, it is critical to remember that *all* of the operations of the institution, whether or not such operation is educational or academic in nature, are subject to Title IX's prohibition on discrimination. Thus, housing programs, a shuttle service, food service, and other commercial operations are covered by Title IX. The degree of coverage of private entities, such as private corporations and partnerships, will vary depending on how the funding is provided, the principal purpose or objective of the entity, and/or how the entity is structured (e.g., physically separate offices or plants). All of the operations of private businesses that are principally engaged in education, health care, housing, social services or parks and recreation are considered a "program or activity" for purposes of Title IX. 20 U.S.C. 1687(3)(A)(ii). S. Rep. No. 64 provides numerous other examples of the scope of coverage with regard to each category of recipient, and readers are referred to this material. S. Rep. No. 64 at 16-20, *reprinted in* 1988 U.S.C.C.A.N. at 18-22.

Finally, it is important to note that the restored, broad interpretation of "program or activity" does not in any way alter the requirement of 29 U.S.C. 1682 that a proposed or effectuated fund termination be limited to the particular program(s) "or part thereof" that discriminate(s), or, as appropriate, to all of the programs that are infected by the discriminatory practices. See S. Rep. No. 64 at 20, *reprinted in* 1988 U.S.C.C.A.N. at 22 ("The bill defines 'program' in the same manner as 'program or activity,' and leaves intact the 'or part thereof' pinpointing language.").

Third, ____ 18(c) reflects the "abortion neutrality" provision in the CRRA, commonly referred to as the Danforth amendment, which provides: "Nothing in this part shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has

received any benefit or service related to a legal abortion." 20 U.S.C. 1688.

The first sentence of the Danforth Amendment is incorporated in subsection ____ 18(c)(1), which states that recipients are not required to provide or pay for any benefit or service related to an abortion. Consistent with congressional intent,¹ however, this provision does not allow recipients of Federal assistance to deny medical procedures, benefits, services, or the use of facilities if the life of the mother will be endangered if the pregnancy continued to term, or for medical complications arising from or related to an abortion.

The second sentence of the Danforth amendment is incorporated in ____ 18(c)(2). In addition, this subsection makes it clear that, consistent with the Danforth Amendment, the regulations prohibit discrimination against, exclusion of, or denial of benefits to, a person because that person has obtained, sought, or will seek an abortion. This prohibition applies to any service or benefit for an applicant (for enrollment or employment), student, or employee.²

1

See 134 Cong. Rec. S227 (daily ed. Jan. 28, 1988) (In response to Sen. Metzenbaum's charge that discriminatory treatment would follow adoption of the Danforth amendment, and criticism that the amendment failed to account for abortions that are necessary to save the life of the mother, Sen. Danforth replied that Sen. Metzenbaum's characterizations were "completely erroneous and totally without foundation at all."); 134 Cong. Rec. H568 (daily ed. Mar. 2, 1988) (statement of Rep. Hawkins); *id.* at H571 (statement of Rep. Jeffords); *id.* at H581 (statement of Rep. Aucoin) ("Equally important is the fact that the bill clearly prohibits denial of provision of services related to complications arising from abortion under the terms of title IX."); *id.* at H584 (statement of Rep. Edwards) ("Under its provisions, a covered institution does not have to include the costs of an abortion procedure in insurance for its students or employees. But [it] does not mean that it can exclude, for example, medical complications related to an abortion. Under the Danforth Amendment, Title IX still requires those complications to be covered.").

2

This provision is consistent with the Danforth provision and congressional intent. Statements of numerous senators and representatives, including Sen. Danforth and other sponsors, reiterate the plain meaning of the prohibition, and equate the imposition of penalties as one form of discriminatory treatment against women who have sought or will seek an abortion. *See* 134 Cong. Rec. S163 (daily ed. Jan. 27, 1988) (statement of Sen. Danforth) ("In fact, it is prohibited — hospitals, colleges, universities — from *discriminating* against people who have had abortions or who are seeking abortions. So it does not intend to authorize, in fact, it prohibits, *penalties* against people who have

Finally, in order to conform ED's existing text to that aspect of the Danforth amendment that does not require or prohibit a recipient from providing services or payment for an abortion, a specific reference to ____ 18(c)(1) is added to the following four provisions: ____ 21(c)(3), ____ 39, ____ 40(b)(4), and ____ 57(c).

Subpart C addresses nondiscrimination on the basis of sex in admission and recruitment practices with respect to students. For example, recipients may not impose numerical limits on the number or proportion of persons of either sex who may be admitted. In addition, a recipient may not give preference to another by separately ranking applicants on the basis of sex, or otherwise treat an individual differently because of his or her sex. Additional prohibitions of discrimination on the basis of parental and marital status are also identified.

Subpart D addresses nondiscrimination on the basis of sex in education programs and activities. Specific areas covered in this subpart are housing, access to

made their own choice for abortion.") (emphasis added); 134 Cong. Rec. S227 (daily ed. Jan. 28, 1988) (statement of Sen. Wilson) ([The second sentence of the Danforth amendment] was language that I and others insisted be in there, precisely to ensure that there could not be *discrimination* against women who either are seeking or have received abortion-related services.") (emphasis added).

Other members of Congress agreed with the Danforth amendment because of the specific inclusion of language prohibiting discrimination. *E.g.*, 134 Cong. Rec. H581 (daily ed. Mar. 2, 1988) (statement of Rep. AuCoin) ("And with their statements [by Sen. Danforth and Wilson, as quoted above] clarifying that this legislation before us today expressly prohibits, and does not in any way permit, discrimination against women who have had or are seeking abortions, I can support this bill."); *id.* at H584 (statement of Rep. Edwards). *See also id.* at H571 (statement of Rep. Jeffords) ("The second sentence of the amendment will ensure that a woman is not denied scholarships, promotions, extracurricular activities, student employment or any other benefits because she has received or is seeking an abortion."); *id.* at H581 (statement of Rep. AuCoin) ("With assurances from the authors of the Danforth amendment, and with the clarification provided by the floor leaders today, it is now clear that this legislation prohibits discrimination based on a person's decision regarding abortion — in scholarships, in housing, in extracurricular activities, in student or faculty hire and tenure, and in other benefits offered to students or employees under title IX."); *id.* at H584 (statement of Rep. Edwards) (Whether it be scholarships, promotions, extracurricular activities, student employment or any other benefits offered to students or employees, under title IX benefits cannot be withheld from a student or employees because she received or is seeking an abortion.").

course offerings, access to schools operated by local education agencies, counseling, financial assistance, employment assistance to students, health and insurance benefits and services, consideration of marital and parental status, and athletics. The proposed regulations do not cover a recipient's use of particular textbooks or curricular materials. The time frames identified in section _____.41(d), which address athletic programs, only apply if the recipient also does not receive funding from the Department of Education; otherwise, such recipient is expected to have complied with the time frames as interpreted for the ED regulation.

Subpart E covers the prohibitions of discrimination on the basis of sex in employment in educational programs and activities. Specific aspects of employment that are addressed include hiring and employment criteria, recruitment, compensation, job classification and structure, promotion and termination, fringe benefits, consideration of marital or parental status, leave practices, advertising, and preemployment inquiries as to parental and marital status. The subpart also includes a provision to exempt actions where sex is a bona fide occupational qualification.

Subpart F addresses the agency's respective procedures for implementation and enforcement of Title IX. For those agencies that have regulations to implement Title VI, such procedures will be adopted and incorporated by reference. Title VI and IX address discrimination in Federally assisted programs and have identical statutory enforcement schemes. The administrative enforcement procedures in Title VI regulations are virtually identical among the participating agencies, and differences are of minor consequence. For two agencies that do not have Title VI regulations, the Treasury and USIA, the specific text is set forth herein. The proposed text for Treasury and USIA are also virtually the same as existing regulations for other agencies. To the extent an agency has regulations, based on other statutes, that address nondiscrimination on the basis of sex in programs or activities that receive Federal financial assistance, such regulations remain in force and are not affected by this regulation.

Applicable Executive Orders and Regulatory Certifications

This regulation has been reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Attorney General has determined that this rule is a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review and, accordingly, this rule has been reviewed by the Office of Management and Budget.

This regulation is not a major rule as defined by the Small Business Regulatory

Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. All of the entities that are subject to these regulations are already covered by Title IX. While this regulation imposes a new standard of liability and requires that recipients establish grievance procedures and take other action, a substantial number of entities already are subject to other agency's Title IX regulations that impose the same requirements. Accordingly, these regulations will not impose new obligations on many recipients.

This regulation enforces a statutory prohibition on discrimination on the basis of sex and, therefore, no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995. Furthermore, this regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because all of the entities that are subject to these regulations are already subject to Title IX, and a substantial number of entities already are subject to the Title IX regulations of other agencies.

The recordkeeping requirements described in the proposed rule are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR part 1320. Accordingly, these proposed information collection requirements are being submitted to OMB for review pursuant to the Paperwork Reduction Act. Comments on the proposed information requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503. Attention: Desk Officer for the Department of Justice.

Text of the Proposed Common Rule

The text of this common rule as proposed for amendment in this document appears below:

PART ____—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

- § ____ .1 Purpose and effective date.
- § ____ .2 Definitions.
- § ____ .3 Remedial and affirmative action and self-evaluation.
- § ____ .4 Assurance required.
- § ____ .5 Transfers of property.
- § ____ .6 Effect of other requirements.
- § ____ .7 Effect of Employment opportunities.
- § ____ .8 Designation of responsible employee and adoption of grievance procedures.
- § ____ .9 Dissemination of policy.
- § ____ .10 [Reserved]
- § ____ .11 Application.
- § ____ .12 Educational institutions and other entities controlled by religious organizations.
- § ____ .13 Military and merchant marine educational institutions.
- § ____ .14 Membership practices of certain organizations.
- § ____ .15 Admissions.
- § ____ .16 Educational institutions eligible to submit transition plans.
- § ____ .17 Transition plans.
- § ____ .18 Statutory amendments.
- § ____ .19-20 [Reserved]
- § ____ .21 Admission.
- § ____ .22 Preference in admission.
- § ____ .23 Recruitment.
- § ____ .24-30 [Reserved]
- § ____ .31 Education programs and activities.
- § ____ .32 Housing.
- § ____ .33 Comparable facilities.
- § ____ .34 Access to course offerings.
- § ____ .35 Access to schools operated by LEAs.
- § ____ .36 Counseling and use of appraisal and counseling materials.
- § ____ .37 Financial assistance.
- § ____ .38 Employment assistance to students.
- § ____ .39 Health insurance benefits and services.
- § ____ .40 Marital or parental status.
- § ____ .41 Athletics.
- § ____ .42 Textbooks and curricular material.
- § ____ .43-50 [Reserved]
- § ____ .51 Employment.
- § ____ .52 Employment criteria.
- § ____ .53 Recruitment.
- § ____ .54 Compensation.
- § ____ .55 Job classification and structure.
- § ____ .56 Fringe benefits.

- § ____ .57 Marital or parental status.
- § ____ .58 Effect of state or local law or other requirements.
- § ____ .59 Advertising.
- § ____ .60 Pre-employment inquiries.
- § ____ .61 Sex as a bona-fide occupational qualification.
- § ____ .62-70 [Reserved]
- § ____ .71 Procedures.

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

SUBPART A-INTRODUCTION

§ ____ .1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub.L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. ~~This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub.L. 93-380, 88 Stat. 484. The effective date of this part shall be 30 days after final publication.~~

§ ____ .2 Definitions.

As used in this part, the term:

(a) "Title IX" means title IX of the Education Amendments of 1972, Pub. L. 92-318, ~~86 Stat. 373 (except sections 904 and 906 thereof)~~ as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; ~~by section 412 of Pub. L. 94-482, 90 Stat. 2234 and by Section 3 of Pub. L. 100-259, 102 Stat. 28, 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.~~

(b) "Department" means the Department of Education.

(c) "Secretary" means the Secretary of Education.

(b) "Assistant Secretary" means the Assistant Secretary for Civil Rights of the Department. ~~Designated agency official means [to be inserted by agency].~~

(c) "Reviewing Authority" means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in

~~cases arising under this part.~~³

~~(f) "Administrative law judge" means a person appointed by the reviewing authority to preside over a hearing held under this part.~~

(c) "Federal financial assistance" means any of the following, when authorized or extended under a law administered by the ~~Department~~ agency:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(d) "Recipient" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

³ This definition is specific to ED's enforcement procedures only.

(e) "Applicant" means one who submits an application, request, or plan required to be approved by a ~~Department~~ an agency official, or by a recipient, as a condition to becoming a recipient.

(f) "Educational institution" means a local educational agency (LEA) as defined by section 1001(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(g) "Institution of graduate higher education" means an institution which:

(h) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(i) "Institution of undergraduate higher education" means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(j) "Institution of professional education" means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of the Department of Education.

(k) "Institution of vocational education" means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or

institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(l) "Administratively separate unit" means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(m) "Admission" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(n) "Student" means a person who has gained admission.

(o) "Transition plan" means a plan subject to the approval of the Secretary ~~of the Department of Education~~ pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

§ .3 Remedial and affirmative action and self-evaluation.

(a) Remedial action. If the Assistant Secretary ~~designated agency official~~ finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary ~~designated agency official~~ deems necessary to overcome the effects of such discrimination.

(b) Affirmative action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) Self-evaluation. Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) Availability of self-evaluation and related materials. Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary ~~designated agency official~~ upon request, a description of any modifications made pursuant to paragraph (c)(ii)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(iii)(3) of this section.

§ ____ .4 Assurance required.

(a) General. Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary ~~designated agency official~~, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary ~~designated agency official~~ if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § ____ .3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary ~~designated agency official~~ of such assurance.

(b) Duration of obligation.

(1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) Form. The Director ~~designated agency official~~ will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ ____ .5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B of this part.

§ ____ .6 Effect of other requirements.

(a) Effect of other Federal provisions. The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(b) Effect of State or local law or other requirements. The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) Effect of rules or regulations of private organizations. The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

§ ____ .7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ ____ .8 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of

the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

§ ____ .9 Dissemination of policy.

(a) Notification of policy.

(1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the ~~Assistant Secretary~~ designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § ____ .8, or to the ~~Assistant Secretary~~ designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

(i) Local newspapers;

(ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) Publications.

(1) Each recipient shall prominently include a statement of the policy described in

paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) Distribution. Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

SUBPART B—COVERAGE

§ ____ .11 Application.

Except as provided in this subpart, this Part ____ applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

§ ____ .12 Educational institutions and other entities controlled by religious organizations.

(a) Application. This part does not apply to ~~any operation of~~ an educational institution ~~or other entity~~ which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) Exemption. An educational institution ~~or other entity~~ which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary ~~designated agency official~~ a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

§ ____ .13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ ____ .14 Membership practices of certain organizations.

- (a) Social fraternities and sororities. This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.
- (b) YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls. This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.
- (c) Voluntary youth service organizations. This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ ____ .15 Admissions.

- (a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.
- (b) Administratively separate units. For the purposes only of this section, §§ ____ .16 and ____ .17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.
- (c) Application of Subpart C. Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.
- (d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.
- (e) Public institutions of undergraduate higher education. Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

§ ____ .16 Educational institutions eligible to submit transition plans.

(a) Application. This section applies to each educational institution to which Subpart C applies which:

- (1) Admitted only students of one sex as regular students as of June 23, 1972; or
- (2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) Provision for transition plans. An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the Secretary ~~of the Department of Education~~ as described in § ____ .17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

§ ____ .17 Transition plans.

(a) Submission of plans. An institution to which § ____ .16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) Content of plans. In order to be approved by the Secretary ~~of the Department of Education~~ a transition plan shall:

- (1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.
- (2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.
- (3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) Nondiscrimination. No policy or practice of a recipient to which § ____ .16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) Effects of past exclusion. To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § ____ .16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

~~18 Statutory Amendments~~

~~This section, which applies to all provisions of this part, addresses statutory amendments to Title IX.~~

~~(a) This part shall not apply to or preclude:~~

~~(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;~~

~~(2) Any program or activity of a secondary school or educational institution specifically for: (i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or (ii) the selection of students to attend any such conference;~~

~~(3) Father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;~~

~~(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single sex pageant based upon a combination of factors related to the individual's personal~~

appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(b) "Program or activity" or "program" means all of the operations of:

(1)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of Title 20) system of vocational education, or other school system;

(3)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship;

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of 20 U.S.C. § 1681 to such operation would not be consistent with the religious tenets of such organization. For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a program or activity, subject to this part if the college, university or other institution receives or

benefits from Federal financial assistance.

(c)(1). Nothing in this part shall be construed to require or prohibit any person or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, including services, and the use of facilities at the life of the mother will be conducted in the circumstances described in terms of to address complications related to an abortion are not subject to this section.

(2). Nothing in this section shall be construed to require or prohibit any person or individual because such person or individual is or is not a recipient of any benefit or service related to a legal abortion. According to section (c)(1) paragraph (c)(1) of this section no person shall be excluded from participation in, be denied admission to, or be subjected to discrimination under any benefit or service, including research, occupational training, employment, or other educational program of a recipient of Federal financial assistance which receives or benefits from Federal financial assistance because such individual has sought or received or is seeking a legal abortion, or any benefit or service related to a legal abortion.

SUBPART C-DISCRIMINATION ON THE BASIS OF SEX IN ADMISSION AND RECRUITMENT PROHIBITED

§ ____ .21 Admission.

(a) **General.** No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ ____ .16 and ____ .17.

(b) **Specific prohibitions.**

(1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education

program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) ~~Subject to § 18(c)(1) of this part~~ Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§ ____ .22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

§ ____ .23 Recruitment.

(a) Nondiscriminatory recruitment. A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § ____ .3(a), and may choose to undertake such efforts as affirmative action pursuant to § ____ .3(b).

(b) Recruitment at certain institutions. A recipient to which this subpart applies shall

not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

SUBPART D—DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES PROHIBITED

§ ____ .31 Education programs and activities.

(a) **General.** Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) **Specific prohibitions.** Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

- (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- (3) Deny any person any such aid, benefit, or service;
- (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- (5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- (6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
- (7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) **Assistance administered by a recipient educational institution to study at a foreign**

institution. A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) Programs not operated by recipient.

(1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ ____ .32 Housing.

(a) Generally. A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) Housing provided by recipient.

(1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that

provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) Other housing.

(1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

§ _____.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ _____.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

§ ____ .35 Access to schools operated by LEAs.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ ____ .36 Counseling and use of appraisal and counseling materials.

(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a

counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) Disproportion in classes. Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ ____ .37 Financial assistance.

(a) General. Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) Financial aid established by certain legal instruments.

(1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided*, That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section;

and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) Athletic scholarships.

(1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § ____ .41.

§ ____ .38 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) Employment of students by recipients. A recipient which employs any of its students shall not do so in a manner which violates Subpart E of this part.

§ ____ .39 Health and insurance benefits and services.

~~Subject to 22-18(C)(1) of this part.~~ In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

§ ____ 40 Marital or parental status.

(a) Status generally. A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) Pregnancy and related conditions.

(1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) ~~Subject to 18(c)(1) of this part, a~~ recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

§ ____ 41 Athletics.

(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics

offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary ~~shall~~

agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) Adjustment period. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

§ ____ .42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

SUBPART E--DISCRIMINATION ON THE BASIS OF SEX IN EMPLOYMENT IN
EDUCATION PROGRAMS AND ACTIVITIES PROHIBITED

§ ____ .51 Employment.

(a) General.

(1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of

discriminating on the basis of sex in violation of this part.

(b) Application. The provisions of this subpart apply to:

- (1) Recruitment, advertising, and the process of application for employment;
- (2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
- (3) Rates of pay or any other form of compensation, and changes in compensation;
- (4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;
- (5) The terms of any collective bargaining agreement;
- (6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;
- (7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
- (8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;
- (9) Employer-sponsored activities, including social or recreational programs; and
- (10) Any other term, condition, or privilege of employment.

§ ____ .52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

- (a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and
- (b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ ____ .53 Recruitment.

(a) Nondiscriminatory recruitment and hiring. A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) Recruitment patterns. A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

§ ____ .54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

§ ____ .55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § ____ .61.

§ ____ .56 Fringe benefits.

(a) "Fringe benefits" defined. For purposes of this part, *fringe benefits* means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment

not subject to the provision of § ____ .54.

(b) Prohibitions. A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

§ ____ .57 Marital or parental status.

(a) General. A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) Pregnancy. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) Pregnancy as a temporary disability. ~~Subject to the provisions of the Equal Employment Opportunity Act of 1972, as amended, and the Pregnancy Discrimination Act of 1978, a~~ A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) Pregnancy leave. In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of

time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ ____ .58 Effect of State or local law or other requirements.

(a) Prohibitory requirements. The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) Benefits. A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§ ____ .59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona-fide occupational qualification for the particular job in question.

§ ____ .60 Pre-employment inquiries.

(a) Marital status. A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) Sex. A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§ ____ .61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment

in a locker room or toilet facility used only by members of one sex.

SUBPART F--PROCEDURES ~~[INTERIM]~~

§ ____ .71 Reserved.

~~The procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 34 CFR 100.6-100.11 and 34 CFR, Part 101.~~ [REDACTED]
[REDACTED]

Clinton Presidential Records Digital Records Marker

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7

Divider Title: _____

Draft 8/14/97

An Agreement Between All Executive Departments and Agencies that Conduct Federally Assisted Programs to Delegate to the Department of Education, the Department of Health and Human Services, and the Department of Veterans Affairs Certain Title VI and Title IX Compliance Responsibilities with Respect to Certain Educational Institutions

A. Purpose

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq ("Title VI"), prohibits discrimination on the basis of race, color, and national origin in programs or activities that receive Federal financial assistance. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq ("Title IX"), similarly prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance. Section 1-207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs and agreements between Federal agencies to promote the effective enforcement of, inter alia, Titles VI and IX, and similar laws that prohibit discrimination in Federally assisted programs and activities. See, also, 28 C.F.R. §§ 42.401-415 (Coordination regulation with respect to Title VI). This agreement will promote the consistent and coordinated enforcement of Titles VI and IX by delegating certain enforcement authority for *jointly* funded educational institutions to the Department of Education, Department of Health and Human Services, and the Department of Veterans Affairs, as set forth herein. In addition, efficiency of enforcement activities will be increased and burdens on recipients, beneficiaries, and Federal agencies will be reduced as all agencies will share data on recipient compliance and eliminate duplicative agency efforts.

B. Parties to this Agreement

Participating agencies are agencies that provide Federal financial assistance and will delegate certain civil rights compliance responsibilities to the Departments of Education (ED), Health and Human Services (HHS), and Veterans Affairs (VA). Specifically, participating agencies are: _____ (list agencies). ED, HHS, and VA are a "participating agency" in those circumstances where ED, HHS, or VA delegate responsibilities to each other.

C. Delegation

1. By this agreement, and subject to paragraphs (C)(2)-(3), participating agencies will delegate to ED specific enforcement duties regarding Titles VI and IX, and similar laws that prohibit discrimination in Federally assisted programs, (other than Section 504 of the Rehabilitation Act of 1973, as amended), the enforcement duties delegated to ED are enumerated below in Section D, and encompass programs involving elementary and secondary education systems, and institutions and institutions of higher education and vocational education that receive Federal assistance from both ED and any participating agency at the time of the alleged discrimination ("designated ED recipients"). As appropriate, similar duties are delegated for any educational institution subject to this paragraph that applies for Federal

assistance from a participating agency and which currently receives Federal assistance from ED ("designated ED applicants").

2. By this agreement, and subject to paragraphs (C)(1) and (C)(3), participating agencies will delegate to HHS specific enforcement duties regarding Titles VI and IX, and similar laws that prohibit discrimination in Federally assisted programs, (other than Section 504 of the Rehabilitation Act of 1973, as amended), the enforcement duties delegated to HHS are enumerated below in Section D, and encompass programs involving schools of medicine, dentistry, nursing, other health-related schools that receive Federal assistance from both HHS and any participating agency at the time of the alleged discrimination ("designated HHS recipients"). As appropriate, similar duties are delegated for any entity that applies for Federal assistance from an agency and which currently receives Federal assistance from HHS ("designated HHS applicant").

3. By this agreement, and subject to paragraphs (C)(1)-(2), participating agencies will delegate to VA specific enforcement duties regarding Titles VI and IX, and similar laws that prohibit discrimination in Federally assisted programs, (other than Section 504 of the Rehabilitation Act of 1973, as amended), the enforcement duties delegated to the VA are enumerated below in Section D, and encompass programs involving proprietary educational institutions (i.e., private, for profit, non-college degree granting institutions that provide technical and skilled training) that receive Federal assistance from both the VA and any participating agency at the time of the alleged discrimination ("designated VA recipients"). As appropriate, similar duties are delegated for any entity that applies for Federal assistance from an agency and which currently receives Federal assistance from VA ("designated VA applicant").

4. ED and HHS shall consult and determine, on a case-by-case basis, which agency will investigate a complaint that alleges discrimination occurred in a school of medicine, dentistry, or other health-related school, as well as the educational institution at large.

5. This agreement does not alter, amend, or otherwise affect any existing delegation agreements between participating agencies and HHS under Title VI with respect to medical facilities and noneducational institutions.

6. This agreement does not alter, amend, or otherwise affect any agreements between agencies with respect to the enforcement of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.

7. This agreement does not alter, amend, or otherwise affect the requirements of the Department of Justice/Equal Employment Opportunity Commission (EEOC) regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance, commonly referred to as the "Title VI/Title VII rule." 28 C.F.R. §§ 42.601-42.613, 29 C.F.R. §§ 1691.1-1697.13. Complaints filed with a

participating agency alleging that a recipient of Federal financial assistance engaged in employment discrimination remain subject to the Title VI/Title VII rule, and therefore will be referred directly to the EEOC by a participating agency.

D. Duties of ED, HHS, and VA as Delegates

The participating agencies assign the following enforcement duties to ED, HHS, or the VA, as appropriate, with respect to designated ED/HHS/VA recipients, respectively, as defined in Section C, and/or other entities as specifically defined. Specifically, ED, HHS, and VA shall:

1. Maintain complete files on all activities undertaken pursuant to this agreement, including the compliance status of designated ED/HHS/VA applicants and recipients as determined by complaint investigations, post-approval reviews, and other actions taken to investigate, address, or resolve noncompliance.
2. Receive and review complaints alleging that designated ED/HHS/VA recipients have discriminated in the operation of programs or activities in violation of Titles VI and IX; attempt to obtain information necessary to make complaints complete, where appropriate; and investigate complete complaints that are not patently frivolous or otherwise without merit. The manner of investigation shall be at the discretion of ED/HHS/VA. Upon request by a participating agency, ED/HHS/VA shall provide the requesting agency copies of correspondence with the designated ED/HHS/VA recipient.
3. Issue written letters of findings of compliance or of noncompliance that (a) advise the designated ED/HHS/VA applicant or recipient and, where appropriate, the complainant of the results of the post-approval review or complaint investigation; (b) provide recommendations, where appropriate, for achieving voluntary compliance; and (c) offer, where appropriate, the opportunity for the designated ED/HHS/VA recipient to engage in negotiations for achieving voluntary compliance. The governor of the State in which the designated ED/HHS/VA applicant or recipient is located also will be notified if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. ED/HHS/VA shall provide simultaneously a copy of its letter(s) of findings of noncompliance to the referring participating agency and to the Assistant Attorney General for Civil Rights.
4. If compliance by a designated applicant or recipient cannot be voluntarily achieved, notify a participating agency of this determination within 5 business days. If only ED/HHS/VA has authority to pursue a fund suspension, denial, or termination consistent with 42 U.S.C. § 2000d-1 or 29 U.S.C. § 1682, it may proceed consistent with its regulations. ED/HHS/VA and a participating agency should consult with each other as to an appropriate course of enforcement action. It is expected that the participating agency and ED/HHS/VA will agree on how to proceed to secure compliance by the designated ED/HHS/VA recipient.

a. If ED/HHS/VA and the participating agency agree, refer the matter to the Assistant Attorney General, Civil Rights Division, Department of Justice, for review and appropriate judicial action.

b. If both ED/HHS/VA and the participating agency have authority to pursue a fund suspension, denial, or termination consistent with 42 U.S.C. § 2000d-1 or 29 U.S.C. § 1682, and if ED/HHS/VA and the participating agency agree to initiate such action, the agencies shall determine whether an administrative hearing, if requested by the designated ED/HHS/VA recipient, will be conducted jointly or by one agency on behalf of both. The designated ED/HHS/VA recipient shall be notified of the agencies' proposed action, and whether an administrative hearing, if desired, will be conducted jointly or by one agency on behalf of both.

i. If the designated ED/HHS/VA recipient does not request a hearing, ED/HHS/VA will render a final decision pursuant to its regulations and, within 10 days of such decision, notify the participating agency and the Assistant Attorney General, Civil Rights Division, Department of Justice, of such decision, and the reasons therefor.

ii. If an administrative hearing is conducted, within 5 business days of a decision issued after such hearing, ED/HHS/VA will notify the Assistant Attorney General, Civil Rights Division, Department of Justice (and the participating agency if such agency did not participate), of the outcome of the hearing, the reasons for such decision, and of any action taken against, or intended, with regard to the designated ED/HHS/VA recipient. In addition, ED/HHS/VA will render a final decision pursuant to its regulations and, within 10 days of such decision, notify the participating agency and the Assistant Attorney General, Civil Rights Division, Department of Justice, of such decision, and the reasons therefor.

c. If ED/HHS/VA and the participating agency cannot agree on a course of action, the agencies will notify the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice of such disagreement. Pursuant to Executive Order 12250, the Civil Rights Division will seek to resolve the dispute between the agencies in a manner satisfactory to both agencies.

5. Upon request of a participating agency, ED/HHS/VA shall provide letters of findings for any complaint referred to ED/HHS/VA by a participating agency. In addition, upon request, a participating agency shall be provided copies or reasonable access to inspect and review files maintained by ED/HHS/VA with respect to designated recipients.

6. Continue or perform reviews of designated ED/HHS/VA applicants consistent with paragraph (D)(3), when significant or unique issues arise during inquiries by the participating agency.

7. Conduct post-approval reviews of the programs or activities of certain designated ED/HHS/VA recipients pursuant to a schedule established by ED/HHS/VA, and notify the participating agency of the schedule as it pertains to them, and results thereof.

8. By November 15, or within 45 days of a request by a participating agency, whichever is later, provide an oral or written summary of all actions taken with respect to referrals by a participating agency during the prior fiscal year.

E. Duties of a Participating Agency

A participating agency shall:

1. Within 10 days of receipt of a complaint, determine whether the entity(ies) involved are designated ED/HHS/VA recipient(s), and if so, refer such complaint to ED/HHS/VA, as appropriate. In addition, if sufficient information is provided in the complaint, the participating agency shall notify ED/HHS/VA whether the specific program(s) involved receives Federal financial assistance from the participating agency. If ED/HHS/VA provides supplemental information to the participating agency regarding the nature of the investigation, the participating agency shall determine whether it provides Federal assistance to the specific program(s) in issue within 20 days of a request by ED/HHS/VA.

2. Upon request by ED/HHS/VA, provide ED/HHS/VA, as appropriate, with information, technical assistance and training necessary for it to perform the duties delegated under this agreement. This information may include, but is not limited to:

- a. compliance information solely in a participating agency's possession or control;
- b. data on recipients' program operations, including eligibility requirements and/or actual participants; and
- c. any material in a participating agency's possession that is relevant to an evaluation of a designated recipient's compliance or noncompliance with Titles VI and/or IX.

3. As part of pre-approval reviews of designated ED/HHS/VA applicants seeking Federal assistance from a participating agency, the participating agency shall contact ED/HHS/VA, as appropriate, to determine the status of compliance of the applicant. In addition, if the participating agency's queries indicate the existence of noncompliance with Title VI and/or Title IX, it shall immediately consult with ED/HHS/VA, as appropriate, to determine which agency shall pursue the matter. It is expected that unique or significant issues will be referred to ED/HHS/VA for investigation or review. A participating agency shall supply all information collected and necessary for ED/HHS/VA to undertake such a review.

4. When ED/HHS/VA has notified the designated ED/HHS/VA applicant or recipient in writing that compliance cannot be achieved by voluntary means and ED/HHS/VA has

referred the matter to a participating agency, a participating agency shall make an independent compliance determination, and consult with ED/HHS/VA, as appropriate. If only the participating agency has authority to pursue a fund suspension, denial, or termination consistent with 42 U.S.C. § 2000d-1 or 29 U.S.C. § 1682, it may proceed consistent with its regulations. ED/HHS/VA and a participating agency should consult with each other as to an appropriate course of enforcement action. It is expected that the participating agency and ED/HHS/VA will agree on how to proceed to secure compliance by the designated ED/HHS/VA recipient.

a. If ED/HHS/VA and the participating agency agree, refer the matter to the Assistant Attorney General, Civil Rights Division, Department of Justice, for review and appropriate judicial action.

b. If both ED/HHS/VA and the participating agency have authority to pursue a fund suspension, denial, or termination consistent with 42 U.S.C. § 2000d-1 or 29 U.S.C. § 1682, and if ED/HHS/VA and the participating agency agree to initiate such action, the agencies shall determine whether an administrative hearing, if requested by the designated ED/HHS/VA recipient, will be conducted jointly or by one agency on behalf of both. The designated ED/HHS/VA recipient shall be notified of the agencies' proposed action, and whether an administrative hearing, if desired, will be conducted jointly or by one agency on behalf of both.

i. If the designated ED/HHS/VA recipient does not request a hearing, the participating agency will render a final decision pursuant to its regulations and, within 10 days of such decision, notify ED/HHS/VA and the Assistant Attorney General, Civil Rights Division, Department of Justice, of such decision, and the reasons therefor.

ii. If an administrative hearing is conducted, within 5 business days of a decision issued after such hearing, the participating agency will notify the Assistant Attorney General, Civil Rights Division, Department of Justice (and ED/HHS/VA if such agency did not participate), of the outcome of the hearing, the reasons for such decisions and of any action taken against, or intended, with regard to the designated ED/HHS/VA recipient. In addition, the participating agency will render a final decision pursuant to its regulations and, within 10 days of such decision, notify ED/HHS/VA and the Assistant Attorney General, Civil Rights Division, Department of Justice, of such decision, and the reasons therefor.

c. If ED/HHS/VA and the participating agency cannot agree on a course of action, the agencies will notify the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice of such disagreement. Pursuant to Executive Order 12250, the Civil Rights Division will seek to resolve the dispute between the agencies in a manner satisfactory to both agencies.

F. Sharing of Data and Joint Activities

1. Apart from the responsibilities and obligations set forth in Sections D and E, ED/HHS/VA and a participating agency shall share data on the status of compliance with Titles VI and IX and similar statutes of all known applicants and recipients, as requested by the other. Prior to any participating agency awarding assistance to an applicant, it shall consult with ED/HHS/VA, as appropriate, to determine whether there are any outstanding findings of noncompliance, conditions for the continued receipt of funds, or other facts that may affect an award, or conditions attached thereto. ED/HHS/VA shall respond to a request, which may be oral or in writing, within ___ days, either orally or in writing.

2. Upon agreement, ED/HHS/VA and a participating agency may conduct jointly any activity set forth in Sections D and E that is designated to be performed by one such agency. For example, ED and a participating agency may jointly conduct investigations of complaints, post-approval reviews of designated recipients or others, or pre-approval reviews. The authority of either agency to act independently is not altered or otherwise affected by jointly conducting any activity described herein.

3. ED/HHS/VA shall provide all letters of finding of noncompliance of recipients, whether or not such entities are designated ED/HHS/VA recipients, to all participating agencies.

G. Duties Unaffected by this Agreement

A participating agency will conduct investigations of complaints, pre-award reviews, and post-award reviews as appropriate for all **nondesignated** ED/HHS/VA applicants and recipients.

H. Effect on Prior Delegation

This agreement supersedes and replaces delegation agreements, and portions thereof, between participating agencies and ED/HHS/VA with respect to Title VI and Title IX as they apply to educational institutions.

I. Review and Modification

The provisions of this agreement shall be reviewed by all agencies one year after implementation to determine whether modification is desired. Any modification shall be by written mutual agreement of all parties. This agreement shall remain in effect until a superceding agreement is executed.

J. Approval

This agreement shall be approved by appropriate representatives of all agencies before publication in the Federal Register.

[List names/titles of heads of participating agencies]

THE WHITE HOUSE
WASHINGTON

October 15, 1998

MEMORANDUM

To: Helen Sullivan, Office of General Counsel, DOD
From: Eddie Correia, Office of Counsel to the President
Re: Draft Executive Order on Educational Programs

I have sent you by fax the draft text of the executive order as proposed by DOJ. It also includes some alternative language proposed by DOD. As we have discussed, we are anxious to resolve any outstanding issues and to finalize an order for the President's review and signature. I would appreciate your reviewing the comments below and discussing them with the appropriate persons at DOD.

1. Coverage of Students at Military Academies

We understand DOD's position to be that students in the military academies are already covered by civil rights protections that are comparable to, or perhaps more protective than, Title VI and Title IX. Since your proposed section 3-301 exempts the "armed forces," I assume your position is that students would be exempt from the order since they fall within this category. I appreciate your sending me DOD and branch regulations that include civil rights protections. However, based on our review, we were only able to identify one specific textual reference to the academies (midshipmen at the Naval Academy). Are you certain that existing regulations cover these students? Can you refer me to the provisions that cover them?

2. Civilians

I understand that DOD has no objection to an executive order that extends to civilians (e.g., state and local officials) if they participate in a DOD-sponsored educational program that does not have primarily a military purpose. However, we understand DOD to have some concerns about covering civilians who participate in DOD-sponsored educational programs in two situations -- courses that are primarily intended for military personnel and courses that are in the nature of training exercises in the event of an emergency such as a terrorist attack.

Military personnel are already protected under DOD and/or individual branch regulations. Thus, there may be no need to cover them under the order. As I understand it, both DOJ and DOD have concluded that Title VII protects civilian federal employees from discrimination in the setting of a DOD-sponsored educational program, regardless of the federal agency that is the

employer. For that reason, an exemption for federal employees who participate in these courses may also be appropriate.

The remaining issue regarding these programs appears to be limited to non-federal employee civilians who participate in a course that has primarily a military purpose. You have indicated that DOD has some concerns about overlapping and inconsistent regulations and potential administrative difficulties. However, we believe it is important that there be no gaps in civil rights protections. If there are simply no existing regulatory protections for these persons, then it is important to address this situation. One possible solution is to limit an exemption for any DOD-sponsored military training program to military personnel and federal employees. That has the advantage of ensuring that non-federal employee civilians are covered by the same protections and it avoids carving out particular categories of courses that are excluded. For example, section 3-302 could be revised to read:

This order does not apply to claims by federal employees who participate in military training or education programs conducted by the Department of Defense if such claims can be based on Title VII of the Civil Rights Act of 1964.

However, I am interested in whatever suggestions you have consistent with the overall purpose of the order.

3. National Origin

As we discussed, DOD and other agencies occasionally sponsor educational programs that for legitimate purposes focus on persons of particular national origin. For example, a course may be designed for foreign nationals from Latin America or the Middle East. The draft order did not address this situation. On the other hand, the draft did include a complete exemption for decisions made by entities other than federal agencies. That is probably appropriate where the entity making the decision is a foreign government, but it may not be appropriate for decisions made by other entities, such as domestic companies or state and local governments. On the other hand, it may not be possible to cover by executive order entities other than federal executive branch agencies. If you have any thoughts on that issue, please let me know.

As for the first issue, one possible solution is to amend the proposed section 3-306 to read as follows:

This order does not apply to: 1) selection of foreign citizens to participate in covered programs based on national origin if such programs concern primarily national security or foreign policy; or 2) the selection process utilized and/or decisions made by any entity other than the executive department or agency, regarding who may attend or participate in an education or training program conducted by an executive department or agency.

I would appreciate receiving your comments and suggestions on these matters as soon as possible. I will be out of the office next week. In the event that you need to reach White House staff next week, please contact Jennifer Klein, 456-6266 or Julie Fernandes, 456-2216.

To: Eddie Correia
From: Jill Carnes
Date: October 8, 1998

**I. Department of Defense
DIRECTIVE
Number 1350.2
August 18, 1995**

A) DoD Policy and Broad Program Objective

- Promote an environment free from personal, social, or institutional barriers that prevent Service members from rising to the highest level of responsibility possible. Service members shall be evaluated only on individual merit, fitness, and capability. Unlawful discrimination against persons or groups based on race, color, religion, sex, or national origin is contrary to good order and discipline and is counterproductive to combat readiness and mission accomplishment. Unlawful discrimination shall not be condoned.

B) Substance

1) Purpose

- Regulate Department of Defense Military Equal Opportunity Program (MEOP), and ensure DoD-wide compliance with the broad program objectives.
- Establish Department-wide standards for discrimination complaint processing and resolution as set forth in the DEOC Task Force on Discrimination and Sexual Harassment Report.

2) Objectives

- Provide for an environment that is free from unlawful discrimination and sexual harassment.
- Ensure that all on-base and, as far as possible, all off-base activities are made available to all military personnel and their families regardless of race, color, religion, age, physical or mental disability, sex, or national origin, per the DoD Human Goals Charter.

3) Implementation

- A Defense Equal Opportunity Council (DEOC) will be set in place to advise, coordinate, monitor progress, assist in policy guidance for education and training in EO, provide oversight and ensure resourcing for the Defense Equal Opportunity Management Institute (DEOMI).
- Members of the DEOMI are required to provide training, monitor effectiveness, establish reporting categories, ensure fair, impartial and timely investigation, resolution and follow up to complaints, among other various duties. (Members include Deputy Secretary of Defense, Under Secretaries of Defense, Secretaries of Military Departments.)
- Specific instructions are set forth for the various categories and subjects for the Annual Military Equal Opportunity Assessment (MEOA), including promotions, recruiting, separations, etc.

§ 801. Article 1—Definitions

In this chapter:

- (1) The term "Judge Advocate General" means, severally, the Judge Advocate General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of Transportation.
- (2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.
- (3) The term "commanding officer" includes only commissioned officers.
- (4) The term "officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.
- (5) The term "superior commissioned officer" means a commissioned officer superior in rank or command.
- (6) The term "cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.
- (7) The term "midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.
- (8) The term "military" refers to any or all of the armed forces.
- (9) The term "accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.
- (10) The term "military judge" means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).
- (11) The term "law specialist" means a commissioned officer of the Coast Guard designated for special duty (law).
- (12) The term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.
- (13) The term "judge advocate" means—
 - (A) an officer of the Judge Advocate General's Corps of the Army or the Navy;
 - (B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or
 - (C) an officer of the Coast Guard who is designated as a law specialist.
- (14) The term "record", when used in connection with the proceedings of a court-martial, means—
 - (A) an official written transcript, written summary, or other writing relating to the proceedings; or
 - (B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.
- (15) The term "classified information" means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).
- (16) The term "national security" means the national defense and foreign relations of the United States.

(As amended Dec. 6, 1983, Pub.L. 98-209, §§ 2(a), 6(a), 98 Stat. 1393, 1400; Dec. 4, 1987, Pub.L. 100-180, Div. A, Title XII, § 1231(17), 101 Stat. 1161; Sept. 29, 1988, Pub.L. 100-456, Div. A, Title XII, § 1233(f)(1), 102 Stat. 2057; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title XI, § 1141(b), 110 Stat. 467; Oct. 11, 1996, Pub.L. 104-287, § 7(5), 110 Stat. 3400.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 11(y) of the Atomic Energy Act of 1954, referred to in par. (15), is section 11(y) of Act Aug. 1, 1946, c. 724, as added and amended, which is classified to section 2014(y) of Title 42, The Public Health and Welfare.

1996 Amendments

Pars. (15), (16). Pub.L. 104-106, § 1141(b), added pars. (15) and (16).

C) Scope (Administrative Reissuance Incorporating Change 1, May 7, 1997)

- 1) Directive is applicable to:
 - Office of Secretary of Defense
 - The Military Departments
 - Chairman of Joint Chiefs of Staff
 - The Combatant Commands
 - The Defense Agencies
 - The DoD Field Activities
- 2) The term "Military Services" refers to the Army, the Navy, The Air Force, The Marine Corps, and the U.S. Coast Guard when it is operating as a Service in the Department of Navy. (Different from Feb. 29, 1988 Instruction 1350.3)
 - a) It is DoD policy to ensure that the Military Services (including Reserve components) establish MEO and affirmative action programs that identify and resolve EO problems consistent with the original DoD Instruction 1350.3 of Feb 29, 1988.
- 3) Directive is not applicable to the Commissioned Corps of the National Oceanic and Atmospheric Administration, Department of Commerce, or the Public Health Service, Department of Health and Human Services, (the other two Uniformed Services).

D) Other Issuances

- 1) *Letter from Assistant Secretary of Defense (Feb. 25, 1998)*
 - Re: DoD Interim Policy for Implementation of 10 U.S.C. 1561 (Sexual Harassment Investigations and Reports)
 - Asks that each Military Department Secretary forward a report containing statistical data on sexual harassment complaints and outcomes.
 - Sets forth investigation requirements, reporting requirements and definitions.
- 2) *Administrative Measures for Correcting Military Offenders*
 - Counseling, admonition, reassignment, resignation, etc.
- 3) *Comparison of UCMJ Forums*
 - Sets forth maximum punishments for various forums (Nonjudicial punishment, Summary Court-Martial, Special Court-Martial, General Court-Martial).
- 4) *Charging Sexual Harassment and Other Discrimination Under the UCMJ*
 - Non-exclusive list of possible charges for sexual harassment.
 - List describes behavior, the applicable UCMJ article (extortion, bribery, disrespect, assault etc.), the maximum punishment and remarks.
- 5) *Discrimination and Sexual Harassment Prevention Program Analysis Matrix*
 - Provides detailed analysis for each of the Military Services' policies and procedures for bringing and resolving a complaint and the consequences thereof.



Department of Defense DIRECTIVE

Chl
6/17/97

August 18, 1995
NUMBER 1350.2

USD(P&R)

SUBJECT: Department of Defense Military Equal Opportunity (MEO) Program

- References: (a) DoD Directive 1350.2, subject as above, December 23, 1988 (hereby canceled)
(b) DoD Human Goals Charter (signed by the Secretary of Defense, Deputy Secretary of Defense, Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, and Service Chiefs), May 19, 1994¹
(c) Secretary of Defense Memorandum, "Equal Opportunity (EO)," March 3, 1994
(d) Secretary of Defense Memorandum, "Prohibition of Sexual Harassment in the Department of Defense (DoD)," August 22, 1994
(e) through (o), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a).
2. Regulates the Department of Defense MEO Program and assigns responsibilities for ensuring DoD-wide compliance with the broad program objectives outlined in references (b), (c), and (d).
3. Provides for education and training in EO and human relations.
4. Prescribes the functions of the Defense Equal Opportunity Council (DEOC) and the Defense Equal Opportunity Management Institute (DEOMI).
5. Establishes Department-wide standards for discrimination complaint processing and resolution as set forth in the DEOC Task Force on Discrimination and Sexual Harassment Report (reference (e)). The recommendations contained in the DEOC Task Force Report are set out in section F.; implementation of this Directive shall be consistent with sections D. and F., below.
6. Provides standard terms and definitions pertaining to the MEO program.

¹ References (b) through (e) are on file in the Office of the Deputy Assistant Secretary of Defense (Equal Opportunity), Pentagon, Washington, D.C., (703) 697-6381 or DSN 227-6381.

5. Provide periodic, mandatory education and training in EO and human relations at installation and fleet unit commands, during pre-commissioning programs and initial entry training, and throughout professional military education (PME) systems, as part of the overall effort to achieve EO within the Department of Defense. This training shall be provided to all Service members, enlisted and officer, including flag and general officers. The training shall include comprehensive material on leadership roles and responsibilities for EO programs, complaints processing, legal implications, reprisal prevention and detection, climate assessment methodologies, and managing civilian equal employment opportunity (EEO) systems.

6. Provide for an environment that is free from unlawful discrimination and sexual harassment. (See items 15 and 16, enclosure 2.)

7. Ensure that all on-base activities and, to the extent of the ability of the Department of Defense, any off-base activities available to military personnel are open to all military personnel and their family members regardless of race, color, religion, age, physical or mental disability, sex, or national origin, as called for by the DoD Human Goals Charter (reference (b)).

a. Organizations or administering activities that do not meet this requirement shall be denied the use of military facilities and resources in accordance with DoD Directive 5410.18 (reference (g)).

b. Organizations that use on-base facilities, whether on a reimbursable basis or otherwise, must satisfy the responsible area or activity commander that they do not unlawfully discriminate through their membership requirements or in any of their activities:

8. Oppose discrimination in off-base housing directed against DoD personnel and their family members. Each commander shall take actions to overcome such discrimination and to impose off-limits sanctions in housing cases, as required by DoD Instruction 1100.16 (reference (h)).

9. Impose, as required, off-limits sanctions through the cognizant Armed Forces Disciplinary Control Board in cases of discrimination involving places of public accommodation outside military installations.

E. ORGANIZATIONS AND FUNCTIONS

1. There is established a DEOC.

a. It shall:

(1) Advise the Secretary of Defense on policies for EO matters.

(2) Coordinate policy and review the military and civilian EO programs.

(3) Monitor progress of program elements.

DEFINITIONS

1. Affirmative Action. Methods used to achieve the objectives of the MEO program. Processes, activities, and systems designed to prevent, identify, and eliminate unlawful discriminatory treatment as it affects the recruitment, training, assignment, utilization, promotion, and retention of military personnel.

2. Complaint. An allegation of unlawful discrimination based on race, color, national origin, religion, or sex.

a. Informal Complaint. Allegation of unlawful discrimination or sexual harassment, made either orally or in writing, that is not submitted as a formal complaint.

b. Formal Complaint. Allegation of unlawful discrimination or sexual harassment that is submitted in writing to the authority designated for receipt of such complaints in Service implementing regulations.

3. Complainant. A Service member who submits allegations of unlawful discrimination (as defined in item 16., below).

4. Defense Equal Opportunity Council (DEOC). A senior executive-level decision-making body that provides advice and counsel to the Secretary and Deputy Secretary of Defense on all DoD EO and/or EEO matters.

5. DoD Military Equal Opportunity (MEO) Program. The DoD-wide military program of EO that is accomplished through efforts by the DoD Components. It provides an environment in which Service members are ensured an opportunity to rise to the highest level of responsibility possible in the military profession, dependent only on merit, fitness, and capability.

6. Equal Opportunity (EO). The right of all persons to participate in, and benefit from, programs and activities for which they are qualified. These programs and activities shall be free from social, personal, or institutional barriers that prevent people from rising to the highest level of responsibility possible. Persons shall be evaluated on individual merit, fitness, and capability, regardless of race, color, sex, national origin, or religion.

7. Equal Opportunity (EO) Climate Assessment. Determining the "health" and functioning effectiveness of an organization by examining such factors as morale, teamwork, and communication. This is accomplished through some or all of the following: group and/or individual interviews, observations, surveys or questionnaires, and reviews of records and reports.

8. Ethnic and Racial Categories. The basic racial and ethnic categories for DoD reporting are defined as follows:

a. American Indian or Alaskan Native. A person having origins in the original peoples of North America.

b. Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippine Islands, and Samoa.

c. Black (Not of Hispanic Origin). A person having origins in any of the original peoples of Africa.

d. Hispanic. A person having origins in any of the original peoples of Mexico, Puerto Rico, Cuba, Central or South America, or of other Spanish cultures, regardless of race.

e. White (Not of Hispanic Origin). A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

9. Legal Sufficiency Review. A review of an investigation into a formal complaint of unlawful discrimination or sexual harassment to determine whether:

a. The investigation complies with all applicable legal and administrative requirements;

b. The investigation adequately addresses the matters complained of;

c. The evidence supports the findings of the investigating officer or board;

d. The conclusions and recommendations of the investigating officer or board are consistent with the findings; and,

e. Any errors or irregularities exist, and, if so, their legal effect, if any.

10. National Origin. An individual's or ancestor's place of origin. Also applies to a person who has the physical, cultural, or linguistic characteristics of a national group.

11. Protected Communication. A lawful communication to a Member of Congress, an IG, any member of a DoD audit, inspection, investigation or law enforcement organization, or to any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures to receive such communications, to which a member of the Armed Forces makes a complaint or discloses information that he or she reasonably believes evidences a violation of law or regulation (including those covering unlawful discrimination and sexual harassment), mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety (see DoD Directive 7050.6, reference (1)).

12. Race. A division of human beings identified by the possession of traits that are transmissible by descent and that are sufficient to characterize persons possessing these traits as a distinctive human genotype.

13. Religion. A personal set or institutionalized system of attitudes, moral or ethical beliefs, and practices that are held with the strength of traditional religious views, characterized by ardor and faith, and generally evidenced through specific religious observances.

14. Reprisal. Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action, or any other act of retaliation, against a Military member for making or preparing a protected communication.

15. Sexual Harassment. A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

a. Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

b. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

This definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. ("Workplace" is an expansive term for Military members and may include conduct on or off duty, 24 hours a day.) Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a Military member or civilian employee is engaging in sexual harassment. Similarly, any Military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

16. Unlawful Discrimination. Includes discrimination on the basis of color, national origin, race, religion, or sex that is not otherwise authorized by law or regulation.



Department of Defense INSTRUCTION

February 29, 1988
NUMBER 1350.3

ASD(FM&P)

SUBJECT: Affirmative Action Planning and Assessment Process

References: (a) DoD Directive 1350.2, "The Department of Defense Military Equal Opportunity Program," April 29, 1987
(b) Office of Management and Budget (OMB) Directive 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting," May 1978

A. PURPOSE

This Instruction supplements reference (a) by prescribing DoD policy, assigning responsibilities, and establishing minimum reporting requirements by category and subject for annual Military Equal Opportunity Assessments (MEOA) submitted to the Assistant Secretary of Defense for Force Management and Personnel (ASD(FM&P)) by the Military Services. It emphasizes the use of standardized procedures that support longitudinal analysis throughout the Department of Defense and recognizes Service and/or Component prerogatives in establishing goals and objectives and taking affirmative action toward their accomplishment. This Instruction establishes common report formats for use in the annual MEOA.

B. APPLICABILITY AND SCOPE

This Instruction:

1. Applies to the Office of the Secretary of Defense (OSD) and the Military Services (including their National Guard and other Selected Reserve components). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

2. Does not apply to the United States Coast Guard, whose civil rights program is governed by the Department of Transportation. Nor does this Instruction apply to the other two Uniformed Services, namely, the Commissioned Corps of the National Oceanic and Atmospheric Administration, Department of Commerce, or the Public Health Service, Department of Health and Human Services.

C. POLICY

It is DoD policy for the Military Services to monitor and report on selected dimensions of their personnel programs to ensure equal opportunity and fair treatment for all Service members through affirmative actions and other initiatives. It is the prerogative of the Services to establish requirements for affirmative action plans and assessments at organizational levels below Service headquarters.

D. DEFINITIONS

Terms used in this Instruction are defined in enclosure 1.

Department of Defense

DIRECTIVE

NUMBER 1350.2

August 18, 1995

Administrative Reissuance Incorporating Change 1, May 7, 1997

USD(P&R)

SUBJECT: Department of Defense Military Equal Opportunity (MEO) Program

References: (a) DoD Directive 1350.2, subject as above, December 23, 1988 (hereby canceled)

(b) DoD Human Goals Charter (signed by the Secretary of Defense, Deputy Secretary of Defense, Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, and Service Chiefs), May 19, 1994 1

(c) Secretary of Defense Memorandum, "Equal Opportunity (EO)," March 3, 1994

(d) Secretary of Defense Memorandum, "Prohibition of Sexual Harassment in the Department of Defense (DoD)," August 22, 1994

(e) through (o), see enclosure E1.

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues reference (a).

1.2. Regulates the Department of Defense MEO Program and assigns responsibilities for ensuring DoD-wide compliance with the broad program objectives outlined in references (b), (c), and (d).

1.3. Provides for education and training in EO and human relations.

1. References (b) through (e) are on file in the Office of the Deputy Assistant Secretary of Defense (Equal Opportunity), Pentagon, Washington, D.C., (703) 697-6381 or DSN 227-6381.

1.4. Prescribes the functions of the Defense Equal Opportunity Council (DEOC) and the Defense Equal Opportunity Management Institute (DEOMI).

1.5. Establishes Department-wide standards for discrimination complaint processing and resolution as set forth in the DEOC Task Force on Discrimination and Sexual Harassment Report (reference (e)). The recommendations contained in the DEOC Task Force Report are set out in section

6.; implementation of this Directive shall be consistent with sections 4. and 6., below.

1.6. Provides standard terms and definitions pertaining to the MEO program.

2.. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the U.S. Coast Guard when it is operating as a Service in the Department of the Navy.

NOTE

3. DEFINITIONS

Terms used in this Directive are defined in enclosure E2. Service implementing documents shall adopt the terms contained herein and shall define those terms exactly as they are defined in this Directive.

4. POLICY

It is DoD policy to:

4.1. Support the MEO program as a military and economic necessity, as stated by the Secretary of Defense (reference (c)), and enforce the provisions of this Directive in developing operating EO policies and programs at all levels of activity. Toward that end, Component heads are charged with promoting EO and affirmative actions, and for eliminating unlawful discrimination and sexual harassment within the Department.

4.2. Promote an environment free from personal, social, or institutional barriers that prevent Service members from rising to the highest level of responsibility possible. Service members shall be evaluated only on individual merit, fitness, and capability. Unlawful discrimination against persons or groups based on race, color, religion, sex, or national origin is contrary to good order and discipline and is counterproductive to combat readiness and mission accomplishment. Unlawful discrimination shall not be condoned.

4.3. Use the chain of command to promote, support, and enforce the MEO program. The chain of command is the primary and preferred channel for identifying and correcting discriminatory practices. This includes the processing and resolving of complaints of unlawful discrimination and sexual harassment, and for ensuring that human relations and EO matters are taken seriously and acted upon as necessary. The chain of command is responsible for creating and maintaining a MEO environment that incorporates the policies set out in this Directive.

4.4. Ensure that the Military Services (to include the Reserve components) establish MEO and affirmative action programs that identify and resolve EO problems through formulating, maintaining, and reviewing affirmative action plans (AAPs) with established objectives and

milestones, including accountability in personnel management, consistent with DoD Instruction 1350.3 (reference (f)).

4.5. Provide periodic, mandatory education and training in EO and human relations at installation and fleet unit commands, during pre-commissioning programs and initial entry training, and throughout professional military education (PME) systems, as part of the overall effort to achieve EO within the Department of Defense.

This training shall be provided to all Service members, enlisted and officer, including flag and general officers.

The training shall include comprehensive material on leadership roles and responsibilities for EO programs, complaints processing, legal implications, reprisal prevention and detection, climate assessment methodologies, and managing civilian equal employment opportunity (EEO) systems.

4.6. ~~Provide for an environment that is free from unlawful discrimination and sexual harassment.~~ (See items E2.1.15. and E2.1.16., enclosure E2.)

~~4.7.~~ Ensure that all on-base activities and, to the extent of the ability of the Department of Defense, any off-base activities available to military personnel are open to all military personnel and their family members regardless of race, color, religion, age, physical or mental disability, sex, or national origin, as called for by the DoD Human Goals Charter (reference (b)).

4.7.1. Organizations or administering activities that do not meet this requirement shall be denied the use of military facilities and resources in accordance with DoD Directive 5410.18 (reference (g)).

4.7.2. Organizations that use on-base facilities, whether on a reimbursable basis or otherwise, must satisfy the responsible area or activity commander that they do not unlawfully discriminate through their membership requirements or in any of their activities.

4.8. Oppose discrimination in off-base housing directed against DoD personnel and their family members. Each commander shall take actions to overcome such discrimination and to impose off-limits sanctions in housing cases, as required by DoD Instruction 1100.16 (reference (h)).

4.9. Impose, as required, off-limits sanctions through the cognizant Armed Forces Disciplinary Control Board in cases of discrimination involving places of public accommodation outside military installations.

5. ORGANIZATIONS AND FUNCTIONS

5.1. There is established a DEOC.

5.1.1. It shall:

5.1.1.1. Advise the Secretary of Defense on policies for EO matters.

5.1.1.2. Coordinate policy and review the military and civilian EO programs.

5.1.1.3. Monitor progress of program elements.



FORCE MANAGEMENT
POLICY

ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

FEB 25 1998



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES
DEFENSE PARTNERSHIP COUNCIL

SUBJECT: Department of Defense (DoD) Interim Policy for Implementation of 10 U.S.C. 1561,
Sexual Harassment Investigations and Reports

This directive-type memorandum provides interim DoD policy for implementing Section 591 of the National Defense Authorization Act for Fiscal Year 1998 (attached). Section 591 (to be codified at title 10, United States Code, Chapter 80, Section 1561) establishes new requirements for processing complaints alleging sexual harassment. It directs specific actions by commanding officers, sets time guidelines for the commencement and completion of investigations, and establishes reporting requirements for Commanders, general courts-martial convening authorities, the Secretaries of the Military Departments, and the Secretary of Defense.

This directive-type memorandum applies to "formal" complaints alleging sexual harassment filed by active duty military personnel as defined in DoDD 1350.2, enclosure 2. The Secretaries of the Military Departments will immediately take steps necessary to implement the requirements of the new law with regard to investigating, processing, and reporting formal complaints filed by active duty military personnel alleging sexual harassment.

The DoD policies and procedures governing investigating and reporting sexual harassment complaints are contained in DoD Directive 1350.2, *Department of Defense Military Equal Opportunity (MEO) Program*, August 18, 1995. When processing sexual harassment complaints, the definition of sexual harassment in DoDD 1350.2 shall be used. This definition is broader than the definition in the new law and therefore encompasses all matters that could be raised under the law. To the extent not inconsistent with the law and this directive-type memorandum, the policies and procedures in DoD Directive 1350.2 with regard to investigating and processing formal sexual harassment complaints filed by active duty military personnel alleging sexual harassment shall be followed.



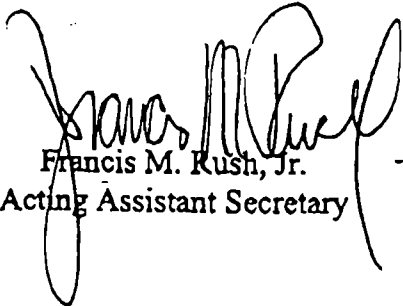
The new law also requires that by April 1, 1998, and by April 1, 1999, the Secretary of Defense transmit reports to Congress forwarding reports provided by the Secretaries of the Military Departments along with the Secretary of Defense's assessment of those reports. To comply with this requirement, I request that each Military Department Secretary forward a report, along with their assessment, for Fiscal Year 1997 to the Secretary of Defense (through ODASD(EO)) by March 9, 1998, and for Fiscal Year 1998 by March 1, 1999. Each report shall contain the following information:

1. The total number of formal sexual harassment complaints filed by active duty military personnel during Fiscal Year 1997 or Fiscal Year 1998, as applicable.
2. The total number of those complaints that were closed.
3. The total number of those complaints substantiated/unsubstantiated.
4. Actions taken as a result of the investigations by category of action; e.g. verbal reprimands, letters of reprimand, Article 15s, courts-martial.
5. The total number of Fiscal Year 1998 complaints meeting the timeline guidelines specified in the new law. (This requirement applies to FY98 only.)
6. An assessment by the Service Secretary of the information in items 1 through 5 above.

Under separate cover, please provide an after actions report to my office through the ODASD(EO) by May 15, 1998, on the steps you have taken to implement the law. This report should include a copy of implementing instructions, a discussion of any problems encountered, and recommendations for addressing these problems or changes to DoD policies. In our review of current policy guidance regarding military equal opportunity complaints, we will consider your recommendations.

Pending receipt of separate guidance, please continue to follow current procedures for civilian employees and reserve component service members.

The Office of the Secretary of Defense point of contact for this matter is Colonel Rob Brady, Director of Military Equal Opportunity, at 697-6381.


Francis M. Rush, Jr.
Acting Assistant Secretary

Attachment:
As stated

SEC. 591. SEXUAL HARASSMENT INVESTIGATIONS AND REPORTS.

(a) INVESTIGATIONS.-(1) Part II of subtitle A of title 10, United States Code, is amended by inserting after chapter 79 the following new chapter:

"CHAPTER 80-MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

"Sec. "1561. Complaints of sexual harassment: investigation by commanding officers

"(a) ACTION ON COMPLAINTS ALLEGING SEXUAL HARASSMENT.-A commanding officer or officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps who receives from a member of the command or a civilian employee under the supervision of the officer a complaint alleging sexual harassment by a member of the armed forces or a civilian employee of the Department of Defense shall carry out an investigation of the matter in accordance with this section.

"(b) COMMENCEMENT OF INVESTIGATION.-To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall, within 72 hours after receipt of the complaint-

"(1) forward the complaint or a detailed description of the allegation to the next superior officer in the chain of command who is authorized to convene a general court-martial;

"(2) commence, or cause the commencement of, an investigation of the complaint; and

"(3) advise the complainant of the commencement of the investigation.

"(c) DURATION OF INVESTIGATION.-To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall ensure that the investigation of the complaint is completed not later than 14 days after the date on which the investigation is commenced.

"(d) REPORT ON INVESTIGATION.-To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall-

"(1) submit a final report on the results of the investigation, including any action taken as a result of the investigation, to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced; or

"(2) submit a report on the progress made in completing the investigation to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced and every 14 days thereafter until the investigation is completed and, upon completion of the investigation, then submit a final report on the results of the investigation, including any action taken as a result of the investigation, to that next superior officer.

"(e) SEXUAL HARASSMENT DEFINED.-In this section, the term 'sexual harassment' means any of the following:

"(1) Conduct (constituting a form of sex discrimination) that-

"(A) involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when-

"(i) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

"(ii) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

"(iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment; and

"(B) is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive.

"(2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the armed forces or a civilian employee of the Department of Defense.

"(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature in the workplace by any member of the armed forces or civilian employee of the Department of Defense."

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of such title are amended by inserting after the item relating to chapter 79 the following new item:

"80. Miscellaneous Investigation

Requirements and Other Duties 1561".

(b) REPORTS.-(1) Not later than January 1 of each of 1998 and 1999, each officer receiving a complaint forwarded in accordance with section 1561(b) of title 10, United States Code, as added by subsection (a), during the preceding year shall submit to the Secretary of the military department concerned a report on all such complaints and the investigations of such complaints (including the results of the investigations, in cases of investigations completed during such preceding year).

(2)(A) Not later than March 1 of each of 1998 and 1999, each Secretary receiving a report under paragraph (1) for a year shall submit to the Secretary of Defense a report on all such reports so received.

(B) Not later than the April 1 following receipt of a report for a year under subparagraph (A), the Secretary of Defense shall transmit to Congress all such reports received for the year under subparagraph (A) together with the Secretary's assessment of each such report.

Headquarters
Department of the Army
Washington, DC
17 September 1993

Immediate Action INTERIM CHANGE

AR 600-20
Interim Change
No. I04
Expires 17 September 1995

*VOCO
extended
until
release
of new
reg*

Personnel--General

Army Command Policy

Justification. This interim change includes policy changes mandating training in equal opportunity throughout all phases of professional military education and twice annually in units. In addition, this interim change restructures the Equal Opportunity Complaint System and introduces an Equal Opportunity Complaint Form, DA Form 7279-R, and a Unit Equal Opportunity Complaint Report, DA Form 7280-R, to add structure to the quarterly and annual unit equal opportunity complaint reports.

Expiration. This interim change expires 2 years from the date of publication and will be destroyed at that time unless sooner rescinded or superseded by a permanent change.

1. Chapter 6 of Interim Change I02, AR 600-20, 1 April 1992, and chapter 6 of AR 600-20, 30 March 1988, are superseded as follows:

Chapter 6

Equal Opportunity Program in the Army

6-1. Concept

a. The Equal Opportunity (EO) Program formulates, directs, and sustains a comprehensive effort to maximize human potential and to ensure fair treatment of all soldiers based solely on merit, fitness, and capability, which supports readiness. EO is a responsibility of leadership and a function of command. This philosophy is based on fairness, justice, and equity. Specifically, this program is designed to--

(1) Provide EO for military personnel, civilian employee, and their family members both on and off post and within the limits of the laws of localities, states, and host nations.

(2) Contribute to mission accomplishment, cohesion, and readiness.

This interim change supersedes chapter 6 of Interim Change I02, AR 600-20, 1 April 1992, and chapter 6 of AR 600-20, 30 March 1988.

b. Civilian employees of the Department of the Army (DA) may lodge complaints under this regulation that can result in an official investigation and possible disciplinary action against the soldiers involved. They may also file discrimination complaints in accordance with Army Regulation (AR) 690-600, Equal Employment Opportunity (EEO) Discrimination Complaints. However, civilian employees who engage in discriminatory actions are not subject to discipline under AR 600-20 but are subject to the separate procedures of AR 690-700, Civilian Relations -- Personnel Relations and services (General).

6-2. Responsibilities

a. Deputy Chief of Staff for Personnel (DCSPER). The DCSPER will--

(1) Be responsible for Army-wide policies, doctrine, plans, and initiatives pertaining to the Army EO Program.

(2) Be responsible for overall evaluation and assessment of the Army EO Program.

(3) Formulate, maintain, and implement the Headquarters, Department of the Army (HQDA) Affirmative Action Plan (AAP).

(4) Establish selection criteria, in coordination with the CG, PERSCOM, for Army personnel to attend the Defense Equal Opportunity Management Institute (DEOMI).

(5) Coordinate, in conjunction with the CG, U.S. Total Army Personnel Command, EO training requirements at the DEOMI.

(6) Coordinate annually the distribution of training seats at the DEOMI between the Active Army and the U.S. Army Reserve (USAR).

b. Chief, National Guard Bureau (CNGB), and Chief, U.S. Army Reserve (CAR). The CNGB and CAR will--

(1) Monitor and evaluate the implementation of EO policies and programs in their components.

(2) Establish sufficient staff positions in their offices and make sufficient resources available to adequately carry out EO Program requirements.

(3) Select Reserve Component (RC) personnel to attend the DEOMI.

(4) Develop management information and reporting requirements to determine the progress made toward affirmative action goals.

(5) Establish EO training for units and professional military education courses consistent with HQDA policy and command needs.

c. Commanding General, U.S. Army Forces Command (CG, FORSCOM). The CG, FORSCOM, will--

(1) Supervise and evaluate the unit EO training program conducted by the numbered armies in continental United States (CONUS) troop program units.

(2) Coordinate on a continuing basis with the Office of the

installation, separate unit, agency, and activity down to company/troop/battery or equivalent level.

(8) Ensure smaller-unit-level equal opportunity representatives are appointed and trained.

h. It is strongly recommended that commanders conduct a unit climate assessment and unit training needs assessment within 90 days of assuming command (180 days for Reserve Components) and annually thereafter. This assessment can be done using the Military Equal Opportunity Climate Survey (MEOCS), Department of the Army Pamphlet (DA PAM) 600-69, Unit Climate Profile: Commander's Handbook, or other survey instrument (for example, Training Diagnostic Assessment System (TDAS)). Additionally, commanders should supplement the survey instrument with individual and group interviews, the analysis of unit records (awards, promotions, reenlistment, and Uniform Code of Military Justice--UCMJ), and with complaints reports.

6-3. Equal opportunity policy

a. The U.S. Army will provide equal opportunity and treatment for soldiers, civilian employees, and their families without regard to race, color, religion, gender, or national origin and provide an environment free of sexual harassment. This policy:

(1) Applies both on and off post, during duty and nonduty hours.

(2) Extends to soldiers, civilian employees, and their families.

(3) Applies to working, living, and recreational environments (including both on- and off-post housing).

b. Soldiers are not accessed, classified, trained, assigned, promoted, or otherwise managed on the basis of race, color, religion, gender, or national origin. The following are exceptions to a totally nonbiased personnel management process:

(1) The assignment and utilization of female soldiers. (AR 600-13, Army Policy for the Assignment of Female Soldiers, prescribes policies, procedures, responsibilities, and the position coding system for female soldiers.)

(2) Support for established equal opportunity goals, such as to increase representation of a particular group in one or more monitored area(s) of affirmative action plans (AAPs).

c. This chapter does not implement the provisions of either the Age Discrimination in Employment Act of 1967 (sections 630 through 634, title 29, United States Code) or title VII of the Civil Rights Act of 1964 (section 2000e, title 42, United States Code). Physical disability and age controls are not addressed due to overriding concerns of medical fitness and deployability.

6-4. Sexual harassment

a. Sexual harassment is a form of gender discrimination that

involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when--

(1) Submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; or

(2) Submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(3) Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

b. Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a soldier or civilian employee is engaging in sexual harassment. Similarly, any soldier or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment.

6-5. Chain of command responsibilities

The chain of command, whether military or civilian, has the primary responsibility for developing and sustaining a healthy EO climate. This responsibility entails, but is not limited to, promoting positive programs that enhance unit cohesion, esprit, and morale; communicating matters with EO significance to unit personnel and higher headquarters; correcting discriminatory practices by conducting rapid, objective, and impartial inquiries to resolve complaints of discrimination; encouraging the surfacing of problems and preventing reprisal for those who complain; and taking appropriate action against those who violate Army policy.

6-6. Staffing

a. Minimum staffing requirements.

(1) *EO as a primary duty.* Military personnel with EO as their primary duty are assigned to assist commanders at installations, organizations, and agencies that are brigade-level or equivalent and higher commands. Assignments as an EOA are not collateral or part-time duties at brigade-level or higher commands. Primary duty position authorizations and requirements that comply with this guidance are to be specified in applicable unit manning documents.

(2) *Active duty staffing.* One enlisted soldier (sergeant first class or higher) with primary duty as EOA will be available full-time as the advisor for each brigade-level or equivalent and higher unit commander. Additionally, one officer EO advisor will be available full-time to the commander of each MACOM. Staffing should, as a minimum, also provide a master sergeant, sergeant major, and a lieutenant colonel or major (3 persons total) at

have direct access to the supported commander at all times and that commander will be either the EOA's rater or senior rater. Placement of the EO office within the organization must be such as to accomplish the above provisions and to comply with AR 5-3.

d. *The EO Program and the Equal Employment Opportunity Program relationship.* The EO program for military personnel and the EEO program for civilian personnel are separate and distinct. EOAs will not supervise EEO personnel, nor will EEO personnel supervise EOAs. However, integrating EO/EEO training, seminars, and discussions and sharing training materials and facilities are encouraged when doing so promotes the understanding, efficiency, economy, and common interests of both programs.

e. *Roles and duties of EOAs.* The actual duties of EOAs and relative emphasis on each duty vary according to type of unit or level of command, unit composition, and location. Personnel assigned to positions as EOAs will not be assigned further duties in other human resource functional areas, such as alcohol and drug abuse, Army Community Services, chaplains' programs, CHAMPUS, and weight control. Typical roles and duties of EOAs are as follows:

(1) Understanding and articulating Department of Defense (DOD) and Army policies concerning equal opportunity as stated in this regulation.

(2) Recognizing and assessing indicators of institutional and individual discrimination in organizations.

(3) Recognizing sexual harassment in both overt and subtle forms.

(4) Recommending remedies appropriate to eliminate and prevent discrimination and sexual harassment.

(5) Collecting, organizing, and interpreting demographic data concerning all aspects of EO climate assessment.

(6) Assisting commanders in the development of realistic affirmative action plans and monitoring progress of plans.

(7) Training unit equal opportunity representatives/leaders (EORs) and institutional training course/Service school instructors to assist commanders/commandants in meeting their EO responsibilities.

(8) Organizing, conducting, or assisting with training sessions pertaining to equal opportunity, discrimination, and prevention of sexual harassment.

(9) Assisting in evaluating the effectiveness of unit training conducted by commanders.

(10) Planning and conducting executive seminars on affirmative action plans, equal opportunity, discrimination, and the prevention of sexual harassment.

(11) Receiving and assisting in processing individual

complaints of discrimination and sexual harassment. EOAs may conduct inquiries in accordance with the commander's guidance.

(12) Providing advisory assistance to commanders and investigating officers in the investigation and resolution of discrimination and sexual harassment complaints.

(13) Reviewing and commenting on investigation reports of equal opportunity complaints for compliance with Department of Defense and Department of the Army policy and objectives.

(14) Assisting in the planning and conduct of ethnic observances outlined at table 6-1.

(15) Assisting commanders in developing EO policy for their unit.

(16) Maintaining, where appropriate, informal liaison with community organizations fostering civil rights. If EOA decides to become a member of such organizations in his private capacity, coordination with servicing judge advocate is strongly advised to preclude possible conflicts of interest.

(17) Conducting periodic command assessments as outlined in DA PAM 600-26.

(18) Preparing input for the Annual Narrative and Statistical Report, which supports the Army's Military Equal Opportunity Assessment.

(19) Conducting staff assistance visits.

f. Equal opportunity representatives. To assist commanders at the battalion-level and below in carrying out the EO Program within their units, EO duties may be assigned to a soldier as a part-time, secondary responsibility. Equal opportunity representatives (EORs) have not received the total program of instruction that an EOA has and are not utilized in a special duty assignment as an EOA. In addition, EORs may not conduct investigations and are not trained to advise investigating officers in the conduct of equal opportunity complaint investigations. It is recommended that commanders appoint EORs who are members of the chain of command, in the grade of staff sergeant to sergeant first class. EOAs who are graduates of the DEOMI and have been awarded enlisted special qualification identifier (SQI) Q or officer additional skill identifier (ASI) 5T can and will train EORs using the 80-hour program of instruction (POI) published by the EO Proponent Office, Soldier Support Center. EOAs are authorized to supplement that training package to meet local needs and conditions. Instruction in other subject areas related to or supportive of EO objectives may be provided by personnel from other agencies or program areas during EOR training. Typical roles and duties of EORs are as follows:

(1) Assisting commanders in the recognition of detractors from a healthy unit EO climate.

OPNAV INSTRUCTION 5354.1D

From: Chief of Naval Operations
To: All Ships and Stations (less Marine Corps field addressees not having Navy personnel attached)

Subj: NAVY EQUAL OPPORTUNITY MANUAL

Ref: (a) DOD Directive 1350.2 of 18 Aug 95 (NOTAL)
(b) OPNAVINST 5354.3D (NOTAL)

Encl: (1) Navy Equal Opportunity Manual

1. Purpose. To issue enclosure (1), which implements reference (a), restates the equal opportunity (EO) policy of the Department of the Navy (DON), and provides guidance and policy for the Navy EO Program. This is a complete revision and should be reviewed in its entirety.

2. Cancellation. OPNAVINST 5354.1C.

3. Applicability and Scope

a. The provisions of this instruction apply to all active duty Navy and Naval Reserve units, and assigned civilian personnel (not to supersede the provisions of paragraph 3b). The scope of this instruction also extends, where specifically stipulated, to family members of military personnel.

b. Civilian Equal Employment Opportunity (EEO) policies and guidance are provided in separate instructions issued by the Office of Civilian Personnel Management (OCPM) and the Equal Employment Opportunity Commission (EEOC). Civilian personnel policy instructions concerning EEO have applicability to Navy commands/staffs employing U.S. civilian personnel and to all civilian employees, the commanding officer, and all military managers and supervisors of civilian personnel.

4. Discussion. A command environment in which equal opportunity exists for all members is essential to attaining and maintaining a high state of morale, discipline, readiness, and military effectiveness.

Command Managed Equal Opportunity (CMEO) is the commander's tool for prevention of discrimination and for ensuring these goals are attained. Command monitoring of internal practices, as well as awareness of the EO climate in the civilian community (as applicable), enables the commander, commanding officer, officer in charge, or supervisor to take prompt positive action to counter discrimination or other inappropriate practices. Education to promote an understanding of cultural and ethnic differences and to prevent sexual harassment is a command responsibility.

5. Policy. As stated in reference (b), the DON policy is to provide equitable treatment and equal opportunity to all Navy members.

a. This policy shall apply without regard to race, ethnicity, religion, gender, or national origin within constraints of the law.

b. This policy identifies actions to assist in achieving the following goals: attaining an officer and enlisted population that reflects the general population; recruiting qualified personnel; retaining eligible personnel; providing fair and equal military education opportunities for all qualified personnel; ensuring an equitable assignment process and leadership opportunities for all Navy personnel; providing EO training for Navy service members; ensuring EO for promotion and advancement for all personnel; ensuring that discrimination is permitted neither in the administration of military justice nor in the involuntary separation of personnel; ensuring that all personnel may participate equally in all occupational areas and warfare specialties within legal bounds; monitoring the EO climate; and ensuring discrimination complaint procedures are timely and effective.

6. Responsibilities

a. Chief of Naval Operations (CNO)

(1) Sponsor the EO program for Navy military and civilian personnel.

(2) Monitor the Navy's progress toward accomplishing EO.



21 JUN 1996

EXECUTIVE SUMMARY

This manual discusses Navy Equal Opportunity (EO) policies and regulations and defines the responsibilities and actions required by all commands. In addition, it presents an overall view of the Navy's posture toward EO and how this translates into Command Managed Equal Opportunity (CMEO). Amplifying guidance can be found in references (a) through (q), page iv, of enclosure (1).

SECTION I

EQUAL OPPORTUNITY RESPONSIBILITIES OF COMMANDERS

EO is a readiness issue and a basic principle of sound leadership. It is every commander's responsibility to fully implement CMEO and to ensure command climate supports equitable treatment and equal opportunity for all personnel to strive for excellence in all aspects of Navy life. The commander must ensure all personnel are aware of Navy EO policy and must take prompt action against those who are not in compliance.

SECTION II

EQUAL OPPORTUNITY RESPONSIBILITIES SPECIFIC TO SHORE COMMANDERS

Commanders of shore commands will ensure officially sponsored service oriented activities (clubs, exchanges, base housing, etc.) conform to Navy EO policy and command relations with civilian organizations, local governments, and housing authorities are reviewed with respect to discriminatory practices.

SECTION III

COMMAND MANAGED EQUAL OPPORTUNITY (CMEO)

CMEO is the commander's tool for detecting and preventing discrimination and sexual harassment, therefore ensuring a favorable EO climate. CMEO is required of all commands and shall be administered through:

Enclosure (1)

21 JUN 1986

-- Command Training Team (CTT): The CTT is responsible for conducting annual command specific training and Navy Rights and Responsibilities (NR&R) workshops. Annual command specific training will inform all hands of command EO initiatives deriving from the annual command assessment, conduct sexual harassment recognition and prevention training, and review Department of Defense (DOD), Secretary of the Navy (SECNAV), and Office of the Chief of Naval Operations (OPNAV) policies. NR&R workshops present training on Navy EO principles, policies, and procedures and are geared for indoctrination of newly reported personnel.

-- Command Assessment Team (CAT): The CAT conducts an annual command assessment of EO climate through analysis of command specific data on officer and enlisted retention, advancement, and discipline; an EO survey; interviews; and observations. The data collected in the command assessment is analyzed and plans formulated to address areas of concern. All data and plans of action and milestones (POA&Ms) should be retained for future ISIC inspections.

SECTION IV

PREVENTION OF SEXUAL HARASSMENT

All Navy personnel have a responsibility to maintain an environment free of sexual harassment. Commanders must be proactive in stating sexual harassment prevention policy, conducting annual training, expeditiously and fairly resolving complaints by informal or formal means, and guarding against reprisals toward individuals who report sexual harassment or discrimination issues.

SECTION V

NAVY COMPLAINT PROCEDURES

Individual discrimination or harassment complaints are resolved using Navy Complaint Procedures. Informal and formal complaint procedures are discussed along with alternative steps available. Emphasis is placed on resolving the problem at the lowest level.

The Naval Inspector General's "Fraud, Waste and Abuse Hotline" is available as an alternate means of reporting allegations of

Enclosure (1)

21 JUN 1996

harassment or discrimination. The Navy Equal Opportunity (EO)/Sexual Harassment (SH) Formal Complaint Form, NAVPERS 5354/2, will facilitate the handling of complaints and reporting requirements with respect to complaint procedures. The Commander's Handbook: A Tool Kit for Prevention of Sexual Harassment, provides additional guidance on complaint procedures.

SECTION VI

INCIDENT HANDLING AND REPORTING

Criteria for classifying incidents and determining reporting requirements are provided.

SECTION VII

NAVY EQUAL OPPORTUNITY TRAINING

Establishes EO training requirements for officer and enlisted personnel for accession and professional development training to ensure EO knowledge and skills are developed throughout each individual's career.

SECTION VIII

EQUAL OPPORTUNITY ISSUES

EO encompasses a broad scope of issues which often require creative approaches on the part of commanders to achieve a workable solution. Examples of individual needs which may require special attention include religious accommodations, national heritage observances, and English language skills.

Enclosure (1)



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D. C. 20350-1000

SECNAVINST 5300.26C
ASN(M&RA)
17 October 1997

SECNAV INSTRUCTION 5300.26C

From: Secretary of the Navy
To: All Ships and Stations

Subj: DEPARTMENT OF THE NAVY (DON) POLICY ON SEXUAL HARASSMENT

Ref: (a) DoD Directive 1350.2 of 18 Aug 95 (NOTAL)
(b) DoD Directive 1440.1 of 21 May 87 (NOTAL)
(c) 29 C.F.R. § 1604.11 (NOTAL)
(d) Title VII of the Civil Rights Act of 1964, as amended
42 U.S.C. 2000e (NOTAL)
(e) DoD Directive 7050.6 of 12 Aug 95 (NOTAL)
(f) NAVPERS 15620
(g) SECNAVINST 5354.1
(h) OCPMINST 12713.2A (NOTAL)
(i) OPNAVINST 5354.1D (NOTAL)
(j) MCO P5354.1C (NOTAL)

Encl: (1) Definitions
(2) Range of Behaviors which Constitute Sexual
Harassment

1. Purpose. To provide a comprehensive Department of the Navy (DON) policy for all military and civilian personnel on the identification, prevention, and elimination of sexual harassment and to establish regulations to enforce that policy.

2. Cancellation. SECNAVINST 5300.26B.

3. Applicability. This instruction applies to all DON personnel, specifically: all active-duty military personnel,

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both Regular and Reserve; all DON civilians including non-appropriated fund employees; midshipmen of the Naval Academy and the Reserve Officer Training Corps; and Reserve personnel when performing active or inactive duty for training, or engaging in any activity directly related to the performance of a Department of Defense (DoD) reserve duty or function.

4. Summary of Changes. This instruction is a significant revision which should be reviewed in its entirety. Major changes are:

a. Establishes revised policies to combat sexual harassment consistent with DoD guidelines issued by the Defense Equal Opportunity Council (DEOC) Task Force on Discrimination and Sexual Harassment.

b. Provides further guidance on the subject of reprisals against complainants.

5. Definitions. Enclosure (1) defines sexual harassment in accordance with references (a) and (b). Interpretation of this instruction shall be governed by the definitions in enclosure (1).

6. Background

a. The Navy-Marine Corps team must be composed of an optimally integrated group of men and women who are able to work together to accomplish the mission. Each member of the team is entitled to be treated fairly, with dignity and respect, and must be allowed to work in an environment free of unlawful discrimination. Additionally, each member is expected to abide by the DON Core Values of Honor, Courage and Commitment. Sailors, Marines and civilians who model Core Values don't engage in negative behaviors such as sexual harassment, and don't condone those behaviors in others.

b. The economic costs of sexual harassment are significant. Even more harmful, however, are the negative effects on

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productivity and readiness, including increased absenteeism, greater personnel turnover, lower morale, decreased effectiveness, and a loss of personal, organizational, and public trust. While not easily quantified, these costs are real and seriously affect DON's ability to accomplish its mission.

c. While the Equal Employment Opportunity Commission (EEOC) regulations, reference (c), establish a standard for determining employer liability for sexual harassment under Title VII of the Civil Rights Act, reference (d), the DoD definition of sexual harassment establishes a standard that exceeds that of the EEOC. This more comprehensive standard expands on the definition to include identifying supervisors and those in command positions who use or condone implicit or explicit sexual behavior to affect another's career, pay, or job as engaging in sexual harassment.

7. Policy. The DON is committed to maintaining a work environment free from unlawful discriminatory practices and inappropriate behavior. In support of this commitment, it is DON policy that:

a. Sexual harassment is prohibited. All DON personnel, military and civilian, will be provided a work environment free from unlawful discrimination which includes sexual harassment. Off-duty or non-duty behaviors that affect the military workplace may also be considered to be sexual harassment.

b. All DON personnel, military and civilian, will be educated and trained upon accession (within 90 days to the extent possible) and annually thereafter, in the areas of identification, prevention, resolution and elimination of sexual harassment. Training programs will use a three-tiered behavioral zone approach to explain the spectrum of sexual harassment, as outlined in enclosure (2). Annual training shall include the application of pertinent informal and formal complaint procedures (references (e)-(j) refer).

c. DON personnel who may be called upon to conduct or review investigations into alleged incidents of sexual harassment

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should receive training in DON policy on equal opportunity and investigative methods and processes.

d. Individuals who believe they have been sexually harassed shall be provided the opportunity to seek resolution and redress. Commanders and those in supervisory positions shall ensure that notification of sexual harassment can be made in a command climate that does not tolerate acts of reprisal, intimidation, or further acts of harassment. All personnel shall be made aware of the avenues of resolution and redress that are available.

e. All reported incidents of sexual harassment shall be investigated and resolved at the lowest appropriate level. The nature of the investigation will depend upon the particular facts and circumstances and may consist of an informal inquiry where that action is sufficient to resolve factual issues. All incidents shall be resolved promptly and with sensitivity. Confidentiality will be maintained to the extent possible. For civilian employees, confidentiality is guaranteed during the informal stage of a discrimination complaint, if requested. Feedback will be provided to all affected individuals consistent with the requirements of the Privacy Act, Freedom of Information Act, and other pertinent laws, regulations and negotiated agreements. Both the complainant and the subject(s) of a complaint may appeal administrative findings (references (a) and (g) apply for military, reference (h) applies to civilian employees).

f. Counseling support or referral services will be made available for all personnel involved in incidents of sexual harassment.

8. Accountability. The rules in subparagraph 8a are regulatory orders and apply to all DON personnel individually and without further implementation. A violation of these provisions by military personnel is punishable in accordance with the Uniform Code of Military Justice (UCMJ), and is the basis for disciplinary action with respect to civilian employees. The prohibitions in subparagraph 8a apply to all conduct which occurs

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in or impacts a DoD working environment, as defined in enclosure (1). The reasonable person standard as defined in enclosure (1) shall be used to determine whether a violation of these provisions has occurred.

a. No individual in the DON shall:

(1) Commit sexual harassment, as defined in enclosure (1);

(2) Take reprisal action against a person who provides information on an incident of alleged sexual harassment;

(3) Knowingly make a false accusation of sexual harassment; or

(4) While in a supervisory or command position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge.

b. The appropriate action to resolve an incident of sexual harassment will depend upon the circumstances surrounding that incident. Incidents of sexual harassment cover a wide range of behaviors, from verbal comments to physical acts, and can be subtle or overt. Likewise, the full range of administrative and disciplinary actions is available to address sexual harassment. In the case of military personnel, these include informal counseling, comments in fitness reports and evaluations, administrative separation, and punitive measures under the UCMJ. In the case of civilians, options include informal counseling, comments in performance evaluations, and disciplinary action including removal from the Federal Service.

c. Military personnel of the Navy and Marine Corps shall be processed for administrative separation on the first substantiated incident of sexual harassment involving any of the following circumstances (for the purposes of this subparagraph, an incident is substantiated if there has been a court-martial

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conviction or if the commanding officer determines that sexual harassment has occurred):

(1) Action, threats, or attempts to influence another's career or job in exchange for sexual favors; or

(2) Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in punitive discharge.

d. Commanders are not precluded from initiating administrative separation proceedings for reasons set forth in the appropriate service regulations for individuals whose conduct warrants separation not covered in subparagraph 8c.

9. Responsibility

a. Leadership is the key to eliminating all forms of unlawful discrimination. Sound leadership must be the cornerstone of the effort to eliminate sexual harassment. It is not the intent of this instruction to impair commanders and supervisors in their ability to take appropriate actions to carry out leadership responsibilities. They must set the example in treating all people with dignity and respect, fostering a climate free of all forms of unlawful discrimination including sexual harassment. Such a climate is essential to maintain high morale, discipline, and readiness. Commanders and supervisors are responsible for and must be committed to preventing sexual harassment in their commands and work environments. They must not ignore or condone sexual harassment in any form, and they must take whatever action is required to ensure that a recipient of sexual harassment is not subsequently also the victim of reprisal or retaliation. Reprisals, as further described in enclosure (1) and references (e) and (h), are prohibited under this instruction whether they are originated by the command, the alleged perpetrator, or peers of the complainant. These responsibilities regarding sexual harassment are part of the broader responsibility of commanders and supervisors to foster a

1 DECEMBER 1996



Personnel

**MILITARY EQUAL OPPORTUNITY AND
TREATMENT PROGRAM**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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(Capt Michael Franckowiak)
Supersedes AFI 36-2701, August 1994,
chapters 1, 2, 3, and 7.

Certified by: HQ AFPC/DPS
(Col Michael A. Schiefer)
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This Air Force Instruction (AFI) gives the requirements of the Air Force Equal Opportunity and Treatment (EOT) program. It applies to all military personnel subject to the Uniform Code of Military Justice (UCMJ), Reserve Officer Training Corps (ROTC), Air Force Reserve, and all Air Force civilian personnel subject to administrative and or disciplinary action under applicable directives or implementing instructions governing civilian disciplinary or adverse actions. Air National Guard (ANG) personnel are not subject to the UCMJ unless on Federal active duty status under Title 10, United States Code (U.S.C.). It implements Air Force Policy Directive (AFPD) 36-27, *Social Actions*, 3 September 1993; Department of Defense (DoD) Directive 1325.6, *Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces*, 2 September 1969, with Changes 1 and 2; DoD Directive 1350.2, *Department of Defense Military Equal Opportunity (MEO) Program*, 8 August 1995; DoD Instruction 1350.3, *Affirmative Action Planning and Assessment Process*, 29 February 1988; and DoD Directive 1300.17, *Accommodations of Religious Practices Within the Military Service*, 7 October 1988.

The Privacy Act of 1974 applies to this instruction. Each form that is subject to the provisions of AFI 37-132 must contain a Privacy Act Statement, either in the form itself or attached to it. The authorities to collect personal information and maintain the records listed in this instruction are Title 42, U.S.C., Section 290 ee-3, et seq., and Executive Orders 9397 and 11478. **Attachment 1** contains a glossary of references, abbreviations, acronyms, and terms.

SUMMARY OF REVISIONS

This AFI contains Equal Opportunity and Treatment (EOT) program information taken from AFI 36-2701, *Social Actions Program* chapters 1, 2, 3, and 7 with the following changes: expands the EOT program objectives (paragraph 1.1.); requires documentation in performance reports for serious or repeated EOT violations (paragraph 1.1.4.); explains HQ USAF/DP responsibilities (paragraph 1.4.); updates HQ USAF/DPCH responsibilities (paragraph 1.5.1.); explains various Air Force organization's responsibilities to the Defense Equal Opportunity Management Institute (DEOMI) (paragraphs 1.11. and

1.12.); changes the requirements for Social Actions instructors; provides procedures for adding films to the audiovisual list of Air Force-approved films (paragraph 2.8.1.); modifies use of volunteers (paragraph 2.19.); reduces observation period for retrainees to 20 duty days (paragraph 2.20.3.); expands informal assistance (paragraph 2.22.); renames Unit Orientation Briefing to Newcomers Orientation Briefing and expands the training requirement to 1 hour (Table 2.2); replaces and renames staff assistance visit program to the unit climate assessment program and deletes substance abuse assessment (paragraph 3.1.); modifies procedures for including civilians in the unit climate assessment program (paragraph 3.2.2.); explains the Wing Climate Assessment report and Wing Climate Assessment Committee (WCAC) (paragraph 3.5.); deletes chief, Social Actions substance abuse responsibilities (paragraph 4.2.); updates responsibility of geographically separated unit (GSU) commanders (paragraph 4.3.); encourages the use of informal resolution before formal complaints (paragraph 4.9.1.); clarifies complaints involving DoD contractors (paragraph 4.10.); changes approval authority for withdrawing formal complaints from the Installation Commander to the Chief, Social Actions (paragraph 4.17.2.); expands complaint clarification processing time to 20 dutydays (paragraph 4.19.1.); clarifies guidance on EOT Inquiry Assistance (paragraph 4.23.); clarifies appeals for administrative findings of unlawful discrimination or no unlawful discrimination (paragraph 4.25.); explains that commanders can administer appropriate disciplinary action while an appeal is pending (paragraph 4.25.3.); includes guidance on Article 31, Rights of Advisement (paragraph 4.28.); explains the use of feedback in complaint clarifications (paragraph 4.29.); includes guidance for mediation (paragraph 4.32.); includes guidance on accommodation of religious practices (paragraph 4.40.); changes from 6 months to 60 days the time limit to file a complaint (Table 4.1); updates guidance on IG referrals; changes definition of senior official from O-6 (colonel) to an O-7 (brigadier general) (Attachment 1); adds more terms and updates the definitions of existing terms (Attachment 1); deletes age as a category of "unlawful discrimination" (Attachment 1); and deletes ethnic group as a basis for filing a complaint (Attachment 1). A | indicates revision from the previous edition

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Chapter 2

BASE SOCIAL ACTIONS OFFICE

Section 2A—General Information

2.1. EOT/HRE Program Objective. To improve mission effectiveness by assisting commanders at all levels in conducting programs for EOT/HRE.

2.2. Scope and Limitations:

2.2.1. Social Actions personnel must inform commanders of problems that may adversely affect members' behavior, health, duty performance, or the mission.

2.3. Publicizing Programs. The Social Actions staff must ensure Installation and Air Force EOT policy memorandums, along with the location and telephone number of the Social Actions office are posted in heavily trafficked areas. The areas should include, but not necessarily limited to, the Military Personnel Flight (MPF), commissary, base exchange, unit orderly rooms, and MWR facilities.

2.4. Developing a Referral Guide. The Social Actions staff and the Family Support Center (FSC) develop a referral guide by identifying on- and off-base Social Actions resources. If the base does not have a FSC, then the Social Actions Office alone develops a referral listing (updated annually). The Social Actions staff:

2.4.1. Provides a copy of this guide to all personnel at the Key Personnel Briefing (KPB).

2.4.2. Provides updated guides to all unit commanders and first sergeants.

2.5. Setting Up Social Actions Office Facilities. Locate Social Actions facilities centrally in one building that is accessible to all base personnel. Facilities should present a professional setting and must include:

2.5.1. Private consultation areas.

2.5.2. Classrooms for HRE.

2.5.3. Space for normal office operations (AFI 32-1024, Standard Facility Requirements).

2.6. Responding to Congressional and Other High-Level Inquiries. When responding to congressional and other inquiries under AFI 90-401, Air Force Relations with Congress that relate to EOT, coordinate responses with the MAJCOM Assistant for Social Actions and HQ USAF/DPCH as appropriate.

2.7. Establishing Unit Continuity Files. Base Social Actions Offices:

2.7.1. Establish a continuity file for each unit that has more than 50 military people. Each continuity file contains:

- Reports from the last two UCA visits.

- Documented KPBs.

- Data on EOT trends.

Chapter 3

SOCIAL ACTIONS ASSESSMENT PROGRAMS

| Section 3A—Unit Climate Assessment (UCA) Program

3.1. Purpose and Scope:

3.1.1. The UCA helps commanders at all levels assess their organization's EOT climate. A UCA identifies positive and negative factors that affect mission accomplishment and proposes corrective actions, when appropriate.

3.1.2. Conduct UCAs on a regularly scheduled basis for each unit with 50 or more military personnel assigned. Tailor the UCA to meet the needs of the commander. Conduct assessments:

- 6 months after assumption of command.
- Upon a commander's request.
- At least every 2 years.

3.1.3. Commanders will be apprised of the various instruments and methods to assess their unit's human relations climate. EOT personnel will advise commanders of these services at KPBs and upon request. EOT personnel should promote the UCA program and ensure commanders understand the positive benefits of these assessments as they relate to unit readiness.

3.1.4. The following survey instruments are available for use by commanders to evaluate their unit's human relations climate:

- Air Force-approved UCA Survey.
- Air Force Organizational Climate Survey (OCS).
- The DoD MEOCS

3.1.5. EOT personnel will:

- Assist commanders in the distribution and collection of surveys.
- Compile and analyze survey data results (Air Force survey).
- Conduct personal interviews.
- Consolidate interview findings.
- Prepare final unit outbriefs and written reports.
- Provide assistance to commanders desiring to use or administer the MEOCS.

3.1.6. The EOT staff furnishes the UCA report to the commander. The commander reviews and evaluates the report and determines what action, if any, is appropriate. UCA reports are the property of the requesting commander, protected to the maximum extent permitted under the FOIA. Requests for UCA reports from the IC, SJA, or other Air Force or DoD agency in the performance of official duties are official requests and are not considered a FOIA request, or processed in accordance with AFI 37-131.

3.1.7. AF Form 3969, Commander's Unit Climate Assessment Critique (CUCAC), is used to assess the quality of the UCA process in helping commanders determine the health and functioning effectiveness of their organizations:

3.1.7.1. At the conclusion of the UCA visit, the commander will complete the form and return it to the EOT Staff. The EOT staff will file it in the unit's continuity folder attached to the UCA final report.

3.2. Interviews of Civilian Personnel Flight (CPF):

3.2.1. A written request from the commander is required to conduct surveys or interviews of civilian employees as part of a UCA. The written request must be maintained in the unit continuity folder.

3.2.2. EOT personnel must coordinate in advance all requests to conduct surveys or interviews of civilian employees with the CPF. The CPF will provide necessary notifications to local union representatives prior to conducting such surveys or interviews. The CPF will, as appropriate, assist in administering surveys and interviews of civilian employees.

3.3. Social Actions UCA Report. File a copy of each UCA report in the unit's continuity folder.

Section 3B—"Out and About" Climate Assessment

3.4. Purpose. To gather information on EOT and quality of life issues for the wing, unit or appropriate agency chief. Document "out and About" assessments on AF Form 1271.

Section 3C—Installation EOT Climate Assessment

3.5. Wing Climate Assessment Committee:

3.5.1. Purpose. The Wing Climate Assessment Committee (WCAC) provides the IC and subordinate and tenant unit commanders with an assessment of the base EOT climate at least twice a year

3.5.2. A Wing Climate Assessment Committee will be held, at the direction of the IC. The committee will meet at least twice a year covering the periods October to March and April to September. The committee's agenda will include reviewing semi-annual statistics and trends and developing counter measures to neutralize any identified threat to good human relations. The IC will ensure minutes of the WCAC are documented and will be maintained by the EOT office. The minutes will serve as a source document to support requests for climate assessment analysis. The IC assigns duties to WCAC members and chairs the committee. The following organizations will provide representatives:

- Equal Employment Opportunity Office.
- MPF.
- Housing Referral Office.
- Chaplain.
- Social Actions.
- Family Support Center.
- Public Affairs.
- Security Police.

case files consecutively following the guidance provided for documentation EOT (E) and Referral complaint.

4.35.5. Maintain case files in accordance with **Table 2.1** under FOIA.

4.36. Reporting and Documentation. Report mediation cases of AF Form 3018, section III, under the Complaints/Assistance section in the "Other". Report the number of "M" cases processed and closed during the reporting period.

4.36.1. Prepare and initial final agreements which may be hand written and signed by the concerned parties (mediator, complainant, and alleged offender) to expedite timely resolution. Formal official typed agreements will be accomplished and prepared for the disputants within 2 duty days, prior to legal review. All parties will sign the official documents.

4.36.2. Prepare sufficient copies of agreement for all parties, maintain a copy in the EOT office, and forward a copy to SJA for legal review. SJA will determine legal sufficiency.

4.36.3. Terminate the mediation process when cases reach an impasse or deadlock and cannot be resolved to the satisfaction of the disputants. Advise the disputants of alternative grievance procedures.

4.37. Follow-up. Follow-up on mediation cases at a minimum of every 5 days during the 1st month after the complaint to ensure reprisal does not occur and the parties are adhering to the agreement.

4.38. Commander Advisement. When appropriate, advise commanders of the outcome of mediation cases.

4.39. Disposition. Case files will be maintained for a 2-year period unless otherwise established under USAF disposition rules and instructions.

Section 4F—Accommodation of Religious Practices

4.40. Religious Accommodation:

4.40.1. Religious accommodation is based on the constitutional right of the free exercise of religion in accordance with DoD policy.

4.40.2. Commanders should approve requests for accommodation of religious practices when accommodation will not have an adverse impact on military readiness, unit cohesion, standards, or discipline.

4.40.3. Commanders are expected to respect the religious beliefs and practices of Air Force members in a manner that is consistent and fair to all.

4.40.4. Support of religious accommodation practices does not necessarily reflect agreement or belief in such practices by a commander, chaplain, unit, or the Air Force.

4.41. General Guidelines of Accommodation. Nothing in these guidelines will be interpreted as requiring a specific form of accommodation in individual circumstances:

4.41.1. The lowest level of command should resolve conflicts of accommodating religious practices such as, but not limited to, worship opportunities, dietary practices, medical practices, Sabbath observance, and wear of religious apparel.

4.41.2. Accommodating religious practices of military members should not have an adverse impact on military readiness, individual or unit readiness, unit cohesion, health, safety standards, or discipline.

4.41.3. As a matter of command discretion, commanders will not usually schedule training exercises on major religious holy days. Commanders should consider such factors as the location of training, the threat, and the impact on individual or unit readiness, unit cohesion, discipline, health, and safety standards in scheduling training.

4.41.4. Accommodation of religious practices cannot be guaranteed and is subject to change if circumstances warrant.

4.42. General Procedures:

4.42.1. The military member initiates the request for accommodation at the lowest level:

4.42.1.1. The requester may be required to submit the request for accommodation in writing.

4.42.1.2. The requester may seek the advice of a military chaplain.

4.42.2. The senior chaplain serves as advisor to the commander concerning requests for accommodation.

4.42.3. The unit commander should consider the following factors when considering a request for accommodation of religious practices:

4.42.3.1. The importance of military requirements in terms of individual and unit readiness, health and safety, discipline, morale, and cohesion.

4.42.3.2. The religious importance of the accommodation to the requester.

4.42.3.3. The cumulative impact of repeated accommodations of a similar nature.

4.42.3.4. Alternative means available to meet the requested accommodation.

4.42.3.5. Previous treatment of the same or similar requests.

4.42.4. When the accommodation of religious practices is not in the best interest of the unit and continued conflict between the unit's requirements and the individual's religious practices is apparent, other options may be considered. These include, but are not limited to, reassignment, reclassification, and separation.

4.42.5. Commanders may refer unusual or difficult questions about requested accommodations through the chain of command to AF/HC and/or AF/DP.

4.43. Forms Prescribed. AF Form 1271, Social Actions Record of Assistance; AF Form 1587, EOT Complaint Summary; AF Form 1587-1, EOT Informal Complaint Summary; AF Form 3018, Equal Opportunity/Human Relations Education Summary, and AF Form 3969, Commander's Unit Climate Assessment Critique.

Table 4.1. Social Actions Formal Complaints Processing Responsibilities.

R U L E	A	B
	If the complainant or complaint	then
1	Alleges unlawful discrimination that involves criminal activity such as assault, sexual assault, rape, or child abuse.	Immediately coordinate the allegation of criminal activity with the servicing Staff Judge Advocate and refer the complainant, as appropriate, to the Air Force Office of Special Investigations or the Security Police (see note 1).
2	Alleges unlawful discrimination that involves homosexual conduct.	Immediately refer the complaint to the subject's military commander for appropriate action under AFI 36-3206, Administrative Discharge Procedures for Commissioned Officers, atch 2, or AFI 36-3208, Administrative Separation of Airmen, atch 4 (see note 1).
3	Alleges unlawful discrimination and the complainant elects to have the complaint worked by Social Actions (Complainants have the option to use the informal complaint process including mediation.)	Inform the appropriate commanders and clarify the complaint. Commander will notify subject of the clarification. The commander must be careful to protect the identity of complainant. Document all actions on AF Form 1587 (see note 2).
4	Is referred by the commander	The complainant must sign the AF Form 1587.
5	Alleges unlawful discrimination by a senior official	Document actions on AF Form 1587, code the case "R" and refer it to the IG.
6	Alleges unlawful discrimination against an Air Force or subordinate command-level policy or directive	Document allegations on AF Form 1587, code "R". Send the complaint to HQ USAF/DPCH via MAJCOM Assistant for Social Actions.
7	Alleges unlawful discrimination against an off-base establishment other than a landlord or realtor	Process through the EOT office. Request review by SJA and IC. Consider the impact on Status of Forces Agreement in foreign countries. Work through the base community council or Armed Forces Disciplinary Control Board, if appropriate. Document all allegations of unlawful discrimination on AF Form 1587 and code "E" or "R", whichever is appropriate.

1 MAY 1998



Personnel

**NONDISCRIMINATION IN PROGRAMS AND
ACTIVITIES ASSISTED OR CONDUCTED BY
THE DEPARTMENT OF THE AIR FORCE**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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OPR: HQ USAF/DPCH (Mr. R. G. Cook)

Certified by: HQ USAF/DP
(Lt Gen Michael D. McGinty)

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This instruction establishes and outlines procedures for prohibiting discrimination based on race, color, national origin, and disability in the Department of the Air Force programs that are either receiving federal financial assistance (aid, loans, grants) disbursed by the Air Force or programs conducted by the Air Force. It applies to all Air Force activities including the U.S. Air Force Reserve and Air National Guard units and members.

This instruction implements Title VI of the Civil Rights Act of 1964, "The Act" as amended, Section 504 of the Rehabilitation Act of 1973, DoD Directives 1020.1, 31 March 1982, 5500.11, 27 May 1971, and 1350.2, 15 Aug 1995. Discrimination complaints filed by Department of the Air Force civilians or applicants for employment regarding federally assisted programs are processed according to this instruction. However, complaints by Air Force civilians or applicants for employment, concerning employment or personnel matters are processed according to the procedures in Air Force Instruction (AFI) 36-1201, *Discrimination Complaints* (formerly Air Force Regulation (AFR) 40-1613). Discrimination complaints filed by military personnel are processed according to AFI 36-2706, *Military Equal Opportunity Program* (formerly AFR 30-2, *Social Actions Program*). This instruction will be implemented to the greatest extent possible for Air National Guard personnel and United States Air Force Reserve personnel not on extended active duty including Active Guard and Reserve (AGR) personnel through appropriate Air National Guard and Air Force Reserves directives.

SUMMARY OF REVISIONS

This revision clarifies and updates general Air Force instructions and procedures prohibiting unlawful discrimination based on race, color, national origin, and disability in programs and activities either assisted or conducted by the Department of the Air Force; updates, and reassigns responsibilities for implementation of this instruction; provides guidance and procedures for processing discrimination complaints for military and civilian personnel in programs and activities assisted or conducted by the Department of the Air Force; consolidates instructions pertaining to "people with disabilities", previously

contained in AFR 30-12, chapter 3 (Nondiscrimination on The Basis of Handicap), revises functional terminology, abbreviations, acronyms, glossary of references, and terms related to federal financial assistance and programs impacting people with disabilities. **Table A3.1.** outlines functional agency responsibility and guidance for handling complaints.

Section A—General Information

1. Air Force Nondiscrimination Policy

1.1. Air Force Nondiscrimination Policy is Air Force policy that no person shall be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of age, race, color, national origin, disability (formerly handicap), religion, or sex (except as prescribed by statute or policy), under any program or activity either conducted by the Air Force, or receiving federal financial assistance disbursed by the Air Force.

The Civil Rights Act of 1964, Title VI, provides that no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving federal assistance.

DoD Directive 5500.11, *Nondiscrimination in Federally Assisted Programs* 27 May 1971, is the basic implementing directive for DoD compliance with the Civil Rights Act of 1964, Title VI.

1.1.1. DoD Directive 1020.1, *Nondiscrimination on the Basis of Disability in Federally Assisted or Conducted Programs and Activities, Conducted by the Department of Defense* 31 March 1982, is the basic implementing directive for DoD compliance with the Rehabilitation Act of 1973, Section 504. Individual discrimination complaints by Air Force appropriated and nonappropriated fund employees or applicants for employment concerning employment issues and alleging violations of section 504 of the Rehabilitation Act of 1973 are processed under the procedures outlined in AFI 36-1201 (Formerly AFR 40-1613).

1.2. This instruction implements Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, and DoD Directives 5500.11, 27 May 1971, 1020.1, 31 March 1982, and 1350.2, 18 Aug 1995.

1.3. The Air Force will conduct its affairs free from unlawful discrimination. It provides equal opportunity for all members irrespective of age, color, national origin, race, religion, sex, and disability except as prescribed by statute or policy.

1.4. Whenever unlawful discrimination practices are found, the Air Force will immediately take action to address inequalities or inconsistencies which adversely affect people, and ensure channels are available to air complaints without fear of reprisal.

1.5. This instruction establishes, and outlines guidance prohibiting discrimination based on race, color, national origin, and disability, in the Department of the Air Force. It applies to programs either receiving federal financial assistance disbursed by the Air Force, or programs conducted by the Air Force. These programs apply to all Air Force activities including the U.S. Air Force Reserves and National Guard units and members.

Section B— Prohibitions

2. Specific Prohibitions: No Air Force program or recipient of federal assistance disbursed through Air Force may, whether directly or through contractual, licensing, or other arrangements on the basis race, color, national origin, or disability (except where dictated by such considerations, such as health and safety):

2.1. Deny a person any service, aid, or other benefit provided by the program

2.1.1. Intimidation or Retaliatory Acts Prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this instruction because he/she has made complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this instruction or directive. The identity of the complainants shall not be disclosed except when necessary to carry out the purpose of this instruction/directive, including the conduct of investigations, hearings or judicial proceedings.

2.2. Provide a person any service, aid, or other benefit that is different or is provided to others under the program unless such action is necessary to provide qualified disabled persons with aid, benefits or services that are equal to those provided to others.

2.3. Restrict a person in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program, or afford a qualified person with disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to those afforded others.

2.4. Subject a person to segregation in any manner, or to separate treatment in any way related to receiving services or benefits through the program.

2.5. A recipient may not choose a site or the location of a facility that has the purpose of excluding individuals or subjecting them to discrimination on the basis of race, color, national origin, or disability with the purpose or effect of defeating the objectives of this policy directive.

Section C— Scope

3. Scope of This Instruction: This Instruction applies within the United States, including the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States. It applies to:

3.1. The Air National Guard per Title 32, United States Code, Sections 101-716 (1976 and Supplement III, 1979).

3.2. The Civil Air Patrol (CAP) per Title 10, United States Code, Section 9441 (1975 and Supplement IV 1980).

3.3. Those programs specified in DoD Directive 5500.11, Appendix A, and DoD Directive 1020.1, involving the loan or disposition of surplus property.

3.4. Those programs included in DoD Directive 5500.11 and DoD Directive 1020.1, involving research grants made under the authority of federal law.

3.5. Programs or activities conducted by the Department of the Air Force not specifically covered in AFPD 36-27, (formerly AFR 30-2) *Air Force Social Actions Program* and AFI 36-1201, (formerly AFR 40-1613), *Discrimination Complaints*.

3.6. This instruction applies to Department of the Air Force civilian employees and, in discrimination matters, to applicants for employment regarding federally assisted or conducted programs. Programs that receive federal financial assistance are processed according to this instruction.

Section D— Responsibilities

4. Responsibilities Assigned: This instruction establishes the following responsibilities and authorities.

4.1. The Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations and Environment (SAF/MI) is the "Responsible Department Official" to implement this instruction and DoD Directive(s) 5500.11 and 1020.1 as they apply to the Civil Air Patrol (CAP). SAF/MI approval is required before any policy change or revision is made to this directive.

4.2. The Deputy Chief of Staff, Personnel, (HQ USAF/DP) has overall responsibility for implementing this instruction and DoD Directive(s) 5500.11, and 1020.1 as they apply to schools operated by the Air Force in the United States, and civilian employment considerations regarding Air Force federally assisted and conducted programs.

4.3. The Judge Advocate General (HQ USAF/JAG) provides legal advice, coordination, and litigation support.

4.4. The Chief of Air Force Reserves (HQ USAF/RE) is designated the "Responsible Department Official" to develop specific programs for Air Force Reserve (AFRC) personnel and provide oversight in support of Air Force policies.

4.5. The Chief National Guard Bureau (NGB/CF) is designated as the "Responsible Department Official" to implement this instruction and DoD Directives 5500.11 and 1020.1 in the Air National Guard.

4.6. The Deputy Chief of Staff, Installations and Logistics (HQ USAF/IL) is designated as the "Responsible Department Official" to implement this instruction and DoD Directives 5500.11 and 1020.1 as they apply to those programs involving the loan or other disposition of surplus personal property to nonfederal agencies or activities (See DoD Directives 5500.11 and 1020.1).

4.7. The Commander, Air Force Materiel Command (HQ AFMC/CC) is designated as the "Responsible Department Official" to monitor, and when necessary, investigate compliance with this instruction and DoD Directives 5500.11 and 1020.1 as they apply to those Air Force Materiel Command managed programs involving loans, transfers, and research grants, made under the authority of public law.

4.8. The Civil Engineer (HQ USAF/ILE) is designated as the "Responsible Department Official" to implement this instruction and DoD Directives 5500.11 and 1020.1 as they apply to those programs involving the loan, transfer, lease of real property installed equipment (RPIE) and facilities, and historic buildings and properties maintained by the Air Force.

4.9. The Surgeon General (HQ USAF/SG) implements this instruction and DoD Directive 1020.1 as they apply to providing specialized medical support in Air Force medical facilities.

- 4.10. The Director of Public Affairs (SAF/PA) implements this instruction and DoD Directive 1020.1 as they apply to ensuring accessibility for "people with disabilities" (formerly handicapped individuals) to such activities and meetings.
- 4.11. The Director of Communication and Information Management (HQ USAF/SC) implements this instruction, procedures and DoD Directives 5500.11 and 1020.1, as they apply to promulgation of rules and regulations for public comment in a manner that offers people with disabilities a reasonable opportunity for such promulgation.
- 4.12. Major Commands develop, establish, maintain and implement this instruction and DoD Directives 5500.11, and 1020.1 as they apply to providing oversight, implementation, data collection and reporting of information regarding support of Air Force federally assisted or conducted programs.
- 4.13. Installation commanders (IC) are responsible for implementing this instruction and ensuring discrimination complaints falling under the purview of this instruction are referred and reported through appropriate channels to HQ USAF/DPCH.

Section E— Oversight and Channels for Processing Complaints

5. Complaints Processing Information Requirements. Process complaints by persons who believe they have been discriminated against in programs and activities assisted or conducted by the Department of the Air Force according to **Table A3.1**. Responsible agencies must provide a summary of complaints pertaining to programs and activities receiving federal financial assistance disbursed through Air Force channels to the Air Force Human Resources Development Division, HQ USAF/DPCH, along with periodic updates as necessary to ensure current status is recorded.

5.1. HQ USAF/DPCH is the designated OPR for oversight of discrimination complaints that fall under the purview of this instruction and must be advised of all violations pertaining to federally assisted programs. Further, they will maintain records and coordinate responses through Office of the Assistant Secretary of Defense for Equal Opportunity (OASD/EO), for programs and activities assisted by the Department of the Air Force.

5.2. Complaints by Air Force civilians or applicants regarding employment or personnel matters (Appropriated and Nonappropriated fund employees) are processed according to AFI 36-1202, *Discrimination Complaints* (formerly AFR 40-1613), AFI 36-1202, *Labor Management Relations* (formerly AFR 40-711), and AFI 36-1202, *Grievance Procedures* (formerly AFR 40-771); and 29 CFR, part 1614.

5.2.1. Air Force civilians who believe they have been discriminated against in programs or activities assisted or conducted by the Air Force in non-employment matters will process their complaints according to this instruction.

5.3. Active duty military members will process/file discrimination complaints in accordance with AFI 36-2706, *Military Equal Opportunity Program*.

5.4. The policies in this instruction will be implemented to the greatest extent possible for Air National Guard (ANG) personnel and United States Air Force Reserve personnel not on extended active duty (including Air Guard Reserve (AGR) personnel) through appropriate Air National Guard and AF Reserve directives.



SECRETARY OF THE AIR FORCE
WASHINGTON

FEB 28 1995

MEMORANDUM FOR ALL AIR FORCE PERSONNEL

SUBJECT: Discrimination and Sexual Harassment

Every Air Force member deserves the opportunity to achieve his or her own potential, and to work and live in an environment that values human dignity and is free of discrimination. Each one of us, whether military or civilian, plays a key role in creating and maintaining this kind of working and living climate.

Air Force policy on discrimination and harassment is very clear: No amount of any kind will be tolerated. The attached pamphlet is designed to help you translate that policy into everyday reality. It offers practical, plain-talk information on how to recognize problems, how to solve them, and what you can do to be part of the solution.

A quality Air Force is one in which we create the environment which allows each and every member of the Air Force team to achieve their full potential and maximum contribution to the force. To do so, the Air Force must be free of any behavior that hinders performance. Your active support and involvement is required to make this happen.

A large, stylized handwritten signature of Ronald R. Fogleman, written in black ink, is positioned above his name and title.

Ronald R. Fogleman
General, USAF
Chief of Staff

A handwritten signature of Sheila E. Widnall, written in black ink, is positioned above her name and title.

Sheila E. Widnall
Secretary of the Air Force

Attachment:
As Stated

TO REPORT INSTANCES OF DISCRIMINATION OR SEXUAL HARASSMENT, PLEASE CALL
1-800-558-1404 OR DSN 487-7849.



Air Force Policy

The Air Force will conduct its affairs free from unlawful discrimination and sexual harassment. It provides equal opportunity and treatment for all members irrespective of their race, color, religion, national origin, sex, age, or, in the case of civilian employees, handicapping conditions, except as prescribed by statute or policy.

Whenever unlawful discrimination is found, the Air Force immediately eliminates it and neutralizes the effects. Commanders or supervisors who are aware of unlawful discrimination by subordinates but fail to take action may be disciplined. (AFPD 36-27, Social Actions and AFI 36-704, Discipline and Adverse Actions)

Definitions

Equal Opportunity and Treatment. The right of all persons to participate in and benefit from programs and activities for which they are qualified. These programs and activities shall be free from social, personal, or institutional barriers that prevent people from rising to as high a level of responsibility as possible. Persons shall be evaluated only on merit, fitness, and capability regardless of race, color, gender, national origin, age, or handicap except as prescribed by statute, or DoD/Service policy. (DoDD 1350.2, The Department of Defense Military Equal Opportunity and Treatment Policy; AFPD 36-27, Social Actions)

Equal Employment Opportunity Program. A program to ensure compliance with the law; to ensure EEO; and to eliminate discrimination in Air Force recruitment, selection, placement, awards recognition, and training based on race, color, religion, sex, national origin, handicapping condition, or age.

Discrimination. Any action that unlawfully or unjustly results in unequal treatment of persons or groups based on race, color, gender, national origin, religion, age, and, if civilian, handicapping conditions, for which distinctions are not supported by legal or rational considerations. (AFPD 36-27, Social Actions; AFI 36-1201, Discrimination Complaints)

Disparaging terms. Terms used to degrade or connote negative statements pertaining to race, color, gender, national origin, religion or age. These terms include insults, printed material, visual material, signs, symbols, posters, or insignia. The use of these terms constitutes unlawful discrimination.

Prejudice. A negative feeling or dislike based upon a faulty and inflexible generalization (i.e., prejudging a person or group without knowledge or facts).

Racism. Any attitude or action of a person or institutional structure which subordinates a person or group because of race.

Reprisal . Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against an individual for attempting to communicate to a supervisor, commander, inspector general, member of congress, or any established grievance channel.

Sexism. Attitudes and beliefs that one gender is superior to another.

Sex discrimination. The action taken by an individual to deprive a person of a right because of their sex. Such discrimination can occur overtly, covertly, intentionally, or unintentionally.

Sexual harassment. A form of sex discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay or career, or
- Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

The above definition emphasizes that workplace conduct, to be actionable as "abusive environment harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or abusive.

NOTE:

"Workplace" is an expansive term for military members and may include conduct on- or off- duty, 24 hours a day.

Any person in a supervisor or command position who uses or condones any form of sexual behavior to control, influence or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Any military member or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.