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Reports Required: Annual Equal Opportunity Data Summary
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1. Purpose. To implement the provisions of the references, provide for the establishment of a comprehensive Marine Corps Equal Opportunity Program (EOP), and assign responsibilities.

2. Cancellation. MCO P5354.1B.

3. Summary of Revision. This revision includes major chapter and paragraph modifications which update the Manual; eliminates the requirement for field commands to generate and submit an Affirmative Action Plan (AAP) and AAP assessment; and modifies the annual Equal Opportunity Data Summary Report which applicable commands are required to submit to CMC. This revision also includes the Inspector General Marine Corps (IGMC) Inspection Checklist (Appendix H) and DoD IG Equal Opportunity Investigation Review Checklist (Appendix I). Because of the substantial number of changes and new procedures, this Manual should be reviewed in its entirety.

4. Recommendation. Recommended changes to this Manual are encouraged and should be submitted to CMC (MPE).

5. Certification. Reviewed and approved this date.

C. L. STANLEY
By direction

MARINE CORPS EQUAL OPPORTUNITY PROGRAM

0001. PURPOSE. The purpose of the Marine Corps Equal Opportunity Manual is as follows:

1. To delineate and identify the general concepts, principles, and objectives of equal opportunity.
2. To provide guidance and instructions for the continued implementation and management of the Marine Corps Equal Opportunity Program (EOP).
3. To consolidate the guidance for the Marine Corps EOP.

0002. APPLICABILITY. The provisions of this Manual apply to Marines, all other Armed Forces personnel assigned to or serving with Marine Corps units, and civilian supervisors of military personnel. The policies and provisions of the Equal Employment Opportunity (EEO) Program concerning civilian personnel employed by the Marine Corps are provided in separate Department of the Navy (DON) EEO regulations (SECNAVINST 1270.5 and MCO 12713.6) and are not covered in this Manual. The provisions for equal opportunity in off-base housing are applicable to all Department of Defense (DoD) personnel who live in the civilian community and who are assigned to or under the jurisdiction of Marine Corps commands outside of the United States.

0003. POLICY. The Marine Corps will provide equal opportunity for all military members without regard to race, color, religion, gender, age, or national origin, consistent with the law and regulations and the requirements for physical and mental abilities.

0004. DEFINITION OF TERMS

1. To ensure uniform understanding of the terms that have special significance and/or meaning relative to the Marine Corps EOP, definitions are provided in Appendix F. (Terms that have special meaning relative to specific chapters of this Manual are defined in those chapters.)

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MARINE CORPS EQUAL OPPORTUNITY MANUAL

CHAPTER 1

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CHAPTER 1

MARINE CORPS EQUAL OPPORTUNITY PROGRAM

1000. BACKGROUND

1. As an organization comprised of persons drawn from varied backgrounds and all segments of American society, the Marine Corps reflects the attitudes found within that society. An individual does not automatically set aside prejudices, biases, and erroneous perceptions upon joining the Marine Corps.

2. Adverse discriminatory practices and biases within the Marine Corps, whether expressed individually or institutionally, are counterproductive and unacceptable. Discrimination undermines morale, reduces combat readiness and prevents maximum utilization and development of the Marine Corps most vital asset, people. Equality of treatment and the opportunity for all Marines to achieve their full potential based solely upon individual merit, fitness, and ability is the policy of the Marine Corps.

3. While progress in achieving equal opportunity has been made, full realization of equal opportunity in every facet of Marine Corps life will continue to require emphatic action on the part of

all Marines, especially those in leadership positions. All efforts toward full implementation and attainment of equal opportunity constitute the EOP.

1001. PROGRAM OBJECTIVES. The primary objective of the Marine Corps EOP is to integrate equal opportunity into every aspect of Marine Corps life. Specific objectives are as follows.

1. To understand the effects of past discriminatory practices in order to formulate specific equal opportunity objectives and to initiate affirmative actions to eliminate existing deficiencies.
2. To identify, eliminate, correct, or prevent adverse or illegal institutional and individual discriminatory practices.
3. To promote harmonious relationships among Marines through the elimination of prejudice and harassment.
4. To ensure the opportunity and encouragement for personal and professional advancement of individual Marines without regard to age, race, color, religion, gender, or national origin.

1002. RACE/ETHNIC/GENDER IDENTIFIERS

1. The use of race/ethnic/gender identifiers should be limited to the statistical information required by Appendix A and C. Rosters or routine correspondence such as assignment to boards, councils, committees, etc., should not include the use of race/ethnic/gender identifiers. Use of gender identifiers is appropriate to identify billeting requirements during deployments.
2. 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.

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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, or 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.

f. Other/Unknown: Although not a race category, it is a tracked group for Marines who do not identify with the five listed race categories.

1003. SCOPE

1. The EOP, operates through and impacts upon, all existing programs and actions within every aspect of command. The commander must ensure that equal opportunity is applied in every command policy, action, and program.

2. In keeping with the Marine Corps leadership philosophy, the responsibility for accomplishing equal opportunity goals is not dependent on authority and is not the function of any special staff officer. Rather, all Marines are expected to exert proper leadership by promoting harmonious interactions among individuals, regardless of age, race, color, religion, gender, or national origin, by exemplifying fair treatment for all Marines, and identifying unfair practices to higher authority via the chain of command.

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CHAPTER 2

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CHAPTER 3

UNIT EQUAL OPPORTUNITY PROGRAM REQUIREMENTS

3000. GENERAL

1. Sound leadership is the key to eliminating all forms of unlawful discrimination. Commanders and those in supervisory positions will foster a positive command climate free from unlawful discriminatory practices and inappropriate behavior. Individuals must be treated fairly, with dignity, mutual respect, and be allowed and encouraged to resolve conflicts between themselves without fear of reprisal.

2. The development of a comprehensive EOP, is the responsibility of the commander.

3. Given these guidelines, the scope of the command EOP need only be limited by resources and the specific equal opportunity requirements of the command. However, the areas of command responsibility listed in the following paragraphs are fundamental to the concept of equal opportunity and should be addressed in the command EOP, as applicable.

3001. CHAIN OF COMMAND. Equal opportunity depends on the full involvement of every leader in the chain of command with the commander assuming the lead role. Commanders must convey their determination to achieve equal opportunity throughout the command,

and ensure that the EOP receives the proper support at all levels. The chain of command is the primary and preferred channel for correcting discriminatory practices and for communicating equal opportunity matters. Individuals who feel they have been subjected to discrimination or sexual harassment should report the incident to the chain of command if they are unable to resolve the problem by discussing the offensive behavior with the offender or if the behavior continues, or is criminal in nature. MCO 1700.23 (Request Mast) provides chain of command clarification for EO complaints filed through Request Mast procedures.

3002. MONITORING OF COMMAND EQUAL OPPORTUNITY CLIMATE

1. Symptoms of discord may appear in new and varied forms. The influence of societal changes must be assessed and proactive measures taken, if necessary, to prevent possible erosion of the command's readiness posture. This objective can best be accomplished through concerned leadership and open, responsive channels of communications.
2. To identify areas requiring command attention, the command should monitor all incidents which would reflect disharmony among Marines. The analysis of such data, in conjunction with other management tools, should prove to be valuable to the commander in assessing the equal opportunity climate of the command.
3. The following is a list of possible indicators of unrest or disharmony. Although not all inclusive, these indicators have proven to be reliable forecasters in the past:
 - a. Increase in racial, ethnic, or sexual harassment complaints/incidents.

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- b. Increase in request masts, congressional interest items, and special interest items, relating to racial/ethnic discrimination or sexual harassment.
- c. Incidents with racial/ethnic/sexual overtones, that may occur on base or in the surrounding civilian community.
- d. Appearance of racist, religiously intolerant, prejudicial literature, signs, etc.
- e. Marines wearing civilian clothing with organizational insignia or words that are racist/sexist in nature.
- f. De facto, group-imposed segregation in command billeting,

mess halls, clubs, and recreation areas.

g. Disputes, or confrontations that are racial/ethnic/gender oriented, name-calling.

4. Commanders may request a Military Equal Opportunity Climate Survey (MEOCS) from the Defense Equal Opportunity Management Institute (DEOMI), or a Marine Corps Command Assessment System (MCCAS) from the local EO advisor in order to assess their equal opportunity climate. MEOCS and MCCAS measure perceptions and attitudes of command members in regard to discrimination and sexual harassment. A sample form for a MEOCS request is located in Appendix L. For MCCAS, contact the local EO advisor.

5. Rapid command response to increased tensions must be visible to the Marines of the unit. The absence of a visible response can result in increased apprehension and polarization. No incident having an effect on equal opportunity can be overlooked or discounted, regardless of how insignificant or limited its involvement may appear on the surface. Each such incident should be recorded, reported through the chain of command, investigated, and analyzed. The analysis should consider, among other variables, the nature and frequency of incidents in comparison to the composition of the command.

3003. COMMUNICATION CHANNELS/INFORMATION PROGRAMS. All personnel should be made aware of, on a continuous basis, the commander's equal opportunity policies, communication channels available, and all relevant information discussed in this manual. Full use should be made of leadership training, troop information programs, command newsletters, bulletin boards, formations, and welcome-aboard briefs to achieve this goal.

1. Internal Information/Public Affairs. Effective internal information and public affairs programs provide an excellent means of demonstrating the commander's commitment to equal opportunity. To ensure these programs are supportive of the equal opportunity objectives, commanders will:

a. Ensure the effective use of resources, including general officer speaking engagements, news releases, officers call, troop information programs, bulletin boards, and the use of the Fleet Home Town News Service.

b. Ensure a conscientious effort is made to provide the media (public and base/station) with news and articles featuring the accomplishments of members of the command, with a fair representation of minority and female personnel.

c. Ensure the fair representation of minority and women's groups in radio and television spots and programs produced for internal or external use.

d. Ensure that historical/cultural events of significant interest within the command are given proper recognition in installation or local newspapers (e.g.,

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Black History Month, Hispanic Heritage Month, a current Asian/Pacific Islander Heritage Month, Native American Heritage Month, and Women's History Month). Appendix J contains a list of DoD recognized ethnic observances.

e. Develop and release to public and internal media, feature stories concerning efforts and commitment by the Marine Corps to ensure fair treatment of all personnel.

f. Be alert to any journalistic practice which tends to degrade or stereotype classes of persons based on age, race, color, religion, national origin, or gender.

g. Develop and maintain sound community relations per the current edition of SECNAVINST 5720.44; i.e., ongoing liaison with local government leaders and civic and minority organizations whose interests are in support of the community (this pertains to host commanders at the base/camp/station level and above).

2. Marine Corps Equal Opportunity Award. Established to recognize those military and civilian personnel whose achievements have significantly contributed to the fulfillment of Marine Corps equal opportunity goals. Criteria and procedures concerning nominations for this award are detailed in MCO 5305.3.

3004. MAINTENANCE OF STATISTICAL DATA

1. The maintenance and frequent review of statistical data will alert commanders to the development of adverse trends and patterns in time to analyze and correct the problem area. In this arena, statistical data serves as a measure of development of human relations discord, sharpens sensitivity to changing attitudes and needs, and provides a current picture of the command's equal opportunity climate.

2. While not a reporting requirement to the CMC, the statistical information set forth in Appendix A will be maintained by all Marine reporting units down to battalion/squadron level for a minimum of 2 years. This information will be utilized in the compilation of data for inclusion in the Annual Equal Opportunity Data Summary report, Appendix C, submitted to CMC (MPE). Subordinate unit commanders of the commands listed in Appendix B will compile annual statistics based on these semiannual records to be forwarded to the major command EO representative for inclusion in the Annual Equal Opportunity Data Summary, Appendix C, [report control number 5354-01].

3. Semi-annual and annual statistical data will be reviewed by the

commander for possible trends. (See Appendices A and C.)

3005. RACIAL INCIDENTS

1. Whenever an incident occurs that appears to have a racial/ethnic cause, the following guidelines should be used:

a. An incident should be considered as a racial/ethnic incident if it involves members of two or more racial/ethnic groups where racial/ethnic factors were the precipitating cause, or during the incident, became a motivating factor. If the incident involves members of only one racial/ethnic group but is directed at another racial/ethnic group, it should be considered a racial/ethnic incident.

b. Any incident which involves members of the command expressing or demonstrating open support for known racist organizations or groups should be considered a racial/ethnic incident.

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2. A racial/ethnic incident is defined as significant if it contains one or more of the following elements:

a. Death or personal injury that requires hospitalization of an individual.

b. Property damages in excess of \$1,000 as the result of a racial incident.

c. A security/reaction force is alerted.

d. Racially motivated riotous or rebellious conduct that involves defiance or overt contemptuous acts directed by a group toward military authority.

e. Racially motivated assaults involving use of a deadly weapon.

f. An incident in which a racist organization is identified or perceived as being involved.

g. An incident which, in the commander's opinion, may result in escalation into future incidents or may negatively affect the command's racial/ethnic climate.

3. All significant incidents will be reported to the CMC (POC) with an information copy to CMC (MPE) upon occurrence, per MCO 5740.2. Incidents that are not initially identified as having

racial/ethnic overtones but later, through investigation, reveal racial/ethnic causes, will be reported upon that determination. Subsequent information, to comply with the requirements of MCO 5740.2, will be submitted within 30 days of the incident.

3006. DISCRIMINATION. Discrimination is the illegal treatment of a person or group based on race, color, national origin, age or sex. Within the DoD, whether personal or institutional, lawful or unlawful, treatment of people is expressed through exercises of authority or "power" over others. However, when Marines exercise leadership [power] which results in the mistreatment of others, whether intentional or not, it is discriminatory and illegal. Often, the unequal treatment is based on faulty or negative prejudices. Acts of discrimination may also include Marines and civilians condoning, ignoring, or failing to correct, negative and hostile duty or working environments during the performance of their duties.

1. Like all forms of discrimination, racism, sexism, cultural biases, and anti-Semitism can occur not just through the acts of individuals, but within the systems, policies and procedures of an organization or society. The Marine Corps is not immune to the effects of discrimination and harassment. Such unacceptable conduct, if uncorrected, will eventually "poison" a unit's cohesion and morale, and ultimately have a detrimental effect on the unit's combat readiness.

2. Acts of discrimination, such as racism or anti-Semitism, contain one or more of the following elements:

- a. They are unwanted forms of discrimination.
- b. They are expressions of power, authority, or control through indication of superiority over the target individual or group.
- c. They are often invisible to those who are not the target, by the seemingly "normality" of the ideas and practices which perpetuate these acts.
- d. They have a negative impact upon the individual(s) and the unit or work environment.

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e. They deny individuals equal access to education, career development and assignments, resources, decision-making, health, well-being, employment and other opportunities.

3. Types of Discrimination

- a. Overt/Blatant Discrimination. Refers to discrimination that is open to view and is completely obvious, conspicuous, or obtrusive.
- b. Covert/Subtle Discrimination. Refers to discriminatory acts that are hidden and operated insidiously or cunningly and is usually the result of personal prejudices toward another individual or groups of individuals based on differences.
- c. Personal Discrimination. Action(s) taken by an individual to deprive a person(s) of a right because of that person's age, race, color, religion, gender, or national origin. Personal discrimination is normally behavior, covert or overt, that is partially based on preconceived perceptions, stereotypes, values, attitudes, and biases that a person brings with them upon entering the Marine Corps.
- d. Institutional Discrimination. Actions, procedures, or policies which have a differential and negative impact on members of other groups within that institution. This mistreatment is often perceived as the "normal way of doing things." Many DoD regulations and policies lawfully permit the Armed Forces to discriminate against people who do not meet acceptable standards of mental or physical abilities. However, leaders when interpreting or applying DoD and Marine Corps policy must not, overtly or covertly, discriminate against members based upon differences in age, race, color, religion, gender, or national origin.

3007. SEXUAL HARASSMENT

- 1. Definition. Sexual harassment is a form of 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, 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.
- 2. 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 abusive [Note: "workplace" is an expansive term for military members and may include conduct on or off duty, 24 hours a day].
- 3. 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.

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4. Sexual harassment undermines morale, discipline, and degrades mission readiness. Individuals and organizations alike suffer from its damaging effects. All Marines and civilian employees must conform to the spirit as well as the letter of the policy concerning prevention and eradication of sexual harassment.

5. Commanders, supervisors, managers, and all others in leadership positions who tolerate or condone sexual harassment in their subordinates are in violation of Marine Corps policy and are subject to appropriate disciplinary or administrative action.

6. Sexual harassment is a criminal offense punishable under the UCMJ as a violation of U.S. Navy Regulations and Standards of Conduct (SECNAVINST 5370.2).

7. DON policy on sexual harassment (SECNAVINST 5300.26) and MCO 5300.10 require commanders to take corrective action in each substantiated incident of sexual harassment. Corrective action includes but is not limited to: formal or informal counseling, non-punitive letter of caution, security clearance revocation, adverse fitness report, non-judicial punishment (NJP), or courts-martial. Additionally, officers and enlisted personnel of the Navy or Marine Corps will be processed for administrative separation on the first substantiated incident of sexual harassment involving any of the following circumstances: {An incident is considered substantiated if there is a courts-martial conviction or the commanding officer determines sexual harassment has occurred.}

a. Actions, threats or attempts to influence another's career or job for sexual favors; or

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

3008. PREVENTION OF DISCRIMINATION AND SEXUAL HARASSMENT. Each Marine is a little different from the next and each of us offers something unique to the Corps. We all want to be accepted as part of the team and to be given the same opportunity to excel. We are Asian and Hispanic, Black and White, male and female, Christian, Muslim, and Jew. We come from every region of our Nation and from

other countries. Our parents are rich, middle class, or poor; farmers, doctors, or factory workers. These are only a few examples--there are many more. Yet, each of us have our own personal beliefs about people who are different from us. These beliefs are partially based on our perceptions of others and on stereotypes we have learned or heard about certain groups. This happens in all of us. Bias or prejudice in itself doesn't hurt teamwork. But when we act on those biases or prejudices, and begin to treat others differently because of them, we have crossed over the line that separates acceptable conduct from prejudicial treatment, discrimination, or even racism. That's when teamwork suffers. We all are different. Yet, we also have similarities. We're Marines. We bring together a combination of cultures, ages, talents, and abilities that mold us into a cohesive team. We must learn to manage our biases and effectively communicate with those around us so that we may eliminate those things that diminish our ability to function as a team. Methods to prevent discrimination and forms of harassment include:

1. Be proactive. Emphasize team work. Discrimination in any form is adverse to mission accomplishment.
2. Publicize Marine Corps and local command policy. Stress leadership accountability.
3. Ensure all Marines are aware of the avenues of filing EO complaints and actions that will be taken against personnel in substantiated cases.

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4. Set the example by knowing what sexual harassment is and refusing to engage in it or condone it. Establish a command climate that precludes sexual harassment and is reflected at each level of the chain of command. Marines must not only refrain from sexual harassment but actively counter and report such actions immediately. Counsel harassers when sexual harassment is viewed even if a complaint is not filed.

3009. TRAINING

1. General. One of the primary means for implementing the command EOP is through leadership training. DoD Directive 1350.2, DoD Military Equal Opportunity Program, mandates that all military personnel including general officers receive training in equal opportunity, human relations, and prevention of sexual harassment.
2. Marine Corps Leadership Training
 - a. The Marine Corps leadership training program is an important means for providing each Marine with instruction which

enhances the development of professional capabilities necessary for increased grade and responsibility. In addition, its objectives are in concert with several basic objectives of the EOP, such as the elimination of individual discriminatory practices, the elimination of prejudice, and the promotion of harmonious personal relationships among Marines. Leadership training stresses the importance of individual needs and fosters beliefs that provide the commander with a vital program which can help effect changes in behavior and attitude in those Marines whose prejudices and preconceptions conflict with the concept of equal opportunity.

b. Commanders will ensure that equal opportunity and sexual harassment prevention training is conducted annually at a minimum. Command guidance and organizational needs will dictate equal opportunity training objectives and topics. Specific equal opportunity and sexual harassment topics covered will be recorded and maintained at the battalion/squadron level.

c. EO training is best conducted in small discussion groups. Whenever possible and practical, EO issues (training) and topics should be facilitated through guided discussions where everyone feels free to participate and share their views and perspectives.

d. The "User's Guide to Marine Corps Leadership Training" (NAVMC 2767) has been published to provide leadership training materials for use by field commanders in developing, conducting, and evaluating their leadership programs. Included are course outlines for equal opportunity and sexual harassment prevention education.

3. Team Marine and Our Core Values. Commanders will ensure that the principles of the Team Marine lesson is periodically discussed at SNCO and Officer Professional Military Education (PME) sessions. See Appendix E, for ordering information.

4. Training Information Resources (TIR). TIR libraries are available at every major command where an EOA is assigned. The purpose of these libraries is to provide resources for units or individuals to use. TIR include videos, books, lesson plans, posters and other materials. The EOA is responsible to maintain, update and manage the TIR. EO representatives will coordinate with the nearest (geographic) EOA to use these resources to conduct training at their units.

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5. Informal Resolution System (IRS)

a. The IRS was developed by the Secretary of the Navy standing committee on military and civilian women in the DON as a system to informally resolve complaints of sexual harassment and other

conflicts at the lowest possible level between individuals. It emphasizes individual responsibility to set the example for appropriate behavior and to confront any form of discrimination, harassment, or other forms of inappropriate behaviors.

b. IRS training is an annual requirement. Ideally, it should be conducted with annual sexual harassment training, however, it can be done as a separate package.

c. The commander will determine how he/she wants to accomplish the training requirement as long as it meets the intent of the package and the annual requirement. The IRS guidance does allow for modification of the lesson plans to meet the needs of the audience as long as the key points and concepts are not changed.

d. Commanders should seek the assistance of the EOA or contact the Equal Opportunity Branch, Headquarters Marine Corps to answer any questions concerning the IRS package.

e. The IRS training package is designed to be taught on three levels: Entry level (E1-E3, civilian up to GS-5), midlevel (E4-04, GS-9 through GS-15), and senior level (commanding officers, senior executive service, flag officers and sergeants major). The time requirements are: 30 minutes for entry level, 2 hours for the midlevel, and 45 minutes for senior level training. These times are in addition to the times required for the sexual harassment block.

f. The IRS training package contains a facilitators handbook, instructors notes, lesson plans, transparencies, and case studies. Also, a 'Resolving Conflict' pamphlet will be provided to each Marine and civilian employee during training. See Appendix E, for ordering information.

6. EO Representatives. Commanders are encouraged to allow individuals assigned duties as a command EO representatives to attend the 2-week program managers course at DEOMI. The course is designed for mid-level staff members who have direct responsibility for the command's EOP. A limited number of seats are available through the CMC (MPE).

7. DEOMI Mobile Training Teams (MTT). Commanders may request DEOMI personnel conduct EO training specifically designed to meet the needs of the requesting command. MTT's may be requested per the procedures listed in Appendix K.

8. Education Deficiencies. Educationally deficient personnel identified in the Command Military Race/Ethnic Statistics report (Appendix A) will be counseled and encouraged to participate in programs that will enhance their opportunity for upward mobility. To achieve this, commanders will ensure wide dissemination of and familiarization with education programs available through base education offices, the Marine Corps Institute, and other sources.

1. The opportunity for upward mobility is essential to the morale and readiness of a command. To ensure equality of opportunity for advancement and career development, and to prevent negative perceptions by personnel, commanders will:

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a. Ensure representation of all race/ethnic groups and both sexes, when feasible, on all local promotion boards, councils, committees, etc. Review recommendations to ensure that bias is not a factor in the screening process.

b. Ensure that members of the command receive counseling concerning service record book entries that may affect opportunities for promotion and career development.

c. Ensure timely and ongoing career development counseling.

d. Encourage individuals with educational deficiencies to participate in off-duty education.

2. Assignments to command (CO/XO) and other key billets have an impact on advancement potential. Commanders will ensure that such assignments are based on grade and occupational skill requirements and that a Marine is not denied assignment to any billet for which qualified because of age, race, color, religion, gender, or national origin unless otherwise restricted by law or regulation.

3. To ensure equality of assignments to primary duty billets, work details, and to fill transfer quotas; and to prevent the perception of inequality in these areas, commanders will:

a. Ensure that assignment to primary duty is based on grade and occupational skill requirements, and that a Marine is not otherwise denied assignment to any billet for which qualified because of age, race, color, religion, gender, or national origin.

b. Fill quotas for transfer so that the needs of the Marine Corps will be met and all Marines will share equally with respect to desirability of the assignment, individual ability, personal desires, and to any other established criteria.

3011. RECOGNITION

1. Recognition of individual achievement through appropriate forms of commendation enhances behavior and morale and contributes directly to unit efficiency and readiness. In identifying those individuals who merit recognition, commanders will:

- a. Ensure that the same standards for recommending individuals for recognition are applied to all members of the command.
- b. Review statistical data to determine possible negative trends and take corrective action.

3012. MILITARY JUSTICE

1. Injustice perceived by an individual Marine or group of Marines, whether real or imagined, has a detrimental effect on unit readiness and morale. Therefore, commanders must ensure that military justice is administered with absolute fairness.
2. To ensure that military justice is administered with complete fairness, commanders will:
 - a. Ensure military justice and administrative separation functions in the command are performed free of illegal discrimination.

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- b. Investigate all cases where bias is suspected or alleged to be a factor in the judicial process.
- c. Monitor command disciplinary statistics for possible trends of unequal treatment of command personnel.

3013. USE OF BASE AND UNIT FACILITIES. Base and unit facilities must be responsive to the needs of the command and must support the commander's equal opportunity policy. Commanders must ensure that equal opportunity exists in the decision process regarding the use and operation of all base/unit facilities, to include barracks/living areas, exchanges, commissaries, religious activities, and entertainment/recreation facilities. All unit leaders must ensure compliance, as applicable, and be alert to any instance of discrimination. Commanders will monitor the operation of all facilities to ensure that neither segregation nor discriminatory practices occur.

3014. HOUSING AND OFF-BASE RESPONSIBILITIES

1. Marine Corps policy dictates that housing programs be free of discriminatory practices and provide equality of opportunity and treatment for all Marines. Because DoD's policy continues to emphasize the civilian community as the primary source of housing facilities, the elimination of discrimination against military personnel seeking off-base housing must receive continuous command

attention.

2. To ensure equal opportunity in housing programs, commanders will:

a. Ensure that all base housing units and facilities are assigned equitably, without regard to age, race, color, religion, gender, or national origin.

b. Ensure that housing referral offices provide assistance to all Marines in obtaining adequate off-base housing as outlined in MCO P11000.22.

3. The installation commander is the Marine Corps representative to the surrounding civilian community, and the officer primarily responsible for fostering equal treatment for military personnel and dependents in that community. All officers and staff noncommissioned officers must assist the installation commander by providing necessary support and timely information of any discriminatory practices encountered by military personnel or dependents. Actions to be taken by installation commanders, with regard to specific areas of concern are provided below:

a. Establish and maintain a working relationship with community councils or civilian community leaders to address instances and/or patterns of alleged discriminatory practices, and develop recommendations toward resolving those problems.

b. Establish or maintain liaison with federal agencies and other military services to facilitate discussion and development of programs regarding off-base housing problems.

c. Develop or maintain procedures for liaison with appropriate local or state agencies in the solution of discrimination problems.

d. Use the worldwide authority and responsibility to impose off-limits sanctions, per MCO 1620.2, should the foregoing actions prove unsuccessful. Ensure that military personnel are advised of:

3-12
?

MARINE CORPS EQUAL OPPORTUNITY MANUAL 3014

(1) The right to initiate civil suits against discriminatory establishments, appropriate officials to notify in cases of discrimination in public facilities, and proper complaint procedures.

(2) The provisions of Titles II and III of the Civil Rights Act of 1964 and the Fair Housing Amendments Act of 1988.

e. Ensure that legal assistance officers are knowledgeable of procedures for handling complaints concerning the applicability of the Civil Rights Act of 1964 and for requesting the attorney general to institute civil suits.

4. Discrimination by Private Organizations

a. The DON policy prohibits Marine Corps units or Marine Corps sponsored organizations from using the facilities of organizations having discriminatory membership policies. However, membership and participation in such organizations, groups, clubs, etc., by Marines on an individual basis, as private citizens, is permitted as long as no Marine Corps affiliation is implied or expressed.

b. In addressing such organizations through the EOP, commanders will:

(1) Ensure that established procedures for dealing with such groups do not infringe upon the individual Marine's constitutional right to freedom of association.

(2) Ensure that personnel, who are members of organizations or associations that have discriminatory practices which are incompatible with official Marine Corps policy, avoid activities on behalf of the organization/association that give the appearance of Marine Corps affiliation.

(3) When, in the opinion of the commander, the undermining effect of discriminatory practices of bona fide private organizations weakens the morale of their respective commands, "off-limits" sanctions may be justified. The commander will accumulate the evidence to support that conclusion. The facts relating to the findings of discrimination and the impact that it has on the command should be developed by the local Armed Forces Disciplinary Control Board (MCO 1620.2), which allows all parties a full and fair opportunity to present their case. All such evidence will be fully documented and submitted to the CMC (MPE) for a decision relative to approval of a board's recommendation for "off-limits" action.

5. The commander's EOP must actively promote the nondiscriminatory assignment of dependent children to public schools of the community, and the equal treatment of military members in civilian adult education programs. Commanders must ensure that all military parents/guardians are aware of the following:

a. Marine Corps policy regarding support of the assignment of military dependents to public schools on a nondiscriminatory basis.

b. Constitutional rights to equality of opportunity in public schooling and applicable provisions of the Civil Rights Act of 1964.



U.S. Department of Justice
Civil Rights Division
Appellate Section

November 17, 1998

To: Eddie Correia, Office of Counsel to
President
From: Jennifer Levin, Department of Justice,
Civil Rights Division
Subject: Draft Executive Order

I have enclosed a revised draft Executive order on nondiscrimination in federally conducted education and training programs. We have incorporated the edits you requested for Section 3-301.

If you have any questions, feel free to contact me at 305-0025.

11/17/98

Executive Order _____

Nondiscrimination on the Basis of Race, Color, National Origin,
and Sex in Federally Conducted Education and Training Programs

Numerous civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq., and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq., prohibit discrimination on the basis of race, color, national origin, and sex, in educational programs and activities that receive Federal financial assistance. In addition, other Federal laws, including Title VII of the Civil Rights Act of 1964, as amended (Title VII), prohibit discrimination against employees by employers on the basis of race, color, national origin, sex, and other grounds with respect to, among other things, opportunities for and participation in education and training programs. The Federal government has acted, and will continue to act, aggressively through litigation, policy guidance, outreach, and other means to expand and ensure equal opportunities for minorities and women that participate in State, local, and private education programs that receive Federal financial assistance.

In addition to providing Federal assistance to various education and training programs, the Federal government *itself* conducts numerous education and training programs. For example, the Department of Defense operates schools for grades kindergarten through high school to educate the dependents of service members and others in the United States and around the

world. The Department of Interior also operates schools, kindergarten through the undergraduate level, to educate Native Americans. Many agencies also provide training on Federal laws and regulations to a variety of audiences in a variety of settings: formal academies teach state and local personnel principles, laws, techniques, and strategies relating to effective law enforcement; seminars instruct members of select industries on Federal requirements for licensing and operation; programs in prisons train Federal inmates on trade skills; and members of the public are educated about the environment and natural resources.

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. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs -- including discrimination against people with disabilities (prohibited by the Rehabilitation Act of 1973, as amended), and discrimination based on race, color, national origin, sex, or religion against Federal employees (prohibited by Title VII). Through this Executive order, we are now expanding prohibitions of discrimination on the basis of race, color, national origin, and sex to certain other Federally conducted education and training programs and activities.

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

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

1-101. No individual shall, on the basis of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in an education or training program or activity of any Executive department or agency conducted in the United States, the territories, the possessions, the Commonwealths of Puerto Rico and of the Mariana Islands, and as set forth in Subsection 1-102.

1-102. The provisions of this Order shall apply to education programs and activities that are operated by the Department of Defense under 10 U.S.C. § 2164 and 20 U.S.C. §§ 921-932.

Section 2. Definitions.

2-201. "Program or activity" includes programs or activities conducted, operated, administered, or undertaken by an executive department or agency.

2-202. "Education and training programs" 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 delegated authority to determine the scope of education and training programs, in addition to those identified in subsection 2-202 and section 3, that are subject to and exempt from coverage by this order, respectively.

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

2-205. "Armed forces" includes, for purposes of this order, the Armed Forces of the United States, as well as the armed forces of a foreign government recognized by the United States or attached to an international organization.

Section 3. Exemptions from coverage.

3-301. This order does not apply to members of the armed forces or to military training or education programs. Members of the armed forces, including students at military academies, will continue to be covered by regulations that bar discrimination based on race, color, national origin, or sex, which are enforced by the Department of Defense and individual service branches.

The Department of Defense shall develop procedures to protect the rights of, and to provide redress to, civilians not otherwise protected from discrimination based on race, sex, national origin, or color by existing Federal law, and who participate in military training or education programs conducted by the Department of Defense.

3-302. This Order does not apply to, affect, interfere, or modify in any way the operation of any otherwise lawful affirmative action plan.

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 to individuals of a particular sex, race, color, or national origin, including Native American or Alaska native, different from his or hers.

3-304. This Order does not apply to programs and activities conducted by the Department of Interior, Bureau of Indian Affairs, that are in conformance with tribal customs or otherwise culturally appropriate. For example, classes that require separation of students on the basis of gender in order to conform to tribal customs that require such separation would not be in violation of this order.

3-305. This Order does not apply to (1) selections based on national origin of foreign nationals to participate in covered programs, if such programs concern primarily national security or foreign policy; or 2) selections or other decisions regarding participation in covered programs made by entities outside the

Executive Branch, provided that it shall be the policy of the Executive Branch that education and training programs and activities shall not be available to entities that select persons for participation in violation of Federal or State law.

Section 4. Administrative enforcement.

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

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 implementing rules, regulations, policies, or guidance, such office shall refer a copy of the report and findings, and 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 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, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act (Civil Service Reform Act of 1978, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1111, see Tables for classification.)

Section 5. Implementation and Agency Responsibilities.

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

- a. the scope of education programs and activities subject to and exempt from coverage by this order, in addition to those identified in Sections 2 and 3;
- b. examples of discriminatory conduct;
- c. applicable legal principles;

- d. enforcement procedures with respect to complaints against employees;
- e. remedies;
- f. requirements of an agency's annual report as set forth in Section 7;
- g. and such other matters as deemed appropriate.

5-502. Within 60 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 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 60 days of issuance.

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

Section 6. Annual Report.

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 and nature of complaints filed with the agency and the disposition of such complaints. Such reports shall be submitted annually for the first three years after the effective date of this order, and submitted within 60 days of the end of the preceding year's activities.

Subsequently, reports shall be submitted every three years, within 90 days of the end of each 3 year period.

Section 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 No. 12250.

7-702. Nothing in this order amends, supplements, or subtracts from an employee's protections and remedies under Title VII of the Civil Rights Act of 1964, as amended.

Section 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

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in accordance with the Administrative Procedure Act, 5 U.S.C.
701, et seq.

To: Eddie Correia
From: Jill Carnes
Date: October 16, 1998
Re: Are cadets covered by UCMJ/military regulations?

UNIFORM CODE OF MILITARY JUSTICE

- Section 802, Article 2: Persons subject to this chapter (Chapter 10, Armed Forces)
- Section 802, Article 2(a)(2):
 - Cadets, aviation cadets and midshipmen are expressly subject to this chapter.

ARMY

- No express provisions
 - "EO Program formulates, directs and sustains a comprehensive effort to ensure fair treatment of all *soldiers*..."
- West Point cadets are considered active duty and they are counted in strength figures.
- West Point cadets can be courts-martialed, they are subject to UCMJ.

NAVY

OPNAV Instruction 5354.1D

- 3(a): The provisions of the instruction apply to all active duty Navy and Naval Reserve units.
- I called the Dept. Of Navy (10/17) and midshipmen *are* considered active duty.

MARINES

Marine Corp. Equal Opportunity Manual

- Applies to Marines, and all other Armed Forces personnel assigned to or serving with Marine Corps units and civilian supervisors of military personnel. (No Marine cadets)

AIR FORCE

- Air Force regs are very broad and comprehensive.
- There is a special instruction for "Nondiscrimination in Programs and Activities Assisted or Conducted by the Department of the Air Force."
 - This applies to everyone.
- Defines those impliedly subject to regs as:
 - 1) *Members* of the military, and their families
 - 2) *Members* of the Air Force, and their families

Note 19

ry interpretation. *Stout v. Hancock*, C.C. A.S.C.1944, 146 F.2d 741, certiorari denied 65 S.Ct. 1086, 325 U.S. 850, 89 L.Ed. 1971.

Interpretation of this chapter by the President and the military authority is entitled to great weight. *Liles v. U.S.*, D.C.N.C.1957, 153 F.Supp. 54.

Rulings of administrative officers charged with execution of statutes affecting the Army are entitled to great weight. *Richardson v. Zuppann*, D.C.Pa.1949, 81 F.Supp. 809, affirmed 174 F.2d 829.

§ 802. Art. 2. Persons subject to this chapter.

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the following: the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the following: the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

Rulings of administrative officers with execution of statutes affecting are entitled to great weight. *Richards v. Zuppann*, D.C.Pa.1949, 81 F.Supp. 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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Guam, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) of this section and a change of status from civilian to member of the armed forces shall be effective upon taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

Aug. 10, 1956, c. 1041, 70A Stat. 37; June 25, 1959, Pub.L. 86-70, § 6(b), 73 Stat. 42; July 12, 1960, Pub.L. 86-624, § 4(b), 74 Stat. 411; Sept. 7, 1962, Pub.L. 87-651, Title I, § 104, 76 Stat. 508; Nov. 2, 1966, Pub.L. 89-718, § 8(a), 80 Stat. 117; Nov. 9, 1979, Pub.L. 96-107, Title VIII, § 801(a), 93 Stat. 810; Dec. 12, 1980, Pub.L. 96-513, Title V, § 511(24), 94 Stat. 2922; Oct. 12, 1982, Pub.L. 97-295, § 6(b), 96 Stat. 1314.

Historical and Revision Notes

1956 Act

Revised section	Source (U.S. Code)	Source (Statutes at Large)
50552.		May 5, 1950, ch. 169, § 1 (Art. 2), 64 Stat. 109.

Explanatory Notes

In clause (1) [subsec. (a)(1)], the words "members of" are substituted for the words "All persons belonging to". The words "all" and "the same" are omitted as surplusage. The word "when" is inserted after the word "dates".

In clauses (1) and (8) [subsec. (a)(1) and (8)], the words "of the United States" are omitted as surplusage.

In clause (3) [subsec. (a)(3)], the words "Members of a reserve component" are substituted for the words "Reserve personnel". The word "orders" in the last clause is omitted as surplusage.

In clause (4) [subsec. (a)(4)], the word "relative" is omitted as surplusage.

In clauses (4) and (5) [subsec. (a)(4) and (5)], the word "members" is substituted for the word "personnel".

In clause (8) [subsec. (a)(8)] the word "members" is substituted for the word "personnel".

In clauses (11) and (12) [subsec. (a)(11) and (12)], the word "outside" is substituted for the word "without" wherever it occurs. The words "the continental limits of" are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words "the provision of", "all", and "territories" are omitted as surplusage.

In clause (12) [subsec. (a)(12)], the words, "Secretary concerned" are substituted for the words "Secretary of a Department".

CROSS REFERENCES

Judge Advocates General of Army, Navy, and Air Force, see 10 USCA §§ 3037, 5148, 8037.

WEST'S FEDERAL PRACTICE MANUAL

Extent of judicial functions of Claims Court in military pay cases, see § 1865.

LAW REVIEW AND JOURNAL COMMENTARIES

Fact finding in the courts of military review. Judge John Powers, 44 Baylor L.Rev. 457 (1992).

Making intramilitary tort law more civil: A proposed reform of the Feres doctrine. David Schwartz, 95 Yale L.J. 992 (1986).

Military justice: Removing the probability of unfairness. 63 U.Cin.L.Rev. 439 (1994).

NOTES OF DECISIONS

Military judge 20

9. — Force and effect

Juhl v. U.S., Ct.Cl.1967, 383 F.2d 1009, 181 Ct.Cl. 210, certiorari granted 88 S.Ct. 1635, 390 U.S. 1038, 20 L.Ed.2d 300, reversed on other grounds 89 S.Ct. 528, 393 U.S. 348, 21 L.Ed.2d 537, [main volume] on remand 187 Ct.Cl. 727.

Although it was not error for convening authority to assign all marines to court-martial of naval officer since marines were members of same armed force as naval officer, such action presented image of unfairness and attitude of unnecessary inflexibility where large concentration of naval personnel was within hour's driving time of situs of the trial. U.S. v. Negron, NMCMR 1984, 19 M.J. 629.

15. Accuser

Person who has been ordered or coerced into preferring charges becomes "accuser" and, therefore, is disqualified from acting as convening authority. U.S. v. Hamilton, CMA 1994, 41 M.J. 32.

Alleged improper action by battalion commander, who lacked authority to convene special court-martial empowered to impose bad-conduct discharge, did not give rise to potential error in

referral of charges, because even if battalion commander was de facto accuser, he was not convening authority. U.S. v. Drayton, ACMR 1994, 39 M.J. 871, review granted 43 M.J. 170, affirmed 45 M.J. 180.

Lieutenant general was "accuser" lacking authority to convene court-martial to enforce his own order not to operate privately owned vehicle on base for two years; lieutenant general was so closely connected to the offense that reasonable person could conclude that lieutenant general had personal interest in the matter. U.S. v. Byers, ACMR 1992, 34 M.J. 923, reconsideration denied, review granted in part 36 M.J. 32, set aside 37 M.J. 73.

Convening authority was an accuser and disqualified to convene court-martial where convening authority was person who directed that charges nominally be signed and sworn to by another and had an interest other than official interest in prosecution of accused. U.S. v. Corcoran, CMA 1984, 17 M.J. 137.

20. Military judge

Appellate military judge is not "military judge" within meaning of rule entitling party to voir dire of military judge regarding possible ground for disqualification. U.S. v. Hamilton, CMA 1994, 41 M.J. 32.

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

[See main volume for text of (1) and (2)]

(3) Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

[See main volume for text of (4) to (10)]

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

CROSS REFERENCES

Army, Navy, and
037, 5148, 8037.

FEDERAL PRACTICE MANUAL

Claims Court in

VIEW AND JOURNAL COMMENTARIES

military review. Military justice: Removing the probability of
or L.Rev. 457 unfairness. 63 U.Cin.L.Rev. 439 (1994).

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NOTES OF DECISIONS

referral of charges, because even if battalion
commander was de facto accuser, he was not
convening authority. U.S. v. Drayton, ACMR
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cle on base for two years; lieutenant general
was so closely connected to the offense that
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U.S. v. Byers, ACMR 1992, 34 M.J. 923, recon-
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Subject to this chapter

are subject to this chapter:

main volume for text of (1) and (2)]

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Army National Guard of the United States or the Air
ited States only when in Federal service.

main volume for text of (4) to (10)]

aty or agreement to which the United States is or may be
rule of international law, persons serving with, employed
armed forces outside the United States and outside the
Rico, Guam, and the Virgin Islands.

aty or agreement to which the United States is or may be
rule of international law, persons within an area leased
or acquired for the use of the United States which is
secretary concerned and which is outside the United States
wealth of Puerto Rico, Guam, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

[See main volume for text of (c)]

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

(A) investigation under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

(As amended Dec. 6, 1983, Pub.L. 98-209, § 13(a), 97 Stat. 1408; Nov. 14, 1986, Pub.L. 99-661, Div. A, Title VIII, § 804(a), 100 Stat. 3906; Sept. 29, 1988, Pub.L. 100-456, Div. A, Title XII, § 1234(a)(1), 102 Stat. 2059; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title XI, § 1133(b), 110 Stat. 466.)

HISTORICAL AND STATUTORY NOTES

1996 Amendments

Subsec. (e). Pub.L. 104-106, § 1133(b), added
subsec. (e).

1988 Amendment

Subsec. (a)(11), (12). Pub.L. 100-456 struck
out "the Canal Zone," following "and outside".

1986 Amendment

Subsec. (a)(3). Pub.L. 99-661, § 804(a)(1),
substituted "on inactive-duty training, but in the
case of members of the Army National Guard of
the United States or the Air National Guard of
the United States only when in Federal service"
for "they are on inactive duty training author-
ized by written orders which are voluntarily
accepted by them and which specify that they
are subject to this chapter".

Subsec. (d). Pub.L. 99-661, § 804(a)(2), add-
ed subsec. (d).

1983 Amendment

Subsec. (a)(11). Pub.L. 98-209, § 13(a)(1)(A),
substituted "outside" for "outside the following".

Pub.L. 98-209, § 13(a)(1)(B), inserted "the
Commonwealth of" before "Puerto Rico".

Subsec. (a)(12). Pub.L. 98-209, § 13(a)(1)(A),
substituted "outside" for "outside the following".

Pub.L. 98-209, § 13(a)(1)(B), inserted "the
Commonwealth of" before "Puerto Rico".

Subsec. (b). Pub.L. 98-209, § 13(a)(2), struck
out "of this section" following "subsection (a)".

Effective Date of 1986 Amendment

Section 804(e) of Pub.L. 99-661 provided that:
"The amendments made by subsections (a)
[amending subsec. (a)(3) and enacting subsec. (d)
of this section] and (b) [enacting section 803(d)
of this title] shall apply only to an offense com-
mitted on or after the effective date of this title
[as provided in section 808 of Pub.L. 99-661, set
out as a note hereunder]."

Section 808 of Pub.L. 99-661 provided that:
"Except as provided in sections 802(b), 805(c),
and 807(b) [set out as notes under sections 850a,
843, and 806 of this title, respectively], this title
and the amendments made by this title [amend-
ing sections 802(a)(3), 825, 860, 936, and 937 of

FORCE MANAGEMENT
POLICYASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

§ 1 000 1997

Bill Lann Lee, Esquire
Acting Assistant Attorney General
Civil Rights Division
Washington, D.C. 20530

Dear Mr. Lee:

This letter responds to questions raised by your office regarding completion by the Department of Defense of its inventory of the civilian education programs or activities it conducts, in support of the President's initiative related to preventing discrimination in civilian education programs or activities conducted by the Federal Government. It also completes the inventory of civilian education programs or activities conducted by the Department of Defense.

The Department of Defense fully supports this initiative, as announced by the President. I and my staff on August 25 provided to you with an interim listing of those civilian education programs or activities conducted by the Department of Defense which meet the definition of "education program or activity" contained in the President's letter of June 17, 1997 and the guidance you provided in your letter of July 14, 1997. With the attached submissions from the National Guard Bureau and the Director, Defense Research and Engineering, you have my assurance, as requested by your staff, that the Department of Defense inventory listing now is complete. The survey referenced in our August 25 letter produced no additional civilian education programs or activities for inclusion in the inventory.

Since the question of scope appears to have resurfaced, however, let me take this opportunity to reiterate the views of the Department of Defense regarding this matter. It is our understanding that the President's initiative is intended to expand the scope of protection against discrimination based on sex, race, color and national origin to include civilian education programs and activities conducted by the Federal Government which are currently not covered by existing laws prohibiting such discrimination. Training and education programs conducted by this Department for military personnel, including training and education programs conducted by the Military Services, do not fall within this category.

The President's memorandum does not refer to or contemplate addressing education programs or activities whose primary purpose is to train military members, e.g. "military" training and education programs or activities, as opposed to "civilian" training and education programs and activities. My understanding is based on the President's June 17, 1997 memorandum (especially paragraph (1) on page 3) and on discussions between our respective offices and the White House, before the President's initiative was announced, over how best to handle the exclusion of these military education and training programs. We have used this



understanding in developing the inventory listing initially provided to your office in August and completed today.

It also is important to note that military personnel are not Department of Defense or Military Service "employees." Military personnel are subject to and protected by the Uniform Code of Military Justice (UCMJ) (10 U.S.C. chapter 47). They are individuals who have voluntarily enlisted or accepted appointment into the armed forces of the United States, thereby changing their status from "civilian" to "member of the armed forces" and subjecting themselves to military authority, including the potential for criminal prosecution under the UCMJ. Unlike "employees," they cannot unilaterally change their status or resign from their positions ("quit their jobs") at any time.

In addition, the armed forces, themselves, are based on a unique construct of command authority, known as the military chain of command, enforced through the UCMJ. Military members are both subject to and protected by the UCMJ. Conduct which prejudices the good order and discipline of the armed forces, including prohibited discrimination, already can be charged as a crime under the UCMJ. Continued maintenance of the good order and discipline among the armed forces dictates that they continue to have the exclusive authority and responsibility, through the command structure, to enforce prohibitions against discrimination, including those based on race, sex, national origin and color. Superimposing external structures on the armed forces in order to duplicate prohibitions against discrimination in military training and education programs is unnecessary and could significantly damage the military command structure.

Military training and education programs are governed generally and, in some cases, specifically, by statute, in particular title 10 of the U.S. Code. The purposes of these programs are often conceptually and substantively different than those of programs conducted for civilians, whether they are civilian Government employees or members of the public. Additionally, military training and education, particularly basic training, advanced individual training, advanced skills training, officer candidate training, and the senior service schools, are intended to teach and enhance skills which those entering the military do not possess, e.g., military discipline, military combat and combat support, and military command.

In addition to, and apart from, the matter of military training and education programs, I also would like to respond to the President's direction that the Department identify and describe those substantive and procedural issues which we anticipate might arise as a result an initiative to prohibit discrimination based on race, sex, color and national origin in Federally conducted civilian education programs and activities (as you further defined them in your July 14 letter). Initially, we note that this initiative could run counter in certain respects to Congressionally mandated preference programs, such as the National Security Agency's Undergraduate Training and Assistance Program and the Defense Intelligence Agency's Undergraduate Training Program. These programs, which require that preferences be accorded to certain minority groups, provide, *inter alia*, funding for the undergraduate education of individuals who will subsequently work in

certain fields for NSA and DLA. A Presidential executive order mandating that the Department not discriminate based on race, sex, color or national origin in these education and training programs might be read as conflicting with such requirements.

Your July 14 letter asked that, for purposes of this initiative, the Department of Defense list in its inventory of Federally conducted education and training programs its occupational training programs attended by any student who is not a Department of Defense employee, whether that student is an employee of other Federal agency, a State or local agency, or a member of the public. We are concerned that including internal Department of Defense education and training programs directed at Department of Defense civilian employees, which also may be open to some civilian employees of other agencies, could have a substantially negative impact on those programs. Since all Federal employees already have substantive statutory protections, their inclusion would not support the goal of the President's initiative of expanding the scope of protection against discrimination based on sex, race, color and national origin to include education programs and activities conducted by the Federal Government which are currently not covered by existing laws prohibiting such discrimination. It would provide, in effect, duplicative protections, with the potential for duplicative and, possibly, contradictory remedies.

We are concerned that, if the approach envisaged by the July 14 letter were adopted, organizations of the Federal Government, including the Department of Defense components, would close their education and training programs to civilian employees of sister agencies. This would deny all employees involved, both Defense and non-Defense personnel, the benefits and richness of experience that such joint training can provide. It also may force agencies which currently rely on these training and education programs to expend additional resources either to establish training programs of their own or to contract for training.

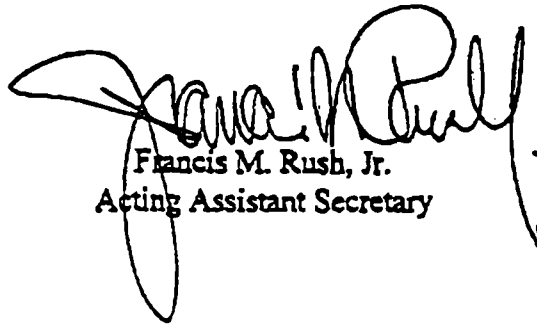
Alternatively, it may eliminate these training opportunities for outside employees all together. This would be particularly harmful for those communities of interest which cross Departmental and agency lines, such as the Intelligence Community, the Drug Enforcement community, and the Counter-Terrorism community. It would also run counter to current initiatives within these communities to foster joint training and educational opportunities in order to further broad Governmental objectives in each of these areas.

In sum, this Department fully supports the President's initiative to prohibit discrimination based on race, sex, color and national origin in Federally conducted civilian education and training programs, such as the Department of Defense Dependents Schools and the Department of Defense Domestic Dependent Elementary and Secondary Schools. We do not support changing the scope of this initiative to include military training and education programs. In addition, we have concerns regarding the potential conflict between an imprecisely drafted executive order and existing Congressional mandates for preferences for minorities in certain Department of Defense education programs. We also are concerned that inclusion of education and training programs established by the Department of Defense for its civilian employees that also are open to civilian employees of other Government agencies will have the effect of closing

training opportunities to those non-Defense employees, as well as running counter to other current initiatives that foster joint participation in training and education opportunities in various interdepartmental communities of interest within the Executive Branch.

The letter has been coordinated with the Office of the General Counsel of the Department of Defense.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis M. Rush, Jr.", with a large, stylized flourish extending from the bottom left.

Francis M. Rush, Jr.
Acting Assistant Secretary

Attachment:

cc (with attachment):

General Counsel, DoD

David Ogden, Esquire

Counselor to the Attorney General

Loretta King, Esquire

Deputy Assistant Attorney General (Civil Rights)

Name of Program	FY 1997 Funding Level	Number and Type of Participants	General Description of Program	Authority, Policies, and Possible Impediments
Multijurisdictional Counterdrug Task Force Training (MCTFT)	\$3,824,000. Courses are provided tuition-free.	13,800 (E) Federal, State and Local Police Officers in Conventional Classes; 400 (E) in Law Enforcement Distance Learning and 25,000 (E) Drug Demand Reduction Community Coalition personnel.	To instruct Law Enforcement Officers to investigate and prosecute narcotic cases within a multijurisdictional counterdrug task force, and how to avail their agencies to military support resources.	Congressionally directed. MCTFT will not discriminate on the basis of race, color, religion, sex, age, national origin, marital status, or against any qualified handicapped individual, in its employment and/or admission practices and treatment of students.
National Interagency Civil-Military Institute (NICI)	\$3 Million. Courses are provided tuition-free.	867 (A) Federal, State and Local Police Officers, DoD personnel involved in the Counterdrug field, Drug Demand Reduction personnel and community coalitions.	Provide training to military and civilian leaders on the interagency processes required for effective military support to civil authorities thus enhancing the interoperability of the military with Federal, State and Local counterdrug operations, Demand Reduction Activities and Disaster/Civil Emergency Support.	32 USC 112. Students are admitted to courses provided by NICI without regard to their race, sex, color, religion, age, marital status or national origin.
Regional Counterdrug Training Academy (RCTA)	\$2,924,000. Courses are provided tuition-free.	2013 (A) State and Local Police Officers and DoD Counterdrug personnel.	Develop and provide Counterdrug Training to State, Local and Municipal Law Enforcement agencies, and to DoD personnel involved in Counterdrug activities.	Congressionally directed. Students are admitted to courses provided by RCTA without regard to their race, sex, color, religion, age, marital status or national origin.

Name of Agency: National Guard Bureau

Name of Program	FY 1997 Funding Level	Number and Type of Participants	General Description of Program	Authority, Policies and Possible Impediments
National Guard Challenge Program	\$37,360,300	The program is conducted in 15 states and a maximum of 3642 students may enroll in the program per year. Nationwide, the program employs approximately 600 state employees.	The program provides military based training, supervised work experience in community services and conservation projects to civilian youth who cease to attend secondary school before graduating so as to improve skills and employment potential.	Currently, the authority for the program 32 USC 501. The program complies with Title VII of the Civil Rights Act of 1964 and DOD regulations issued thereunder; Executive Order 11246 and Department Labor regulations issued thereunder; Section 504 of the Rehabilitation Act of 1973 and DOD regulations issued thereunder; and The Age Discrimination Act of 1975.
National Guard STARBASE Program	\$3,394,000	The program is conducted in 14 states and territories with an approximate enrollment of 20,000 students per year. Nationwide, the program employs approximately 56 state employees.	The program is for youth kindergarten through grade 12 and is designed to expose classes and teachers of inner-city schools to real world applications of math and science through "hands on" learning, simulations and experiments in aviation and space related fields.	Authority for the program is Section 219 of Title 10. The program complies with Title VII of the Civil Rights Act of 1964 and DOD regulations issued thereunder; Executive Order 11246 and Department Labor regulations issued thereunder; Section 504 of the Rehabilitation Act of 1973 and DOD regulations issued thereunder; and The Age Discrimination Act of 1975.

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42 USCA s 2000e-16

42 U.S.C.A. § 2000e-16

This document has been amended. Use UPDATE.

See SCOPE for more information.

**UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER VI--EQUAL EMPLOYMENT OPPORTUNITIES**

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Current through P.L. 105-175, approved 5-11-98

§ 2000e-16. Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, and in the Government Printing Office, the General Accounting Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers, issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section

through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall--

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to--

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity

Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.. [FN1]

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

CREDIT(S)

1998 Electronic Update

(Pub.L. 88-352, Title VII, § 717, as added Pub.L. 92-261, § 11, Mar. 24, 1972, 86 Stat. 111, and amended 1978 Reorg. Plan No. 1, § 3, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub.L. 96-191, § 8(g), Feb. 15, 1980, 94 Stat. 34; Pub.L. 102-166, Title I, § 114, Nov. 21, 1991, 105 Stat. 1079; Pub.L. 104-1, Title II, § 201(c)(1), Jan. 23, 1995, 109 Stat. 8.)

[FN1] So in original.

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. House Report No. 92-238 and Conference Report No. 92-899, see 1972 U.S. Code Cong. and Adm. News, p. 2137.

1980 Acts. Senate Report No. 96-540, see 1980 U.S. Code Cong. and Adm. News, p. 50.

1991 Acts. House Report No. 102-40 (Parts I and II), Interpretative Memorandum, and Statement by President, see 1991 U.S. Code Cong. and Adm. News, p. 549.

1995 Acts. Related House No. 104-650 (Parts I and II) and Related Senate Report No. 104-397, see 1995 U.S. Code Cong. and Adm. News, p. 3

References in Text

Executive Order 11478, as amended, referred to in subsecs. (c) and (e), is set out as a note under section 2000e of this title.

"This Act", referred to in subsec. (e), means Pub.L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (section 2000a et seq.). For complete classification of this Act to the Code, see Short Title of 1964 Acts note set out under section 2000a of this title and Tables.

Amendments

1995 Amendments. Subsec. (a). Pub.L. 104-1, § 201(c)(1), inserted provisions relating to Government Printing Office and General Accounting Office and struck out provisions relating to legislative branch.

1991 Amendments. Subsec. (c). Pub.L. 102-166, § 114(1), increased time within which aggrieved employee or applicant may file civil action from within 30 days of receipt of notice of final action to within 90 days of receipt of such notice.



**DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600**

October 26, 1998

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

I received your fax of the draft text of the executive order proposed by DOJ, as well as your memorandum. Thank you.

We have looked at and discussed the comments in your memorandum. In response, here are our views and recommendations for proposed revisions to the draft text.

1. Coverage of Students at Service Academies

The cadets, air cadets and midshipmen at the Academies (United States Military Academy, United States Naval Academy, United States Air Force Academy) are members of the armed forces, as evidenced by the fact that they are appointed by the President (10 U.S.C. §§ 4341a, 6953, and 9341a) and subject to the Uniform Code of Military Justice (10 U.S.C. § 802(a)(2)), and would be covered by an exclusion that applies to the armed forces.

We will get copies of any applicable academy regulations for you. However, since the Academies are subordinate organizational elements of the Military Departments (United States Military Academy (10 U.S.C. Ch 403); United States Naval Academy (10 U.S.C. Ch 603); United States Air Force Academy (10 U.S.C. Ch 903)), they are covered by, and subject to, the overall Department of Defense and Military Department regulations on nondiscrimination and equal opportunity applicable to military members. For example, Section B, "Applicability," of Department of Defense Directive 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program," states that it applies to the Military Departments. As members of the armed forces, the cadets, air cadets, and midshipmen at the Military Academies are covered by this regulation and this Program. (In this context, the Air Force regulation sent to you does not cover discrimination complaints by military members, including air cadets. I will provide that regulation (Air Force Instruction 36-2706) to you as well.)

To clarify our position, DoD fully supports the President's initiative and the goals of the proposed executive order. However, it has always been our understanding that the President's initiative is intended to expand the scope of protection against discrimination based on sex, race, color and national origin to include civilian education programs and activities conducted by the Federal Government which are currently not covered by existing laws prohibiting such discrimination. Training and education programs conducted by this Department for military personnel, including training and education programs conducted by the Military Services, do not fall within this category.



In the context of military training and education programs, the issue is not the status of the civilian attendees, that is whether they are Federal employees, foreign nationals, or others. It is the nature and the purpose of military training and education, itself. Continued maintenance of the good order and discipline among the armed forces dictates that they continue to have the exclusive authority and responsibility, through the military command structure, to enforce prohibitions against discrimination in all aspects of the military environment, to include military training and education programs. You can see evidence of this focus in the emphasis placed on enforcement through the chain of command, contained in the Military Service regulations we sent to you. DoD believes that superimposing external structures on the armed forces and the chain of command, through the proposed executive order, is unnecessary and could significantly damage the military command structure and, thus, the ability of the armed forces to assure the nation's defense. In particular, we believe that an official outside the military chain of command (such as the Attorney General) should not establish enforcement procedures or remedies that must be adopted within the command structure.

However, because we support the goal of prohibiting discrimination based on race, sex, color, and national origin in all training and education programs conducted by DoD, including in military training and education programs, we would propose including in the executive order a provision that would require DoD to establish procedures to provide protections and a means of redress for civilians participating in military training and education programs who are not otherwise protected by existing laws. Coupled with the exclusion for military training and education programs, section 3-301 could be revised to read:

3-301. This order does not apply to members of the armed forces or to military training or education programs. However, the Department of Defense shall develop procedures to protect the rights of, and to provide redress to, civilian personnel not otherwise protected from discrimination based on race, sex, national origin, or color by existing Federal law, who participate in military training or education programs conducted by the Department of Defense.

Instead of the section 3-302 language we had proposed, we would propose adding the following definitions to section 2:

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

2-205. "Armed forces" includes, for purposes of this order, the Armed Forces of the United States, as well as the armed forces of a foreign government recognized by the United States or attached to an international organization.

This approach would both meet the goals of the proposed executive order and address DoD's concerns.

3. National Origin

We appreciate the opportunity to comment and provide input on this issue. Our primary concerns would be alleviated by the proposed changes above, since they address military training and education programs as a whole. However, we agree that the executive order should include the exclusion for programs based on national origin for national security or foreign policy reasons, as you have proposed. We also share your concerns that it may not be appropriate or practical to cover by executive order the decisions of entities, including foreign governments, other than Executive Branch agencies regarding their participation in covered programs. We would propose a slight variation to your amendment to section 3-306:

This order does not apply to (1) selections based on national origin of foreign nationals to participate in covered programs, if such programs concern primarily national security or foreign policy; or (2) selections or other decisions regarding participation in covered programs made by entities outside the Executive Branch.

4. Other

Finally, as an administrative matter, we suggest that the last sentence in section 1-101 be changed as follows:

The provisions of this Order shall apply to education programs and activities that are operated by the Department of Defense under 10 U.S.C. § 2164 and 20 U.S.C. §§ 921-932.

This change more accurately defines the activities in question and makes explicit that the order would apply to the Department's overseas and domestic school systems.

Again, thank you for the opportunity to give you our views on these matters. Please telephone (695-1078), fax (693-7616), or send e-mail (sullivan@osdgc.osd.mil), if I can be of further assistance.

DISCRIMINATION BASED ON HANDICAP

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REFERENCES

For the homeless, see 42 USCA § 290

ices Act, see 42 USCA § 10406.

USCA § 1577.

ock grants, see 42 USCA § 708.

s block grants, see 42 USCA § 300w-7.

0 USCA §§ 3041, 3042.

Insurance Association, see 20 USCA

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the Insta-Cite service

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the WESTLAW Electronic Research Guide, which follows the Explana-

1681. Sex

Prohibition against discrimination; exceptions

No person in the United States 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 activi-
ty receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this sec-
tion shall apply only to institutions of vocational education,
professional education, and graduate higher education, and to
public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions

in regard to admissions to educational institutions, this sec-
tion shall not apply (A) for one year from June 23, 1972, nor
for six years after June 23, 1972, in the case of an educational
institution which has begun the process of changing from being
an institution which admits only students of one sex to being an
institution which admits students of both sexes, but only if it is
carrying out a plan for such a change which is approved by the
Secretary of Education or (B) for seven years from the date an
educational institution begins the process of changing from
being an institution which admits only students of only one sex
to being an institution which admits students of both sexes, but
only if it is carrying out a plan for such a change which is
approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to an educational institution
which is controlled by a religious organization if the applica-
tion of this subsection would not be consistent with the reli-
gious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to—

(A) 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; or

(B) any program or activity of any 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;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably

**SUMMARY: DRAFT EXECUTIVE ORDER
ON EDUCATIONAL PROGRAMS
Nov. 2, 1998**

The purpose of the executive order is to extend the protections of Title IX and Title VI, which now apply to educational programs that receive federal funds, to educational programs conducted by the federal government itself. In general, this is a straightforward matter of simply applying the same standards to courses and other educational programs offered by federal agencies. In a few cases, special provisions are included in the draft, which are described below.

1. Members of the Armed Forces and Students at Military Academies

Members of the armed forces will be covered by DOD and service regulations that are comparable to Title IX and Title VI rather than the executive order. Students at military academies are treated as members of the armed forces.

2. Civilians and Federal Employees

In general, all educational programs offered by federal agencies, including DOD, are covered. However, courses primarily designed for members of the military will be covered by equivalent DOD regulations. In the few cases where these courses include civilians, DOD regulations will be revised to extend the same protections to these persons. Federal employees are protected under Title VII, which covers discrimination under all the circumstances included in Title IX and Title VI.

3. National Origin

As you know, Title VI bars discrimination based on race, color and national origin. In general, this bar is extended to all federal educational programs under the executive order. However, DOD and other agencies involved in national security 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 creates an exemption for these situations.

4. Decisions by Other Entities

We cannot reach the actions of entities other than federal agencies through an executive order. Thus, a private entity could theoretically discriminate in selecting persons to participate in a federal educational program. The draft order establishes a federal policy that an entity that violates state or federal law in selecting participants could not participate in a federal educational program.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 23 1998

Mr. Robert L. Weiner
Senior Counsel
Office of the Counsel
to the President
Room 128, OEOB
Washington, D.C. 20500

Dear Mr. Weiner:

The purpose of this letter is to transmit a draft of the Executive order expanding the prohibitions of discrimination on the basis of race, color, national origin, and sex to certain federally conducted education and training programs. In addition, I am seeking your input regarding several exemptions requested by various agencies. Also enclosed for your review are two charts. The first summarizes the types of programs that agencies identified as inappropriate for coverage under the proposed Executive order. The second chart is a compilation of the federally conducted program inventories received from 91 agencies. I will first bring your attention to changes we have made to the draft Executive order since our last meeting with your office, and will then discuss exemptions requested by agencies.

1. Contractors:

Based upon discussions at our last meeting and in order to simplify implementation, we have deleted all references to contractors in the Executive order.

2. Department of Defense (DOD) Exemptions:

We also discussed the scope of military exemptions at our last meeting. At that time, we proposed the following language to exempt all individuals covered by the Uniform Code of Military Justice, 10 U.S.C. Chapter 47:

Nothing in this order amends, supplements, or subtracts from an individual's protections and remedies under the Uniform Code of Military Justice, 10 U.S.C. Chapter 47.

We have since shared this language with the Office of the General Counsel at DOD. DOD feels that our language does not provide a broad enough exemption and has informally submitted the following:

The provisions of this order do not apply to members of the armed forces. For purposes of the order, the term "armed forces" includes the Armed Forces of the United States, as well as the armed forces of a foreign government recognized by the United States or an international organization.

For purposes of the order, the terms "Federally conducted education program" or "federally conducted civilian education program" exclude military training or education programs conducted by the Department of Defense for the primary purpose of training or educating members of the Armed Forces or to meet a statutory requirement to train Federal, State or local civilian law enforcement officials [pursuant to 10 U.S.C. Chapter 18].

According to DOD, this language would exclude the following types of military training and education programs from coverage:

Military Academies - all

Senior Service Schools - all

Command and General Staff College

National War College

Industrial College of the Armed Forces

Basic and Advanced Individual Training - all

Joint military exercises - all

Defense Mapping School [example of training of foreign government military personnel]

Service Judge Advocate General Schools - all

Training under 10 U.S.C. Ch. 18 - all (covers State and local law enforcement)

DOD's preferred exemption language encompasses virtually all DOD education and training programs except the DOD Dependents Schools and the DOD Domestic Dependent Elementary and Secondary Schools. As a result, civilians and foreign nationals participating in any DOD program designed for the purpose of

"training or educating members of the armed forces" would be excluded from coverage. Moreover, State and local law enforcement officials receiving training from DOD would also be excluded from coverage. Efforts to reach a compromise on the DOD language were unsuccessful. Therefore, our recommended language and DOD's language are included in the current draft Executive order on pages 4 and 5 as Option 1 and Option 2, respectively. Please advise as to which option you prefer.

3. Other Requested Exemptions:

In collecting the agency inventories of federally conducted programs, we asked the agencies to identify any impediments to applying the proposed Executive order to particular programs. A number of agencies identified particular programs or categories of programs for exclusion from coverage. The bases given for those requests fall into four general categories: foreign national participants; military participants; training involving national security, anti-terrorism, or military issues; and miscellaneous programs, such as volunteer activities and single-sex programs.

A. Foreign Nationals. First, and most frequently identified as appropriate for exemption from coverage under the Executive order, were programs involving participation by foreign nationals. While many of the programs identified are conducted by agencies in other countries (and therefore already are excluded), a significant number of the programs are conducted in the United States and include both foreign and U.S. participants. In many cases, the concern raised by the agency relates to the inability to participate in the selection of foreign participants. The Executive order as drafted would address this concern, however, since it contains a provision at 3-306 excluding the selection process when the decision regarding who may attend or participate in a training program is not made by the executive department or agency. On the other hand, the Executive order, as written, would cover foreign nationals once they are selected and participate in a federally conducted educational or training program in the United States.

It is important to note that some agencies with programs that provide training to foreign nationals did not request an exemption for their programs. To illustrate the impact of any decision exempting coverage for foreign nationals, Part C of Chart I (which summarizes requested exemptions) includes a list of programs providing training to foreign nationals, for which agencies did not request exemptions.

A few possible options for a "foreign national" exemption include:

Option (1): Provide coverage for all foreign nationals engaged in training in this country;

Option (2): Exclude all foreign nationals engaged in training in this country;

Option (3): Exclude only members of foreign armed forces who are participating in training in this country.

Option (4): Exclude members of a foreign government or foreign armed forces who are participating in any training in this country; or

Option (5): Exclude any foreign nationals who are participating in military, national security, or anti-terrorism training in this country.

We recommend adopting options 4 and 5. It is our belief that members of a foreign government or foreign armed forces (addressed in option 4) who wish to voice a complaint will likely pursue diplomatic channels, rather than filing an administrative complaint in this country. Further, this group is the most likely to participate in military, national security, or anti-terrorism training. However, in deference to the concerns raised by several agencies regarding these subject matters, we would also recommend excluding from coverage any foreign civilians participating in military, national security, or anti-terrorism training (option 5).

If this recommendation is adopted, any civilian foreign nationals participating in any other category of training, while in the United States, would be covered by the Executive order.

Please advise whether you prefer any of these options or another option.

B. Military Personnel. The second category of requests for exemptions made by other departments or agencies includes programs where military personnel are participants. Under either option for the DOD exemptions discussed above, this concern would be addressed.

C. National Security/ Anti-terrorism/ Military Programs. The third category of requests for exemptions includes programs that relate to national security or anti-terrorism, or are provided for the primary purpose of military training. Agency concerns include both the sensitive content and the fact that foreign nationals frequently participate. For example, the Department of Energy requested an exemption for a class of

programs that involves highly classified information, noting that "under law, all attendees must hold appropriate security and intelligence clearances and demonstrate an official 'need to know'." The Department of State also has raised general national security concerns regarding coverage of its Antiterrorism Assistance Program, which involves almost exclusive participation by foreign nationals. Note that if our recommendation to exclude any foreign nationals who participate in this category of programs is adopted (option 5 above), the State Department's concern would be addressed. As written, the Executive order does not exclude programs involving national security or anti-terrorism issues for either U.S. civilians or foreign nationals.

D. Miscellaneous. The final category of requests for exemptions include miscellaneous programs that are not specifically identified in the Executive order. For example, several agencies sponsor programs in local school systems wherein Federal employees volunteer as tutors or mentors. Such volunteer programs should not be covered by the Executive order because the employees are not acting in their official capacity. Other miscellaneous requests came from the Department of Education, which requested an allowance for single-sex schools as long as there are comparable schools or programs offered, and the Small Business Administration, which requested an exemption for a program that was established to benefit certain businesses owned by women and was designed specifically to overcome gender-based inequities. We recommend that the Executive order not list specific programs that should be exempt, since specific programs change from year to year. Instead, those specific programs can be listed in the subsequent enforcement guidance. If you agree, the Executive order could include a statement indicating that specific programs that are exempt will be identified in the enforcement guidance to be issued at a later date.

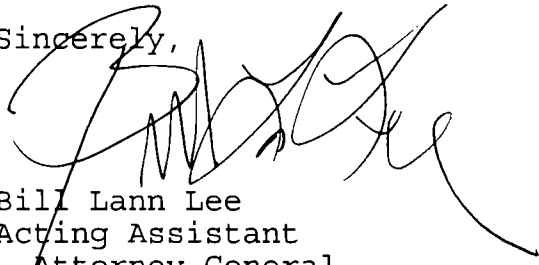
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The current draft has been reviewed by the Department of Justice's Office of Legal Counsel. After receiving your decisions on the DOD exemption language and the other requested exemptions as set forth above, as well as other comments you might have, we will revise the Executive order. Once finalized, the document will be forwarded to the Office of Management and Budget (OMB) for review and distribution to the affected departments and agencies for review and comment. If the final draft to OMB is transmitted by the Department of Justice, we will have to send it through full Departmental clearance to secure the Attorney General's signature. This process is typically time-consuming. To expedite the transmittal, we recommend that the Domestic Policy staff send the final draft forward to OMB. Please advise on this issue as well.

As a final note, you may recall that a decision was made early on that the Executive order need not contain all of the enforcement details. Rather, we would issue subsequent guidance to outline specifics such as the scope of programs covered, specific exemptions, examples of discriminatory conduct, and details of the administrative complaint process.

Please feel free to contact me at (202) 514-6715, or Anita Hodgkiss at (202) 616-2732, to discuss these matters. It may be helpful for us to have another meeting to discuss these issues.

Sincerely,



Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

Enclosures (3)

cc: Elena Kagan



Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 23 1998

Ms. Elena Kagan
Deputy Assistant to the President
for Domestic Policy
The White House
2nd Floor, West Wing
Washington, D.C. 20502

Dear Ms. Kagan:

The purpose of this letter is to transmit a draft of the Executive order expanding the prohibitions of discrimination on the basis of race, color, national origin, and sex to certain federally conducted education and training programs. In addition, I am seeking your input regarding several exemptions requested by various agencies. Also enclosed for your review are two charts. The first summarizes the types of programs that agencies identified as inappropriate for coverage under the proposed Executive order. The second chart is a compilation of the federally conducted program inventories received from 91 agencies. I will first bring your attention to changes we have made to the draft Executive order since our last meeting with your office, and will then discuss exemptions requested by agencies.

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Industrial College of the Armed Forces

Basic and Advanced Individual Training - all

Joint military exercises - all

Defense Mapping School [example of training of foreign government military personnel]

Service Judge Advocate General Schools - all

Training under 10 U.S.C. Ch. 18 - all (covers State and local law enforcement)

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"training or educating members of the armed forces" would be excluded from coverage. Moreover, State and local law enforcement officials receiving training from DOD would also be excluded from coverage. Efforts to reach a compromise on the DOD language were unsuccessful. Therefore, our recommended language and DOD's language are included in the current draft Executive order on pages 4 and 5 as Option 1 and Option 2, respectively. Please advise as to which option you prefer.

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A. Foreign Nationals. First, and most frequently identified as appropriate for exemption from coverage under the Executive order, were programs involving participation by foreign nationals. While many of the programs identified are conducted by agencies in other countries (and therefore already are excluded), a significant number of the programs are conducted in the United States and include both foreign and U.S. participants. In many cases, the concern raised by the agency relates to the inability to participate in the selection of foreign participants. The Executive order as drafted would address this concern, however, since it contains a provision at 3-306 excluding the selection process when the decision regarding who may attend or participate in a training program is not made by the executive department or agency. On the other hand, the Executive order, as written, would cover foreign nationals once they are selected and participate in a federally conducted educational or training program in the United States.

It is important to note that some agencies with programs that provide training to foreign nationals did not request an exemption for their programs. To illustrate the impact of any decision exempting coverage for foreign nationals, Part C of Chart I (which summarizes requested exemptions) includes a list of programs providing training to foreign nationals, for which agencies did not request exemptions.

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We recommend adopting options 4 and 5. It is our belief that members of a foreign government or foreign armed forces (addressed in option 4) who wish to voice a complaint will likely pursue diplomatic channels, rather than filing an administrative complaint in this country. Further, this group is the most likely to participate in military, national security, or anti-terrorism training. However, in deference to the concerns raised by several agencies regarding these subject matters, we would also recommend excluding from coverage any foreign civilians participating in military, national security, or anti-terrorism training (option 5).

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Please advise whether you prefer any of these options or another option.

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programs that involves highly classified information, noting that "under law, all attendees must hold appropriate security and intelligence clearances and demonstrate an official 'need to know'." The Department of State also has raised general national security concerns regarding coverage of its Antiterrorism Assistance Program, which involves almost exclusive participation by foreign nationals. Note that if our recommendation to exclude any foreign nationals who participate in this category of programs is adopted (option 5 above), the State Department's concern would be addressed. As written, the Executive order does not exclude programs involving national security or anti-terrorism issues for either U.S. civilians or foreign nationals.

D. Miscellaneous. The final category of requests for exemptions include miscellaneous programs that are not specifically identified in the Executive order. For example, several agencies sponsor programs in local school systems wherein Federal employees volunteer as tutors or mentors. Such volunteer programs should not be covered by the Executive order because the employees are not acting in their official capacity. Other miscellaneous requests came from the Department of Education, which requested an allowance for single-sex schools as long as there are comparable schools or programs offered, and the Small Business Administration, which requested an exemption for a program that was established to benefit certain businesses owned by women and was designed specifically to overcome gender-based inequities. We recommend that the Executive order not list specific programs that should be exempt, since specific programs change from year to year. Instead, those specific programs can be listed in the subsequent enforcement guidance. If you agree, the Executive order could include a statement indicating that specific programs that are exempt will be identified in the enforcement guidance to be issued at a later date.

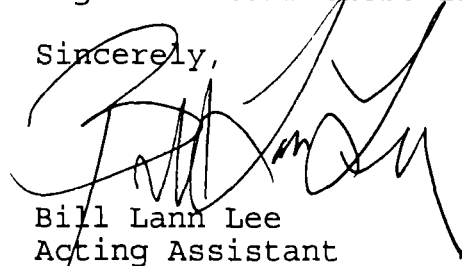
4. Next Steps

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As a final note, you may recall that a decision was made early on that the Executive order need not contain all of the enforcement details. Rather, we would issue subsequent guidance to outline specifics such as the scope of programs covered, specific exemptions, examples of discriminatory conduct, and details of the administrative complaint process.

Please feel free to contact me at (202) 514-6715, or Anita Hodgkiss at (202) 616-2732 to discuss these matters. It may be helpful for us to have another meeting to discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Lann Lee", is written over the typed name and title.

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

Enclosures (3)

cc: Robert L. Weiner

Draft Executive Order

Draft 4/1/98 [includes both options for DOD exemption]

Executive Order _____

Nondiscrimination on the Basis of Race, Color, National Origin,
and Sex in Federally Conducted Education and Training Programs

Numerous civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq., and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq., prohibit discrimination on the basis of race, color, national origin, and sex, in educational programs and activities that receive Federal financial assistance. In addition, other Federal laws, including Title VII of the Civil Rights Act of 1964, as amended (Title VII), prohibit discrimination against employees by employers on the basis of race, color, national origin, sex, and other grounds with respect to, among other things, opportunities for and participation in education and training programs. The Federal government has acted, and will continue to act, aggressively through litigation, policy guidance, outreach, and other means to expand and ensure equal opportunities for minorities and women that participate in State, local, and private education programs that receive Federal financial assistance.

In addition to providing Federal assistance to various education and training programs, the Federal government *itself conducts* numerous education and training programs. For example, the Department of Defense operates schools for grades kindergarten through high school to educate the dependents of

service members and others in the United States and around the world. The Department of Interior also operates schools, kindergarten through the undergraduate level, to educate Native Americans. Many agencies also provide training on Federal laws and regulations to a variety of audiences in a variety of settings: formal academies teach state and local personnel principles, laws, techniques, and strategies relating to effective law enforcement; seminars instruct members of select industries on Federal requirements for licensing and operation; programs in prisons train Federal inmates on trade skills; and members of the public are educated about the environment and natural resources.

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. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs -- including discrimination against people with disabilities (prohibited by the Rehabilitation Act of 1973, as amended), and discrimination based on race, color, national origin, sex, or religion against Federal employees (prohibited by Title VII). Through this Executive order, we are now expanding prohibitions of discrimination on the basis of race, color, national origin, and



sex to certain other Federally conducted education and training programs and activities.

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

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

1-101. No individual shall, on the basis of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in an education or training program or activity of any Executive department or agency conducted in the United States, the territories, the possessions, the Commonwealths of Puerto Rico and of the Mariana Islands, and as set forth in Subsection 1-102.

1-102. The provisions of this Order shall apply to education programs and activities that are operated by the Department of Defense Dependents Schools.

Section 2. Definitions.

2-201. "Program or activity" includes programs or activities conducted, operated, administered, or undertaken by an executive department or agency.

2-202. "Education and training programs" 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 delegated authority to determine the scope of education and training programs, in addition to those identified in subsection 2-202 and section 3, that are subject to and exempt from coverage by this order, respectively.

Section 3. Exemptions from coverage.

OPTION 1: DOJ Language for DOD Exemption:

3-301. Nothing in this order amends, supplements, or subtracts from an individual's protections and remedies under the Uniform Code of Military Justice, 10 U.S.C. Chapter 47.

OPTION 2: DOD Language for DOD Exemption (3-301 and 302):

3-301. The provisions of this order do not apply to members of the armed forces. For purposes of this order, "armed forces," includes the Armed Forces of the United States as well as the armed forces of a foreign government recognized by the United States or an international organization.



3-302. For purposes of this order, the terms "federally conducted education program" or "federally conducted civilian education program" exclude military training or education programs conducted by the Department of Defense for the primary purpose of training or educating members of the Armed Forces, or to meet a statutory requirement to train Federal, State, or local civilian law enforcement officials. 10 U.S.C. Ch.18

Other exemptions continued:

3-303. This Order does not apply to, affect, interfere, or modify in any way the operation of any otherwise lawful affirmative action plan.

3-304. 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 to individuals of a particular sex, race, color, or national origin, including Native American or Alaska native, different from his or hers.

3-305. This Order does not apply to programs and activities conducted by the Department of Interior, Bureau of Indian Affairs, that are in conformance with tribal customs or otherwise culturally appropriate. For example, classes that require separation of students on the basis of gender in order to conform to tribal customs that require such separation would not be in violation of this order.

3-306. This order does not apply to 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.

Section 4. Administrative enforcement.

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

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 implementing rules, regulations, policies, or guidance, such office shall refer a copy of the report and findings, and 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 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, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act (Civil Service Reform Act of 1978, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1111, see Tables for classification.)

Section 5. Implementation and Agency Responsibilities.

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

- a. the scope of education programs and activities subject to and exempt from coverage by this order, in addition to those identified in Sections 2 and 3;
- b. examples of discriminatory conduct;
- c. applicable legal principles;
- d. enforcement procedures with respect to complaints against employees;
- e. remedies;

f. requirements of an agency's annual report as set forth in Section 7;

g. and such other matters as deemed appropriate.

5-502. Within 60 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 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 60 days of issuance.

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

Section 6. *Annual Report.*

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 and nature of complaints filed with the agency and the disposition of such complaints. Such reports shall be submitted annually for the first three years after the effective date of this order, and submitted within 60 days of the end of the preceding year's activities.

Subsequently, reports shall be submitted every three years, within 90 days of the end of each 3 year period.

Section 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 No. 12250.

7-702. Nothing in this order amends, supplements, or subtracts from an employee's protections and remedies under Title VII of the Civil Rights Act of 1964, as amended.

Section 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.

SUMMARY OF FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAM EXEMPTION REQUESTS

The following chart summarizes the information provided to the Department of Justice by Federal departments, agencies, boards, and commissions (collectively, "agencies") on their federally conducted programs which, in their opinion, should be excluded from the proposed executive order governing federally conducted education and training programs. The chart is divided into three parts.

Part A lists programs that involve education and/or training provided to foreign nationals. This was the most common exemption requested. The chart provides the name of the agency, the name of the federally conducted program, the legal authority for the program, the approximate 1997 fiscal year funding, a brief description of the program, and the reason offered by the agency for the exemption. Whenever possible, the justification listed is a direct quotation from the inventory submitted by the agency so as not to mischaracterize the nature of the program or the reason the agency believes the program merits exclusion from the executive order. In the event an agency did not articulate a justification for the requested exemption, the class of programs the training belongs to is simply listed in the "Justification" column--e.g., training of foreign nationals.

Part B provides information on exemptions requested for various reasons other than the fact that the programs involve training of foreign nationals. Exemptions were requested for programs involving training for military purposes, training involving national security issues, training directed at agency employees that is also open to non-agency employees, programs specifically targeted to women, and training conducted by contractors on behalf of an agency. The same categories of information are provided for these programs as are provided in the first section.

There were instances where the concerned agency unequivocally requested an exemption for a particular program or a class of programs and gave reasons therefor. In a few instances, other agencies listed programs with similar characteristics, yet did not request an exemption for the programs. In order to provide the most complete information as to the number and scope of a particular class of programs, those agencies that did not request an exemption but have similar programs are listed in Part C.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
1	Department of Commerce	Special American Business Internship training program (SABIT)	Freedom Support Act; Foreign Assistance Act of 1961 §632(a) \$2.5M	SABIT Program provides training for managers and scientists from the Newly Independent States (NIS) of the former Soviet Union through reimbursable agreements to U.S. companies and directly through group training sessions. U.S. companies provide the training free of charge. Other costs are borne by the U.S. Government.	Congress places restrictions on FSA activities, including earmarked funds for certain countries or restrictions which might inhibit SABIT's ability to train individuals from specific NIS countries.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
2	DOJ/Criminal Division	International Criminal Investigative Training Assistance Program (ICITAP)	§ 534(b)(3) of the Foreign Assistance Act of 1961, as amended; Anti-Drug Abuse Act of 1988; International Narcotics Control Act of 1990; Urgent Assistance for Democracy in Panama Act of 1990; East European Democracy Act of 1989; Freedom Support Act of 1992. Funding is from Department of State and USAID; conducted by DOJ	ICITAP was created in 1986 by Congressional mandate to provide comprehensive development assistance programs to law enforcement agencies in emerging democracies. ICITAP maintains two types of projects: those run by in-country offices in Bolivia, Columbia, El Salvador, Guatemala, Haiti, Honduras, Panama, and Bosnia for major police reform and development efforts, and those which are Washington-based for smaller projects in Central and South America, the English-speaking Caribbean, Lebanon, Liberia, Rwanda and South Africa.	ICITAP training programs are aimed exclusively at law enforcement and judicial officials of other countries. The recipients of ICITAP training are selected by the host country. Given the complex cultural, ideological, religious, and traditional heritages of the places in which ICITAP works abroad, it would be extraordinarily difficult to comply in all cases with the goals of Title IX. We believe that ICITAP and programs like it should be excluded from the scope of the intended order.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
2	DOJ/ Criminal Division	Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) A. Former Soviet Union & Central/Eastern Europe	FY 97: \$5M Funding is from State Dept. Under Freedom Support Act and Support for Emerging Democracies (SEED)	Provides professional training, assistance & advice in investigative & prosecutorial laws & techniques required to combat organized crime, corruption & economic crimes. Using State Dept funds, provides financial support for the ABA's Central & E. European Law Initiative.	OPDAT programs are implemented overseas and recipients of the training are non-U.S. citizens who serve as prosecutorial & judicial personnel in other countries. Recipients are selected by host country, not OPDAT. Overseas programs not believed to be subject to provision of U.S. statutory & regulatory measures that seek to prohibit discrimination in federally conducted education and training programs.
	DOJ/ Criminal Division	B. Haiti	FY 97: \$ 1.7M	OPDAT assists the Haitian Ministry of Justice in the operation of a training facility for Haitian judicial personnel and prosecutors.	Training of foreign nationals.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
2	DOJ/ Criminal Division	C. Colombia	FY 97: \$ 1M	In Colombia OPDAT provides technical assistance and training for the Prosecutor General's Office.	Training of foreign nationals.
	DOJ/ Criminal Division	D. International Visitors to the United States	FY 97: \$0	OPDAT serves as the liaison between various private and public agencies that sponsor visits to the U.S. by foreign officials who are interested in examining the American legal system.	Training of foreign nationals.
3	Department of State	B. Antiterrorism Assistance	22 U.S.C. §2349aa, P.L. 98-151; P.L. 99-399 FY 97: \$ 16.5M	This program is designed to strengthen relationships between the U.S. and foreign governments by helping them to deter and manage terrorist threats.	Training of foreign nationals. Also, expressed National security concerns.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

3	Department of State	C. Office of Professional Development	Authority: Pub. L. 99-399; Memoranda of Agreement between Navy and State and the Marine Corps which specifies the Department's training responsibilities. FY 97: \$540K	The Office of Professional Development (DS Training Center) offers operational and technical training for DS and other DOS personnel; police authority from foreign countries; and other U.S. federal, state and municipal officials as required.	Training of foreign nationals. Training of military personnel.
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CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
4	Treasury/ Federal Law Enforcement Training Center	Conducts a multitude of training courses for foreign governments, both within and outside the U.S. The following are examples. A. Law and Democracy Programs PAATP Curriculum Conf: Russia and Poland participating B. Exports International Banking & Money Laundering: Poland, Russia, Romania C. ATF Internat'l ATF Internat'l Post Blast Investigations: Haiti, Colombia, Venezuela.	Authority: P.L. 104-208 Funding: not provided	Not provided	Training of foreign nationals.

**CHART I
PART A**

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
4	Department of Treasury/ US Secret Service	International Training- Currency Seminar Authentication of Genuine U.S. Currency and Detection of Counterfeit (various courses)	Authority: not provided FY 97: not provided State Department funded	Provides information to ascertain the authenticity of U.S. currency. Open to international law enforcement personnel and banking officials.	Training of foreign nationals.

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
5	Federal Mediation and Conciliation Service	FMCS International Program e.g., A. South African Mediation Service B. Hungarian Ministry of Labor Program C. Preventative Mediation Services	Authority: not provided FY 97: Not provided Authority: 1947 Taft Hartley Amendments to the National Labor Relations Act and 1978 Labor-Management Cooperation Act FY 97: \$ 240K	Many foreign training initiatives. Mediation training to South African mediators Mediation training to Hungarian mediators Custom designed training program. In FY 97 1300 international labor, management, and government representatives received training.	Training of foreign nationals Training of foreign nationals.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
6	Peace Corps	Volunteer Assignments	Authority: The Peace Corps Act, Pub. L. 87-293, 22 U.S.C. §2502 et seq. FY 97: Not provided	Peace Corps teaching assignments are in institutions operated by governments and other entities of the countries in which Volunteers serve and are under the supervision of host-country nationals.	No Peace Corps Volunteers serve in the United States. While the Peace Corps may provide technical assistance in planning Volunteer assignments, the curriculum for each course is the responsibility of local authorities. The Peace Corps does not control any substantive aspect of the assignment, and the instruction offered is in no sense a federally conducted educational activity. Thirty-seven percent of all Peace Corps Volunteers serving at the end of fiscal 1996 were serving in education programs in foreign countries.
7	U.S. Commodity Futures Trading Commission	Seminar: Futures Registration	Authority: not provided FY 97: not provided	Commission staff conducts an annual seminar about futures regulation for members of foreign government regulatory agencies and foreign exchanges.	Training of foreign nationals. FTC does not view this program as federally conducted.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
8	United States Information Agency	A. Study of the US Program	Authority: Pub. L. 87-256, as amended FY 97: \$2,860,131	Seeks to promote a better understanding of the U.S., its history, culture, & institutions among foreign educators worldwide whose professional focus & responsibilities involve teaching about the U.S. in universities abroad	All of our educational and cultural exchange programs involve foreign persons, foreign institutions, or foreign countries with many programs requiring the selections to be made overseas. Agency foresees impediments to the enforcement of Title IX to grantees selected overseas where their selection has not been subject to U.S. laws and regulations.
	United States Information Agency	B. Center for Cultural and Technical Interchange Between East and West, Inc.	Authority: Pub. L. 86-472 FY 97: \$ 7M	Promotes better relations & understanding between nations of Asia & the Pacific through cooperative study, training, and research.	Same as above.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
8	United States Information Agency	C. North-South Center	Authority: Pub. Law 101-513 FY 97: \$ 1.5M	Promotes better relations & serves as a catalyst for change among the U.S., Canada, & the nations of Latin America & the Caribbean by advancing knowledge & understanding.	Same as above.
	United States Information Agency	D. Fulbright Teacher Exchange Program	Authority: Pub. L. 87-256 FY 97: \$2,047,528	Sponsors reciprocal exchanges between American & foreign teachers & educ'l administrators in approx. 30 countries.	Participants are selected overseas.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
8	United States Information Agency	E. Summer Institutes for African Educators in English as a Second/Foreign Language	Authority: Pub. L. 87-256 FY 97: \$250K	The two institutes support upgrading of English language teaching at secondary and tertiary school levels throughout parts of Africa. Participants are teachers of English at the secondary or tertiary school level, teacher trainers at teacher training colleges, or supervisors of secondary level English language programs.	Training is in another country.

**CHART I
PART A
Requested Exemptions - Training of Foreign Nationals**

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
8	United States Information Agency	F. Junior Faculty Development Program	Authority: Freedom Support Act FY 97: \$750K	Provides opportunities for university faculty from Russia & Ukraine to develop their academic knowledge & teaching skills in specially designed programs at American universities.	Participants are selected overseas.

CHART I PART A

Requested Exemptions - Training of Foreign Nationals

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
8	United States Information Agency	G. Advisor Training (OSEAS Regional Linkage and Partnership Prog & US-Based Training Program)	Authority: Pub. L. 87-256 FY 97: \$27K	The programs develop the professional advising skills and knowledge about U.S. higher education of overseas educational advisors provide professional development opportunities for U.S. international educators at overseas advising centers.	Training of foreign nationals.
	United States Information Agency	H. International Media Training	Authority: Pub. L. 87-256, as amended, 22 U.S.C. §2451 <u>et seq.</u> FY 97: \$1,455,186	Training programs for foreign journalists to promote the development of a free and independent media throughout the world.	Training of foreign nationals.

**CHART I
PART B
Other Requested Exemptions**

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
1	Department of Defense	A. National Interagency Civil-Military Institute	Authority: 32 U.S.C. § 112 FY 97: \$3M	Providing training to military and civilian leaders on the interagency processes required for effective military support to civil authorities thus enhancing the interoperability of the military with Federal, State and Local counterdrug operations.	Requests an exemption for military training and education programs. "Military training and education programs are governed generally and, in some cases, specifically, by statute, in particular title 10 of the U.S. Code. The purposes of these programs are often conceptually and substantively different than those programs conducted for civilians, whether they are civilian Government employees or members of the public. Additionally, military training and education, particularly basic training, advanced individual training, advanced skills training, officer candidate training, and the senior service schools, are intended to teach and enhance skills which those entering the military do not possess, e.g., military discipline, military combat and combat support, and military command."

**CHART I
PART B
Other Requested Exemptions**

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
	Department of Defense	B. Fire Fighting and Damage Control	Authority: 32 U.S.C. § 112 FY 97: \$ 103K	This program is for merchant mariners who are going to sea, and covers: NAVOSH; shipboard firefighting; damage control; chemical, biological, and radiological defense; helo fire fighting; and other assorted maritime/government required courses.	Military training (see above)
	Department of Defense	C. Senior Service Schools (SSS)	Authority: 32 U.S.C. § 112 FY 97: not provided	SSS nominations are senior managers who have potential and desire for the Senior Executive Service. These military programs emphasize military strategy.	Military training (see above)

**CHART I
PART B
Other Requested Exemptions**

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
	Department of Defense	D. DODSI Interagency Training Center	Authority: Director CIA Decision, 3/18/68; Nat'l Security Directive 47 FY 97: \$1.4 M	Provides classroom training in technical surveillance, countermeasures and supporting subjects. Primary concern is technical security protection of U.S. government information. Open to Federal employees and Federal contractors identified by the contracting Federal agency.	

**CHART I
PART B
Other Requested Exemptions**

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
	Department of Defense	E. Long Term Full Time training	Authority: not provided FY 97: not provided	LTFT graduate level education to maintain the technical expertise required by the unique function of the Defense Mapping Agency. The Agency selects 25 employees through several levels of competition to attend Photogrammetry, GIS, Orbital Mechanics, and computer science disciplines. The program is open to all DMA civilian employees.	Specifically requests exemption for internal DOD education and training programs directed at DOD civilian employees, which also may be open to some civilian employees of other agencies. "We are concerned that, if the approach envisaged by the July 14 letter were adopted, organizations of the Federal Government, including the Department of Defense Components, would close their education and training program to civilian employees of sister agencies. This would deny all employees involved, both Defense and non-Defense personnel, the benefits and richness of experience that such joint training can provide. It also may force agencies which currently rely on these training and education programs to expend additional resources either to establish training programs of their own or to contract for training."

CHART I PART B Other Requested Exemptions					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
	Dept of Defense	G. Dept. of Defense Security Institute	Authority: not provided FY 97: \$4.6M	Program provides classroom, on-site , and independent study course training in major security programs.	Internal training (see above)

**CHART I
PART B
Other Requested Exemptions**

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
2	Department of Energy	Training Involving national security; Requests exemption for a class of programs e.g., Nuclear Nonproliferation Training Seminar (NNS)	Authority: not provided FY 97: not provided Authority: E.O. 12333; DOE Order 151.1; Presidential Decision Directive 39 FY 97: \$410K	Trainees include employees of DOE, other Federal agencies, contractors, congressional staff, National Laboratories, non-profit and private organizations, and foreign governments. NNS provides an introduction to nuclear nonproliferation policy issues. NNS is open to Federal and DOE National Laboratory employees. Occasionally, visitors from foreign governments are permitted to attend the first two days of the workshop.	"We also note that some of the training conducted by DOE is required for reasons of national security. Some of the courses contain highly classified information. Under law, all attendees must hold appropriate security and intelligence clearances and demonstrate an official "need-to-know. In accepting nominees to attend these courses, DOE must rely on the equal opportunity and nondiscriminatory policies and practices of the attendees's employers. In view of the rigid requirements for admissions to such courses and the national security interest involved, DOE submits that such training programs be excluded from coverage under the proposed executive order.

CHART I PART B Other Requested Exemptions					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
	Department of Energy cont'd	e.g., Emergency Management System Training	Authority: not provided FY 97: not provided	Program to train emergency management community, improving emergency planning, preparedness, and response capabilities within DOE at M&O contractor sites, with other Federal agencies, and tribal, State, local and industry organizations.	Same as above.

CHART I PART B Other Requested Exemptions					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
3	General Services Administration	Judicial Legal Intern Program	Authority: 5 U.S.C. §3111 FY 97: not provided	This program is offered by the General Services Administration Board of Contract Appeals. The program involves the use of volunteer law students who are not considered agency employees. The law students receive academic credit from their schools in exchange for legal intern activities which assist Board judges.	Not provided.

**CHART I
PART B
Other Requested Exemptions**

#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
4	Small Business Administration	Women's Business Owner Demonstration Program	Authority: 15 U.S.C. § 656 FY 97: \$4M	This program provides long-term training, counseling, networking and mentoring, and funds private sector, non-profit organizations with a three-year declining Federal grant that must be matched by Federal contributions.	This program was established to benefit certain businesses owned by women. Strict application of Title IX may have the undesirable effect of nullifying this important eligibility requirement. The proposed Executive order should exempt such programs which are specifically designed to overcome gender-based inequities.

CHART I PART C Similar Program/No Exemption Requested					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
1	Department of Energy	Idaho National Engineering and Environmental Laboratory (INEEL) Research Exchange Program	Energy Reorganization Act of 1974, §2(a) and §103(10); DOE Organization Act of 1977, Pub. L. No. 95-91, §102; Executive Orders 12876, 12900, 13021 FY 97: not provided	Provides for inclusion of university participants from minority and non-minority institutions in existing INEEL projects. Participants are from 97 universities, 40 states, and 3 foreign countries.	Training of foreign nationals.
	Department of Energy	INEEL Employee Education Program	Authority: M&O Contract FY 97: not provided	Obligated through INEEL subcontracts with two Idaho universities to provide the mission-related academic courses, primarily at the graduate level.	Training of foreign nationals.

CHART I PART C Similar Program/No Exemption Requested					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
2	DOJ/ Immigration	Carrier Consultant Program	Illegal Immigration Reform and Immigration Responsibility Act of 1996 FY 97: \$2M	Provides basic and advanced training to international airlines that service the U.S. to identify fraudulent documents, smuggler operations, and other related illegal activities as well as changes in U.S. immigration laws and regulations.	Training of foreign nationals

CHART I PART C Similar Program/No Exemption Requested					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
3	DOJ/FBI	International Training	Freedom Support Act, support for Eastern European democracy legislation and world-wide funding agreements \$380K	Training at the FBI Academy, Quantico, International Law Enforcement Academy in Budapest, other regional sites. Liaison successes for the FBI and increases the effectiveness and efficiency of international police services to make them better partners with the FBI on operational matters.	Training of foreign nationals in U.S. and overseas.

CHART I PART C Similar Program/No Exemption Requested					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
4	DOT/Federal Aviation Admin.	A. Antiterrorism Training and Assistance Program	International Security and Development Cooperation Act of 1985, PL 99-83 FY 97: \$ 273,369	Training in principles and concepts of Airport Security Management within the unique environment of an international airport.	Training of foreign nationals
		B. Civil Aviation Security International Course	Authority: None cited FY 97: \$ 67,275	Training for foreign officials responsible for implementing aviation security programs and procedures in their country.	Training of foreign nationals

CHART I PART C Similar Program/No Exemption Requested					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
5	Federal Trade Commission	International Technical Assistance Program	Authority: 22 U.S.C. §§239(b), 2295b, 5812, 5931; Inter-Agency Agreement with the U.S. Agency for International Development. FY 97: \$1,007,371	Training designed to assist the governments of Central and Eastern Europe, Latin America and the Caribbean in developing antitrust and consumer protection legislation. Provided in conjunction with the Justice Department's Antitrust Division.	Participants are employees of foreign governments
6	General Services Admin.	Trail Boss Program	Authority: E.O. 13011, dated 7/16/97 FY 97: \$295,500	Trains senior Government professionals to acquire and implement major Information Technology systems.	Training of foreign nationals. Open to all Federal Agencies, international government employees, and State and local government employees.

CHART I PART C Similar Program/No Exemption Requested					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
7	Inter-American Foundation	A. Field Research Fellowship Program at the Doctoral-Level for Caribbean, Latin American and U.S. Citizens	Authority: Agency directive FY 97: \$205,520	Supports dissertation field research in Latin American and Caribbean countries on IAF development strategies. Seventeen Fellows; enrolled doctoral students at U.S. universities.	Training of foreign nationals.
	Inter-American Foundation	B. Field Research Fellowship Program at the Master's Level for Caribbean, Latin American and U.S. Citizens	Authority: Agency directive FY 97: \$14,620	Supports Master's-level field research in Latin American and Caribbean countries on IAF development strategies.	Training foreign nationals
	Inter-American Foundation	C. U.S. Graduate Study Fellowship Program for Caribbean and Latin American Citizens Only	Authority: Agency directive FY 97: \$566,740	Supports graduate student at U.S. universities on IAF development strategies. Seventeen Fellows; enrolled graduate students at U.S. universities.	Training foreign nationals

CHART I PART C Similar Program/No Exemption Requested					
#	Agency	Federally Conducted Program	Authority/ FY 97	Description	Justification for Exemption
8	Securities and Exchange Commission	International Enforcement and Market Oversight Institute	Authority: 5 U.S.C. §3109; Agency Service Agreement with USAID FY 97: not provided	Comprehensive one-week training program covering securities investigative, enforcement and market surveillance practices and techniques.	During FY 1997, the Enforcement Institute was attended by 103 delegates from securities regulatory organizations from both developed and emerging markets throughout the world. If the delegates' participation is USAID-funded, USAID requires that the genders of the delegates be reported to USAID.
	Securities and Exchange Commission	Variety of other programs presented in the U.S. and overseas for capital markets participants from countries for which SEC and USAID technical assistance funding.	Authority: not provided FY 97: not provided	Various programs	Programs are delivered to capital markets officials from foreign countries.

Chart II: Federally
Conducted Programs

CHART II -- SUMMARY OF FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAM INVENTORIES

The following is a summary of information provided to the Department of Justice by Federal departments, agencies, boards, and commissions in response to our request for an inventory of their Federally conducted education and training programs. The summary is divided into two sections.

The first section includes two charts, one for the Cabinet departments and the second for agencies, boards, and commissions. The charts indicate the general types of programs conducted by each entity. For the Cabinet departments, the program categories are: Federally operated schools; student and youth educational programs; specialized training; and programs for the general public. For agencies, boards, and commissions, the program categories are the same except the "Federally operated schools" category is omitted since none of these entities operate such schools. In addition, the chart for the agencies, boards, and commissions includes a category to identify entities reporting that they only conduct education or training programs for Federal employees.

The second section of this summary provides a brief description of the Federally conducted programs and activities of each entity, first for Cabinet departments and then for agencies, boards, and commissions. Because of the complexities involved in this survey, and the failure of many agencies to provide complete and accurate information, the data set forth in this section are not complete and may include a few programs that more properly should be characterized as Federal financial assistance rather than as a Federally conducted program.

There are three Cabinet departments that operate schools. The Department of Defense operates school systems for military dependents both in the United States and abroad. The Department of the Interior's Bureau of Indian Affairs operates K-12 tribal schools and two Native American colleges. In addition, the Department of Agriculture operates a graduate school that offers a variety of classes to the public.

Student and youth educational programs can involve a diverse set of activities, including scholarships, fellowships, and internships, activities in schools and at the Federal facility, development and dissemination of instructional materials, teacher training, and summer camps.

Specialized training typically is provided to state and local government employees, and to persons who work in, or otherwise are involved in, the regulated industries. Training also may be provided to foreign nationals, in the United States and/or abroad. Training may be provided at a training institute established by the Federal entity, or through seminars, workshops, classes, or the distribution of instructional materials.

Educational activities for the general public may take place at a Federal facility or through the distribution of publications or via the Internet. Educational programs conducted by the Department of the Interior's Park Service at national parks and other sites is perhaps the largest Federal educational program directed to the general public.

CHART II. Summary of Federally Conducted Programs and Activities**A. *Cabinet Agencies***

Department	Federally Operated School	Student and Youth Educational Programs	Specialized Training	Programs for the General Public
Agriculture	x	x	x	x
Commerce		x	x	
Defense	x	x	x	
Education		x		x
Energy		x	x	x
EPA		x	x	x
HHS		x	x	x
HUD			x	
Interior	x	x	x	x
Justice		x	x	x
Labor		x	x	
State		x	x	
Transportation		x	x	
Treasury		x	x	
Veterans		x	x	

CHART II. Summary of Federally Conducted Programs and Activities***B. Agencies, Boards, and Commissions***

Agency	Student and Youth Educational Programs	Specialized Training	Programs for the General Public	No Covered Programs
Advisory Commission on Intergovernmental Relations				x
Advisory Council on Historic Preservation		x	x	
African Development Foundation				x
Agency for International Development		x		
American Battle Monuments Commission				x
Appalachian Regional Commission	x			
Architectural and Transportation Barriers Compliance Board		x		
Arms Control and Disarmament Agency	x			
Assassination Records Review Board				x
Central Intelligence Agency	x			
Commission on Civil Rights	x		x	
Commission on Fine Arts				x
Commodity Futures Trading Commission		x	x	

Agency	Student and Youth Educational Programs	Specialized Training	Programs for the General Public	No Covered Programs
Consumer Product Safety Commission	x			
Corporation for National and Community Service	x	x		
Defense Nuclear Facilities Safety Board	x			
Equal Employment Opportunity Commission	x	x	x	
Export-Import Bank		x		
Farm Credit Administration				x
Federal Communications Commission				x
Federal Deposit Insurance Corporation		x		
Federal Election Commission		x		
Federal Emergency Management Agency		x		
Federal Housing Finance Board				x
Federal Labor Relations Authority		x		
Federal Maritime Commission				x
Federal Mediation and Conciliation Service		x		
Federal Mine Safety and Health Review Commission				x
Federal Retirement Thrift Investment Board				x

Agency	Student and Youth Educational Programs	Specialized Training	Programs for the General Public	No Covered Programs
Federal Trade Commission		x		
General Services Administration	x	x		
Holocaust Memorial Museum	x		x	
Institute of Museum and Library Sciences				x
Inter-American Foundation	x			
International Trade Commission		x		
Merit Systems Protection Board		x		
National Aeronautics and Space Administration	x			
National Archives and Records Administration		x		
National Capital Planning Commission				x
National Commission on Libraries and Information Science				x
National Council on Disability		x		
National Credit Union Administration	x	x		
National Endowment for the Arts	x	x		
National Endowment for the Humanities	x			
National Labor Relations Board	x	x		

Agency	Student and Youth Educational Programs	Specialized Training	Programs for the General Public	No Covered Programs
National Mediation Board	x	x		
National Science Foundation	x			
National Transportation Safety Board				x
Nuclear Regulatory Commission		x		
Occupational Safety and Health Review Commission				x
Office of Government Ethics				x
Office of Personnel Management		x		
Office of the Special Counsel				x
Overseas Private Investment Corporation	x			
Panama Canal Commission	x	x		
Peace Corps	x	x	x	
Pension Benefit Guaranty Corporation				x
Postal Rate Commission				x
Postal Service	x	x		
Railroad Retirement Board				x
Securities and Exchange Commission	x	x		
Selective Service Commission				x
Small Business Administration		x		

Agency	Student and Youth Educational Programs	Specialized Training	Programs for the General Public	No Covered Programs
Social Security Administration	x			
Tennessee Valley Authority	x		x	
United States Enrichment Corporation				x
United States Information Agency		x		
United States Trade and Development Agency	x			

The following agencies advised in their response that they do not believe that they are subject to the President's Memorandum of June 17, 1997: the Delaware River Basin Commission; the Federal Home Loan Mortgage Corporation (Freddie Mac); the Federal National Mortgage Association (Fannie Mae); the Federal Reserve Board; the Legal Services Corporation; the Neighborhood Reinvestment Corporation; the Smithsonian Institution; and the Susquehanna River Basin Commission.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Agriculture

1. *Agricultural Marketing Service*

The Service provides training to students on food distribution issues and has a fellowship program.

2. *Agricultural Research Service*

The Service provides scholarships at historically black land grant colleges.

3. *Animal and Plant Health Inspection Service*

The Service provides scholarships at historically black land grant colleges; provides other scholarships and fellowships; provides training to veterinarians, veterinary students, scientists, state employees, and others; and has an internet education program, a high school mentoring program, and career day programs.

4. *Cooperative State Research, Education and Extension Service*

The Service provides scholarships at historically black land grant colleges and conducts a K-12 classroom program.

5. *Departmental Administration*

The Administration provides scholarships at historically black land grant colleges.

6. *Economic Research Service*

The Service provides scholarships at historically black land grant colleges and has a volunteer student intern program.

7. *Farm Service Agency*

The Agency provides scholarships at historically black land grant colleges, conducts a conference for Future Farmers of America, and conducts outreach to college students and youth.

8. *Food and Consumer Service*

The Service provides scholarships at historically black land grant colleges.

9. *Food Safety and Inspection Service*

The Service provides scholarships at historically black land grant colleges.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Agriculture (cont.)

10. Forest Service

The Service provides scholarships at historically black land grant colleges, fellowships, and a wide range of educational services to teachers and students in the classroom and at the Department. The Service also conducts specialized training persons in the forest industry and conducts Job Corps training.

11. Graduate School

The Department conducts a graduate school that provides training to state and local government officials, and offers a variety of courses to the general public (foreign nationals also participate).

12. Grain Inspection, Packers and Stockyards Administration

The Administration provides scholarships at historically black land grant colleges and other colleges, and has a student outreach program.

13. National Agricultural Statistics Service

The Service provides scholarships at historically black land grant colleges and has a scholarship program for Native American college students. It also conducts an outreach program for high school students.

14. Natural Resources Conservation Service

The Service provides scholarships at historically black land grant colleges and provides fellowships.

15. Rural Development

Rural Development provides scholarships at historically black land grant colleges.

Department of Commerce

1. International Trade Administration

ITA provides training to foreign nationals from the Newly Independent States of the former Soviet Union.

2. National Oceanic and Atmospheric Administration

NOAA makes individual school presentations and provides training on pollution and resource management issues.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Commerce (cont.)

3. National Telecommunications and Information Administration

The Administration provides training to government contractors and foreign nationals on radio frequency spectrum management.

4. Office of the General Counsel

The GC's Office provides training to trade attorneys.

Department of Defense

Note: The Department of Defense did not provide information on programs whose "intent [is] . . . to train DoD military personnel" although the Department advises that non-Department personnel are admitted on a space-available basis. The Department of the Air Force reported that it has not covered programs. A few Department components were not included in the report and we are told that their responses are forthcoming.

1. Defense Intelligence Agency

The DIA provides scholarships and has an adopt-a-school program.

2. Defense Investigative Service

The DIS provides training on security issues to Federal contractors, and foreign government and international organization personnel at the Department of Defense Security Institute.

3. Defense Research and Engineering

Defense Research and Engineering provides scholarships, and disseminates information on science and math experiments.

4. Department of Defense Education Activity

The Department operates two K-12 school systems for civilian dependents of military personnel (one school system is in the United States, Puerto Rico, Guam, and the Panama Canal Zone, and the other is overseas).

The Department operates eighteen "Science, Mathematics, and Engineering Targeted Education Programs" to promote science, mathematics and engineering skills and careers at public schools and Historically Black Colleges.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Defense (cont.)

5. Department of the Army

The Army conducts a Junior ROTC program.

6. Department of the Navy

The Navy provides scholarships and fellowships, conducts a high school apprenticeship program, has internships, provides mentoring in high schools and grade schools, provides students with a "telepresence" at global scientific exploration sites, and conducts various student outreach activities. The Navy distributes educational booklets and has a web site. It also provides training in firefighting to merchant mariners.

7. National Guard Bureau

The National Guard Bureau Counterdrug Directorate instructs state, local and municipal law enforcement officers to investigate and prosecute narcotics cases and how to avail their agencies of military support resources. The NGBCD also trains law enforcement agencies and Department of Defense personnel in counterdrug activities. The NGBCD provides training to military and civilian leaders on the interagency processes required for effective military support of civil authorities.

The NGBCD provides military based training, supervised work experience in community services, and conservation projects to civilian youth who drop out of secondary school. The NGBCD conducts a program for youths designed to expose classes and teachers of inner-city schools to real world applications of math and science.

8. National Security Agency

NSA provides scholarships, conducts summer programs for students on math, science, and technology, provides training to math and science teachers, sponsors a nationwide math contest, has an adopt-a-school program, and conducts other mentoring activities.

9. Washington Headquarters Services

Headquarters Services awards scholarships and has a volunteer student intern program.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Education

The Education Department conducts research on educational issues, awards fellowships, provides reference services through the National Library of Education, distributes tutoring materials and other publications, facilitates distribution of information by schools on "best practices," operates information clearinghouses, provides educational services to certain private school students through contractors, provides financial support for BIA schools, sponsors voluntary national tests, conducts satellite town meetings for the general public, contributes to a high scholar program that brings high school scholars to Washington, D.C. for educational activities, conducts an education reform program for teachers, and operates a web site for teachers.

Department of Energy

1. Federal Energy Technology Center

The Center provides internships, conducts student mentoring, provides classroom demonstrations and demonstrations for students at FETC, and conducts teacher training.

2. Field Offices

The Field Offices provide scholarships and fellowships, student programs, teacher training, a speakers bureau, and specialized training.

3. Office of Arms Control and Nonproliferation

The Office conducts training for DOE contractors, and some state and local government employees and foreign nationals.

4. Office of Civilian Radioactive Waste Management

The Office offers scholarships, conducts teacher training, conducts workshops for youth and student field trips, and provides contractor training.

5. Office of Defense Programs

The Office conducts a pre-college enrichment program, and conducts science education for students, local government employees, and the general public.

6. Office of Emergency Management

The Office provides training to state and local officials, and the public.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Energy (cont.)

7. *Office of Energy Research*

The Office has internships and fellowships, conducts a math and science competition for high school students, distributes teaching materials, and provides training to high school and middle school students on supercomputers.

8. *Office of Nonproliferation and National Security*

The Office sponsors a lecture series.

9. *Office of Nuclear Energy, Science and Technology*

The Office offers scholarships and fellowships.

10. *Safeguards and Security Central Training Academy*

The Academy provides security training to Federal contractors, state and local officials, and foreign nationals.

Environmental Protection Agency

The EPA provides training to state employees regarding applications for States to conduct hazardous waste programs, to state and local government employees, tribal employees, and others on a variety of environmental issues and regulatory requirements and on enforcement and problem solving skills, and to volunteer monitors for estuaries and coastal areas. The EPA conducts public outreach efforts through meetings, a speakers bureau, information on the Internet, and publications. The EPA provides fellowships and scholarships, has student interns, provides mentoring in schools, conducts teacher training, and disseminates instructional materials.

Department of Health and Human Services

1. *Administration for Children and Families*

The Administration conducts a Head Start Fellows Program.

2. *Agency for Health Care Policy and Research*

The Agency provides fellowships.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Health and Human Services (cont.)

3. Food and Drug Administration

The FDA provides internships and has an adopt-a-school program. The FDA provides training to state and local government employees and various regulated industries through satellite broadcasts, videotapes, classes, and speakers at workshops, professional association meetings, and conferences. The FDA also provides information to the general public about food safety through videotapes.

4. Health Care Financing Administration

The HCFA provides scholarships and conducts a public Medicare mammography campaign.

5. National Institutes of Health

NIH provides scholarships and fellowships.

6. Program Support Center

The Center provides human resource development courses that are open to state and local government employees.

7. Public Health Service

The Public Health Service conducts a college education program on women's health, has fellowships, and provides materials to schools on the President's Challenge Physical Fitness Program.

Department of Housing and Urban Development

HUD provides training on housing issues to state and local government employees, non-profit organizations, and community groups at the HUD Training Academy.

Department of the Interior

1. Bureau of Indian Affairs

BIA operates 79 K-12 schools and two colleges; conducts a family literacy program; provides scholarships; and trains tribal law enforcement and detention officers at its Indian Police Academy.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of the Interior (Cont.)

2. Bureau of Land Management

BLM assigns one employee to work with various tribal colleges and universities; has an internship program, a student conservation association, a summer camp for high school students, and a small program for elementary school children; trains educators; and provides career counseling.

3. Fish and Wildlife Service

The Fish and Wildlife service engages in outreach to the general public through tours, demonstrations, and other activities; conducts educational work on behalf of K-12 students, college and graduate students, and other youth through classes, workshops, camps, field trips, an Internet program, teacher training, and the dissemination of curriculum materials; and conducts specialized training, including training on wildlife issues for state and foreign governments, tribal agencies, and private organizations, a polar bear safety course for the oil industry, and a wetlands course for realtors.

4. Geological Survey

The Geological Survey provides educational information to the general public through a lecture program and dissemination of informational materials; conducts educational work on behalf of students and other youth through graduate research grants and undergraduate scholarships, a summer science camp and a summer symposium, teacher training, dissemination of curriculum and other materials, classes, visiting lecturers in classrooms, and internships; and provides training to state and local government employees and foreign nationals.

5. Minerals Management Service

The Minerals Management Service has a small number of programs, including targeted training, internships, and a school volunteer program.

6. Office of Surface Mining

The Office provides training to state government and tribal personnel.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Interior (cont.)

7. Park Service

The Park Service conducts education programs for park visitors; disseminates instructional materials to educational institutions and sponsors classroom study in parks; provides training to park volunteers and persons interested in historic preservation; and provides educational scholarships for children of Park Service employees.

Department of Justice

1. Antitrust Division

The Antitrust Division provides training on antitrust enforcement.

2. Bureau of Prisons

Education and training classes are conducted for Federal prisoners.

3. Civil Rights Division

The Civil Rights Division provides training to state and local law enforcement personnel on police misconduct issues, and the enforcement of Federal criminal civil rights statutes and the Americans with Disabilities Act (ADA); makes presentations to community groups about criminal civil rights prosecutions; provides training at housing conferences to fair housing agencies and to the housing and lending industry; provides training to state officials about the requirements of Federal laws that prohibit discrimination by Federal aid recipients; makes information available to the general public about the ADA through a toll-free information phone line and publications; and conducts a speakers bureau that provides ADA training at conferences and training sessions.

4. Criminal Division

The Criminal Division provides training to law enforcement agencies, prosecutors, and judicial officials of foreign countries both abroad and in the United States. The Division provides instructional materials to state and local officials on asset forfeiture requirements.

5. Drug Enforcement Administration

DEA provides training to state and local law enforcement officers.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Justice (cont.)

6. *Executive Office for United States Attorneys*

The Executive provides training to state and local prosecutors and law enforcement personnel.

7. *Federal Bureau of Investigation*

The FBI provides training to state and local law enforcement officers, and foreign law enforcement officers, including training at the FBI Academy at Quantico, Virginia.

8. *Immigration and Naturalization Service*

The INS provides training to state and local government personnel, and to employers, and provides information to the general public through a web home page.

9. *INTERPOL - U.S. National Central Bureau*

The Bureau has an internship program and provides training to state and local law enforcement officers.

10. *Marshals Service*

The Marshals Service conducts training for state and local law enforcement officers and other state and local government personnel.

11. *National Institute of Corrections*

NIC conducts training for and disseminates information to state and local correctional officials.

12. *Office of Attorney Personnel Management*

The Department conducts a volunteer student internship program.

13. *Office of Community Oriented Policing Services*

The COPS Office offers Police Corps scholarships.

14. *Office of Information and Privacy*

The Office provides FOIA training to non-Federal entities.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Justice (cont.)

15. Office of Justice Programs

OJP provides limited training to contractors, state government employees, and researchers on utilization of Bureau of Justice Statistics data, and provides training to state and local law enforcement personnel on police misconduct issues and the enforcement of the Americans with Disabilities Act.

Department of Labor

The Labor Department provides training to state government employees and others on occupational safety and health (at the OSHA Training Institute and the National Mine Health and Safety Academy), labor statistics, equal employment in contracting, ERISA, and veterans employment issues (including training at the National Veterans' Training Institute). The Department's Office of the Solicitor also conducts a law student intern program and the Bureau of Labor Statistics conducts a fellowship program.

Department of State

The State Department conducts training at its Foreign Service Institute for Foreign Service family members and other non-Federal employees, has fellowships, provides security and anti-terrorism training to state and local law enforcement officers and foreign nationals, conducts a student internship program, and conducts periodic seminars for small business firms.

Department of Transportation

1. Coast Guard

The Coast Guard conducts a high school ROTC program; provides scholarships; conducts a general education program in partnership with schools; and provides training in boating safety.

2. Federal Aviation Authority

The FAA provides training to pilots, flight controllers, security workers, aviation medical examiners, airport operations inspectors and manufacturing inspectors, airport equipment maintenance workers, and aviation instructors. Persons trained include some foreign nationals.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of Transportation (cont.)

3. Federal Highway Administration

The FHA conducts student internship programs, a fellowship program for college students and faculty, an outreach program for high school students, and a summer classroom program for high school students. The FHA also provides training on state-of-the-art technology to all segments of the transportation community and provides training on discrimination issues to state and local agencies.

4. Federal Railroad Administration

The FRA has a summer internship program for college students.

5. Federal Transit Administration

The FTA provides a variety of training, including training on safety in different modes of transportation at its Transportation Safety Institute, training on various issues at its National Transit Institute, a child safety conference, training on rural transportation issues, and seminars on transportation improvement issues. The FTA also conducts internship programs and an education program for grades K-8.

6. Maritime Administration

The Maritime Administration provides training in firefighting and national emergency operations.

7. National Highway Traffic Safety Administration

The NHTSA provides traffic safety training to the States.

8. Office of the Secretary

The Office of the Secretary has cooperative agreements with minority educational institutions to administer the Department's training for small and disadvantaged business enterprises.

9. Research and Special Programs Administration

The Research and Special Programs Administration provides training on safety and security issues at the Transportation Safety Institute, and training on hazmat issues. It also conducts a student outreach program.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of the Treasury

1. Bureau of Alcohol, Tobacco and Firearms

The BATF has a laboratory internship program for college students, a high school student outreach program, a program for youth to volunteer in law enforcement agencies, classroom programs on crime prevention, and a visiting scientist program (for Americans and foreign nationals). BATF provides training for state and local law enforcement officers, prosecutors, industry officials, and others (including some foreign nationals) on laboratory techniques, financial investigations, arson investigations, alcohol and tobacco regulations, and firearms and explosives laws.

2. Bureau of Engraving and Printing

The Bureau has an internship program and an adopt-a-school program.

3. Bureau of Public Debt

The Bureau has a small adopt-a-school program.

4. Customs Service

The Customs Service provides training to state and local law enforcement officers and others in the security fields, and has several programs for student education (including an "Explorer's Program," an adopt-a-school program, and educational programs in the schools).

5. Department Offices

Department Offices provide training to banking and other officials on community development issues and have an adopt-a-school program.

6. Federal Law Enforcement Training Center

FLETC provides training to state and local law enforcement officers.

6. Financial Management Service

The Financial Management Service provides training to financial institution employees and has an adopt-a-school program.

7. Internal Revenue Service

The IRS trains volunteer tax counselors, has agreements allowing IRS employees to teach at Historically Black Colleges and Universities, and has an adopt-a-school program and a school volunteer program.

CHART II. Description of Federally Conducted Education and Training Programs

A. Cabinet Departments

Department of the Treasury (cont.)

8. *Office of the Comptroller of the Currency*

The Comptroller's Office has an adopt-a-school program.

9. *Secret Service*

The Secret Service provides training to state, local, and foreign law enforcement officials.

Department of Veterans Affairs

The Veterans Affairs Department provides training to over 100,000 medical students at VA facilities; provides training to veterans organizations on veterans benefits; and provides training to bank and mortgage company employees and others on compliance with the VA home loan program.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

Advisory Commission on Intergovernmental Relations

The Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

Advisory Council on Historic Preservation

The Council provides training to state, local, and tribal officials, contractors, and the general public on historic preservation issues.

African Development Foundation

The Foundation advises that it does not conduct any education or training programs for persons who are not Federal employees.

Agency for International Development

AID provides training through contracts and grants, virtually all of which takes place in a foreign country and/or with foreign nationals.

American Battle Monuments Commission

The Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

Appalachian Regional Commission

The Commission conducts a summer program, in collaboration with the Department of Energy, for high school students to learn math and science at the Energy Department's Oak Ridge, Tennessee National Laboratory.

Architectural and Transportation Barriers Compliance Board

The Board conducts training for state and local officials, and other persons concerning compliance with the Americans with Disabilities Act.

Arms Control and Disarmament Agency

The Agency provides education and training to university and faculty members through fellowships at the agency, and to undergraduate students through an intern program. The Agency also provides scholarships to graduate students.

Assassination Records Review Board

The Board advises that it does not conduct any education or training programs for persons who are not Federal employees.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

Central Intelligence Agency

The CIA conducts programs for students under which the students are paid and/or receive tuition assistance.

Commission on Civil Rights

The Commission conducts a speaker series that is open to the general public (as well as Federal employees) and has a intern program for student volunteers.

Commission on Fine Arts

The Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

Commodity Futures Trading Commission

The Commission disseminates informational materials to the public and conducts an annual seminar on futures regulations for members of foreign governments and foreign exchanges.

Consumer Product Safety Commission

The Commission has an internship program for a few students from the Worcester Polytechnic Institute.

Corporation for National and Community Service

The Corporation provides fellowships, scholarships, and internships, conducts leadership and management training for grantees, and provides training on environmental issues to state and local government employees and nonprofit entities.

Defense Nuclear Facilities Safety Board

The Board conducts an internship program for graduate students that is three to four years in length.

Delaware River Basin Commission

The Commission advises that it is not covered by the President's Memorandum of June 17, 1997.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

Equal Employment Opportunity Commission

The EEOC conducts training seminars, briefings, and forums on Federal equal employment laws for employers and members of the public. The EEOC also disseminates informational materials to the general public and has a speakers program. The EEOC conducts a volunteer intern program for college and law school students.

Export-Import Bank

The Export-Import Bank conducts training seminars for credit administrators, bankers, attorneys, exporters, small businesses, and state and local officials.

Farm Credit Administration

The Farm Credit Administration advises that it does not conduct any education or training programs for persons who are not Federal employees.

Federal Communications Commission

The FCC advises that it does not conduct any education or training programs for persons who are not Federal employees.

Federal Deposit Insurance Corporation

The FDIC provides training for employees of state financial regulatory agencies.

Federal Election Commission

The Commission provides training through conferences and an outreach program, primarily to representatives of candidates, political parties, and political action committees, on campaign finance law requirements.

Federal Emergency Management Agency

FEMA provides training on emergency response issues. This includes training provided through the National Fire Academy and the Emergency Management Institute.

Federal Home Loan Mortgage Corporation (Freddie Mac)

Freddie Mac advises that it is not covered by the President's Memorandum of June 17, 1997.

Federal Housing Finance Board

The Board advises that it does not conduct any education or training programs for persons who are not Federal employees.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

Federal Labor Relations Authority

The FLRA provides training to Federal employee union representatives, some private sector union representatives, and Federal labor relations professionals on Federal labor relations issues.

Federal Maritime Commission

The Federal Maritime Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

Federal Mediation and Conciliation Service

The Federal Mediation and Conciliation Service provides training to parties to collective bargaining agreements (in the private and public sectors), and to international labor, management and government groups.

Federal Mine Safety and Health Review Commission

The Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

Federal National Mortgage Association (Fannie Mae)

Fannie Mae advises that it is not covered by the President's Memorandum of June 17, 1997.

Federal Reserve System

The Federal Reserve System advises that it is not covered by the President's Memorandum of June 17, 1997.

Federal Retirement Thrift Investment Board

The Board advises that it does not conduct any education or training program for persons who are not Federal employees.

Federal Trade Commission

The FTC provides training on legal matters to some state and local government employees and a few employees of foreign governments.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

General Services Administration

GSA provides training on a variety of issues to state and local government officials and employees, tribal officials, a few foreign government employees, and contractor employees. Issues addressed include procurement; management of real and personal property, security, and travel; energy conservation and efficiency; and the Federal Advisory Committee Act. GSA conducts this training in part at its Interagency Training Center and its Energy Savings Performance Center. GSA does not consider volunteer students receiving academic credit or its adopt-a-school program to be covered by the President's Memorandum of June 17, 1997.

Holocaust Memorial Museum

The Museum provides education to the general public through periodic lectures, panel discussions, films, and other events, and through publications. The Museum also assists educators by maintaining a resource center containing lesson plans and curricula.

Institute of Museum and Library Sciences

The Institute advises that it does not conduct any education or training programs for persons who are not Federal employees.

Inter-American Foundation

The Inter-American Foundation provides fellowships to graduate students concerning research on Latin American and Caribbean countries.

International Trade Commission

The International Trade Commission conducts training seminars on international economic issues that are open to the public and are attended by private experts in the area under discussion and by personnel of embassies (the seminars are primarily for federal employees).

Legal Services Corporation

The Legal Services Corporation advises that it is not subject to the President's Memorandum of June 17, 1997, and that it does not conduct any education or training programs for persons who are not Federal employees.

Merit Systems Protection Board

The Board conducts a training program for persons who represent management or employees in hearings before the Board.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

National Aeronautics and Space Administration

NASA provides educational materials to teachers through its Educator Resource Centers and conducts workshops for K-12 teachers. It conducts student competitions and a summer high school apprenticeship program.

National Archives and Records Administration

The National Archives provides training to agency contract employees, state and local government employees, and others on records management issues.

National Capital Planning Commission

The Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

National Commission on Libraries and Information Science

The Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

National Council on Disability

The Council may conduct an annual conference to provide training for youth with disabilities, particularly regarding employment options.

National Credit Union Administration

The National Credit Union Administration conducts training for state examiners and other state officials, occasionally conducts training open to the public on credit union issues, and provides student stipends for vocational training.

National Endowment for the Arts

NEA has an internship program for college students (in-house internships and internships in arts organizations), conducts occasional training for arts administrators, and has a small arts program in Federal correctional institutions.

National Endowment for the Humanities

NEH provides fellowships, summer stipends, and research funds to scholars and faculty at colleges and universities.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

National Labor Relations Board

The NLRB provides training seminars on labor law and has a volunteer intern program for academic credit.

National Mediation Board

The National Mediation Board provides training in dispute prevention and resolution to railroad, airline, and union representatives, and has a law clerk internship program.

National Science Foundation

The National Science Foundation provides science fellowships to university graduate students and post-doctoral students.

National Transportation Safety Board

The NTSB advises that it does not conduct education or training programs for persons who are not Federal employees.

Neighborhood Reinvestment Corporation

The Neighborhood Reinvestment Corporation advises that it is not subject to the President's Memorandum of June 17, 1997.

Nuclear Regulatory Commission

The NRC provides training to state personnel on radiation control measures, and also provides training for some state employees and foreign nationals on various issues related to nuclear power plants.

Occupational Safety and Health Review Commission

The Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

Office of Government Ethics

The Office of Government Ethics advises that it does not conduct education or training programs for persons who are not Federal employees.

Office of Personnel Management

OPM conducts executive and management training for state and local government employees, and for foreign nationals.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

Office of the Special Counsel

The Office of the Special Counsel advises that it does not conduct any education or training programs for persons who are not Federal employees.

Overseas Private Investment Corporation

OPIC conducts a student internship program that includes an educational component (seminars, briefings, etc.).

Panama Canal Commission

The Panama Canal Commission provides pilot training and scholarships for dependents of employees.

Peace Corps

The Peace Corps conducts pre-service and in-service training for Peace Corps volunteers, and volunteers conduct education and training in their overseas assignments. The Peace Corps provides educational materials to teachers, and a speakers bureau of current and former volunteers for schools. The Peace Corps facilitates post-graduate scholarships for returned volunteers and academic credit for volunteer service. The Peace Corps conducts lectures open to the general public.

Pension Benefit Guaranty Corporation

The Corporation advises that it does not conduct any education or training programs for persons who are not Federal employees.

Postal Rate Commission

The Postal Rate Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

Postal Service

The Postal Service provides training to individuals and businesses on how to use postal services, provides training and information to businesses that wish to act as suppliers or vendors to the Postal Service, conducts workshops for persons who wish to apply for employment, and conducts a college internship program.

Railroad Retirement Board

The Board advises that it does not conduct any education or training programs for persons who are not Federal employees.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

Securities and Exchange Commission

The SEC conducts internship programs for law students, occasionally provides training to state employees on broker-dealer examinations, and provides training to foreign nationals in the United States and overseas.

Selective Service Commission

The Selective Service Commission advises that it does not conduct any education or training programs for persons who are not Federal employees.

Small Business Administration

The SBA provides information and training on starting and operating a small business through a network of Business Information Centers, Small Business Development Centers, women's business centers, and thousands of volunteer counselors (some or all of this activity may fall within the "Federally assisted" category rather than being Federally conducted). The SBA offers a variety of specialized training courses, including courses veterans, persons interested in running a small business investment company, Native Americans, women business owners interested in doing business with the Federal government, and small business lenders.

Smithsonian Institution

The Smithsonian advises that it is not subject to the President's Memorandum of June 17, 1997.

Social Security Administration

The Social Security Administration provides instructional materials designed to be used in high school civics classes.

Susquehanna River Basin Commission

The Commission advises that it is not subject to the President's Memorandum of June 17, 1997.

Tennessee Valley Authority

The TVA provides scholarships to dependents of employees and others; conducts a "weekend enrichment" program of educational activities; and provides training to communities on developing community improvement plans.

CHART II. Description of Federally Conducted Education and Training Programs

B. Agencies, Boards, and Commissions

United States Enrichment Corporation

The Enrichment Corporation advises that it does not conduct any education or training programs for persons who are not Federal employees.

United States Information Agency

The USIA conducts a wide variety of programs that seek to promote a better understanding of the United States by foreign citizens, improved international relations, cultural exchanges between the United States and foreign countries, the spread of democratic values in foreign countries, and the teaching of English in foreign countries. The programs conducted in the United States are either exclusively for, or almost exclusively for, foreign nationals, and the programs with significant participation by American citizens typically are conducted in foreign countries. The USIA also conducts a speakers program in the United States.

United States Trade and Development Agency

The Trade and Development Agency conducts a volunteer internship for college and post-graduate students.

THE WHITE HOUSE
WASHINGTON

November 18, 1998

Jacob J. Lew
Director
Office of Management and Budget
252 OEOB
Washington, D.C. 20502

Dear Mr. Lew:

I am forwarding to you a proposed executive order dealing with federally conducted education programs and ask that you process it under the terms of Executive Order 11030, as amended. As the President stated in June 1997, this order is necessary to ensure that prohibitions against discrimination on the basis of race, color, national origin or sex apply to courses and other educational programs offered by the federal government itself. The proposed order would apply essentially the same standards to these programs that apply now to educational programs conducted by recipients of federal funds.

I would also appreciate your expediting the review to the extent possible. There has already been considerable consultation among the various agencies responsible for drafting the order. In addition, the views of the principal agencies that conduct educational programs were solicited early in the process of drafting.

Please let me know if you need additional information. Thank you for your assistance.

Sincerely,

Charles F.C. Ruff
Counsel to the President

cc: Bruce Reed
McGavock D. Reed

DRAFT, 11/17/98

Executive Order _____

Nondiscrimination on the Basis of Race, Color, National Origin, and Sex in Federally Conducted Education and Training Programs

Numerous civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq., and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq., prohibit discrimination on the basis of race, color, national origin, and sex, in educational programs and activities that receive Federal financial assistance. In addition, other Federal laws, including Title VII of the Civil Rights Act of 1964, as amended (Title VII), prohibit discrimination against employees by employers on the basis of race, color, national origin, sex, and other grounds with respect to, among other things, opportunities for and participation in education and training programs. The Federal government has acted, and will continue to act, aggressively through litigation, policy guidance, outreach, and other means to expand and ensure equal opportunities for minorities and women that participate in State, local, and private education programs that receive Federal financial assistance.

In addition to providing Federal assistance to various education and training programs, the Federal government *itself conducts* numerous education and training programs. For example, the Department of Defense operates schools for grades kindergarten through high school to educate the dependents of service members and others in the United States and around the world. The Department of Interior also operates schools, kindergarten through the undergraduate level, to educate Native Americans. Many agencies also provide training on Federal laws and regulations to a variety of audiences in a variety of settings: formal academies teach state and local personnel principles, laws, techniques, and strategies relating to effective law enforcement;

seminars instruct members of select industries on Federal requirements for licensing and operation; programs in prisons train Federal inmates on trade skills; and members of the public are educated about the environment and natural resources.

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. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs -- including discrimination against people with disabilities (prohibited by the Rehabilitation Act of 1973, as amended), and discrimination based on race, color, national origin, sex, or religion against Federal employees (prohibited by Title VII). Through this Executive order, we are now expanding prohibitions of discrimination on the basis of race, color, national origin, and sex to certain other Federally conducted education and training programs and activities.

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

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

1-101. No individual shall, on the basis of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in an education or training program or activity of any Executive department or agency conducted in the United States, the territories, the possessions, the Commonwealths of Puerto Rico and of the Mariana Islands, and as set forth in Subsection 1-102.

1-102. The provisions of this Order shall apply to education programs and activities that are operated by the Department of Defense under 10 U.S.C. § 2164 and 20 U.S.C. §§ 921-932.

Section 2. Definitions.

2-201. "Program or activity" includes programs or activities conducted, operated, administered, or undertaken by an executive department or agency.

2-202. "Education and training programs" 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 delegated authority to determine the scope of education and training programs, in addition to those identified in subsection 2-202 and section 3, that are subject to and exempt from coverage by this order, respectively.

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

2-205. "Armed forces" includes, for purposes of this order, the Armed Forces of the United States, as well as the armed forces of a foreign government recognized by the United States or attached to an international organization.

Section 3. Exemptions from coverage.

3-301. This order does not apply to members of the armed forces or to military training or education programs. Members of the armed forces, including students at military academies, will continue to be covered by regulations that bar discrimination based on race, color, national origin, or sex, which are enforced by the Department of Defense and individual service branches. The Department of Defense shall develop procedures to protect the rights of, and to provide redress to, civilians not otherwise protected from discrimination based on race, sex, national origin, or color by existing Federal law, and who participate in military training or education programs conducted by the Department of Defense.

3-302. This Order does not apply to, affect, interfere, or modify in any way the operation of any otherwise lawful affirmative action plan.

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 to individuals of a particular sex, race, color, or national origin, including Native American or Alaska native, different from his or hers.

3-304. This Order does not apply to programs and activities conducted by the Department of Interior, Bureau of Indian Affairs, that are in conformance with tribal customs or otherwise culturally appropriate. For example, classes that require separation of students on the basis of

gender in order to conform to tribal customs that require such separation would not be in violation of this order.

3-305. This Order does not apply to (1) selections based on national origin of foreign nationals to participate in covered programs, if such programs concern primarily national security or foreign policy; or 2) selections or other decisions regarding participation in covered programs made by entities outside the Executive Branch, provided that it shall be the policy of the Executive Branch that education and training programs and activities shall not be available to entities that select persons for participation in violation of Federal or State law.

Section 4. *Administrative enforcement.*

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

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 implementing rules, regulations, policies, or guidance, such office shall refer a copy of the report and findings, and 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 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, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act (Civil Service Reform Act of 1978, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1111, see Tables for classification.)

Section 5. Implementation and Agency Responsibilities.

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

- a. the scope of education programs and activities subject to and exempt from coverage by this order, in addition to those identified in Sections 2 and 3;
- b. examples of discriminatory conduct;
- c. applicable legal principles;
- d. enforcement procedures with respect to complaints against employees;
- e. remedies;
- f. requirements of an agency's annual report as set forth in Section 7;
- g. and such other matters as deemed appropriate.

5-502. Within 60 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 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 60 days of issuance.

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

Section 6. *Annual Report.*

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 and nature of complaints filed with the agency and the disposition of such complaints. Such reports shall be submitted annually for the first three years after the effective date of this order, and submitted within 60 days of the end of the preceding year's activities. Subsequently, reports shall be submitted every three years, within 90 days of the end of each 3 year period.

Section 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 No. 12250.

7-702. Nothing in this order amends, supplements, or subtracts from an employee's protections and remedies under Title VII of the Civil Rights Act of 1964, as amended.

Section 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

Office of the Press Secretary

For Immediate Release

June 17, 1997

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 J. CLINTON

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