

Women's Issues - Title IX



U.S. Department of Justice  
Civil Rights Division

Coordination and Review Section

Washington, D. C. 20530

TO: Robert L. Weiner  
Senior Counsel

At your request, I have enclosed  
the most recent versions of the  
following materials:

1. Notice of proposed rulemaking  
(NPRM) of the common rule on Title  
IX;
2. the Department of Justice's agency  
adoption form, which will be part  
of the NPRM (Separate adoption  
forms will be prepared for each  
agency participating in the common  
rule); and
3. draft executive order prohibiting  
discrimination on the basis of  
race, color, national origin, and  
sex in federally conducted  
education programs.

Jennifer Levin  
Civil Rights Division  
U.S. Department of Justice  
305-0025

Ten -

Please look through to  
make sure it's OK. Remind  
me to tell you about  
the meeting you missed  
today.

Elena

**Draft 12/30/97**

**[DOUBLE SPACE DOCUMENT FOR FEDERAL REGISTER]**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 4**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 113**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**14 CFR Part 1253**

**DEPARTMENT OF COMMERCE**

**15 CFR Part 8a**

**TENNESSEE VALLEY AUTHORITY**

**18 CFR Part 1317**

**DEPARTMENT OF STATE**

**22 CFR Part 146**

**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**

**Agency for International Development**

**22 CFR Part 229**

**UNITED STATES INFORMATION AGENCY**

**22 CFR Part 508**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 3**

**DEPARTMENT OF JUSTICE**

**28 CFR Part 42**

**DEPARTMENT OF LABOR**

**29 CFR Part 36**

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 28**

**DEPARTMENT OF DEFENSE**

**32 CFR Part 196**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 18**

ENVIRONMENTAL PROTECTION AGENCY  
40 CFR Part 7

GENERAL SERVICES ADMINISTRATION  
41 CFR Part 101-6

DEPARTMENT OF THE INTERIOR  
43 CFR Part 17

FEDERAL EMERGENCY MANAGEMENT AGENCY  
44 CFR Part 19

NATIONAL SCIENCE FOUNDATION  
45 CFR Part 618

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES  
National Endowment for the Arts  
45 CFR Part 1155

National Endowment for the Humanities  
45 CFR Part 1171

Institute for Museum and Library Sciences  
45 CFR Part 1182

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE  
45 CFR Part 2555

DEPARTMENT OF TRANSPORTATION  
49 CFR Part 25

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

AGENCIES: Nuclear Regulatory Commission; Small Business Administration; National  
Aeronautics and Space Administration; Department of Commerce; Tennessee Valley  
Authority; Department of State; Agency for International Development; International  
Development Cooperation Agency; United States Information Agency; Department of  
Housing and Urban Development; Department of Justice; Department of Labor;  
Department of the Treasury; Department of Defense; Department of Veterans Affairs;  
Environmental Protection Agency; General Services Administration; Department of the  
Interior; Federal Emergency Management Agency; National Science Foundation;

National Endowment for the Arts, National Endowment for the Humanities, Institute for Museum and Library Sciences, National Foundation on the Arts and the Humanities; Corporation for National and Community Service; Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

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

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

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

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

**SUPPLEMENTARY INFORMATION:**

*Background*

The purpose of this proposed common rule is to provide for the enforcement of Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681, *et seq.*) ("Title IX"), as it applies to educational programs and activities that receive Federal financial assistance from the agencies participating in this notice. Because the proposed standards to be established are the same for all of the participating agencies, they are publishing this notice of proposed rulemaking jointly. The procedures for how an agency will enforce Title IX, including the conduct of investigations and compliance reviews, also follow the same structure; all agencies except the Department of the Treasury ("Treasury") are incorporating their respective procedures under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*) which are virtually identical among the agencies. Title IX is modeled after Title VI and the statutes have the same statutory enforcement mechanisms. Although Treasury does not have Title VI regulations, it is establishing enforcement procedures, as set forth below, that are akin to other agencies' Title VI procedures for enforcement. The final rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations as

indicated in this notice.

In 1979 and 1980, two agencies published notices of proposed rulemaking for Title IX, but the proposed rules were never issued as final rules. On April 25, 1979, the Veteran's Administration published a notice of proposed rulemaking. *See* 44 Fed. Reg. 24320 (1979). On June 17, 1980, the Department of Justice published a notice of proposed rulemaking. *See* 45 Fed. Reg. 41001 (1980). By participating in this notice of proposed rulemaking, these agencies are initiating a new rulemaking proceeding.

#### *Additional Comment Information*

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

#### *Overview*

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

In addition, under Executive Order 12250, the Department of Justice is responsible for the "consistent and effective implementation" of several civil rights laws, including Title IX. Using the ED regulation as the basis for this common rule promotes consistency and efficiency not only for agencies but for the recipient community. ED is the lead agency for enforcement of Title IX through its guidance, interpretations, technical assistance, investigative expertise, and resources committed. As the vast majority of recipients of Federal assistance from the identified agencies also receive assistance from ED, recipients should be subject to a single set of obligations with respect to Title IX.

Further, both Congress and the courts have interpreted Title IX based on ED's regulations. For example, in 1974, Congress amended the statute after holding hearings on provisions in ED's proposed rule. See 20 U.S.C. 1681(a)(6). In 1982, the Supreme Court upheld that portion of ED's regulations that prohibit discrimination by a recipient on the basis of sex in its employment practices. See North Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982). As discussed below, Congress also passed the Civil Rights Restoration Act of 1987 (CRRRA), in large part, to overrule the Supreme Court's decision in Grove City College v. Bell, 465 U.S. 555 (1984), and thus to make Title IX consistent with ED's pre-Grove City interpretation of the statute. See S. Rep. No. 100-64, 2 (1987), reprinted in 1988 U.S.C.C.A.N. 3, 3-4. The recipient community, Federal agencies, and the courts should have the benefit of continued reliance on past interpretations of Title IX and its regulations, and using the ED regulation as the model for other agencies promotes that consistency.

As mentioned, the proposed regulations are not identical to ED's regulations. This proposal addresses several statutory changes that are not reflected in the existing (but soon to be modified) ED regulation, one modification in order to be consistent with Supreme Court precedent, and a few minor changes. A detailed discussion of these changes is set forth below.

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

### *Summary of Regulation*

As stated, Title IX prohibits discrimination on the basis of sex in educational programs or activities that receive Federal financial assistance. Specifically, the statute states that, "[n]o 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 activity receiving Federal financial assistance," with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). This statute was modeled after Title VI, which prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance. The goal of Title IX is to ensure that Federal funds are not utilized for and do not support sex-based discrimination, and that individuals have equal opportunities, without regard to sex, to pursue, engage or participate in, and benefit from academic, extracurricular, research, occupational training, employment, or other educational programs and activities. For example (and without limitation), subject to exceptions

described in this regulation, Title IX prohibits a recipient from discriminating on the basis of sex in: student admissions, scholarship awards and tuition assistance, recruitment of students and employees, the provision of courses and other academic offerings, the provision of and participation in athletics and extracurricular activities, and all aspects of employment, including, but not limited to, selection, hiring, compensation, benefits, job assignments and classification, promotions, demotions, tenure, training, transfers, leave, layoffs, and termination. See North Haven, 456 U.S. at 521 (stating that Title IX "must [be] accord[ed] . . . a sweep as broad as its language" to realize goals of eliminating discrimination and promoting equal opportunity); Cannon v. University of Chicago, 441 U.S. 677, 709 (1979) (concluding that an implied private right of action was necessary for Title IX's full enforcement); Franklin v. Gwinnett County Pub. Schs., 503 U.S. 60 (1992)<sup>1</sup> (concluding that sexual harassment violates Title IX's proscription against sex discrimination). Of course, Title IX prohibits discrimination on the basis of sex in the operation of, and benefits provided by, education and training programs conducted by noneducational institutions, including prisons, museums, job training institutes, nonprofit organizations, and other entities as well.

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

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<sup>1</sup> See Office for Civil Rights, Dep't of Educ., Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12,034 (1997).

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

The definition of "educational institution," which in turn refers to a "local education agency," has been modified to be consistent with the recodification of "local education agency."

In addition, it should be understood that the definition of "federal financial assistance," which remains unchanged from the ED regulation (and is consistent with agencies' regulations implementing Title VI and Section 504 of the Rehabilitation Act of 1973, as amended), includes a "contract . . . *that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.*" See § \_\_\_.2. "Federal financial assistance" does not include a direct procurement by the Federal government to obtain supplies and/or services for its own use and benefit that does not contain a subsidy. A procurement or contract negotiated at fair market value, or even above, is not Federal financial assistance. Such a contract does not have "as one of its purposes the provision of assistance." Further, the reference in the definition of "Federal financial assistance" to "agreements" includes "cooperative agreements" by agencies.

Two matters should be noted with respect to assurances. First, the method or practice of awarding Federal financial assistance varies among the participating agencies. Some, but not all agencies, require a formal application for Federal assistance prior to any award, and such applications will contain the assurances required, including as required by § \_\_\_.4 of the proposed regulation. Other agencies award assistance through instruments where the formal agreement or contract of assistance is the only document executed by the recipient. In the latter instance, the agreement or contract will include, as a condition of the award, the required assurances of § \_\_\_.4. The presence of an assurance in a contract, agreement, or document other than "application," wherein the execution of such document includes the assurance of compliance as a condition of the award, satisfies § \_\_\_.4. Second, in order to maintain consistency among agencies regarding the text of the assurance for compliance with Title IX, without regard to the specific document in which it is contained, we modified § \_\_\_.4(c) to include the text of the assurance.

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

Modifications of ED's existing regulations to conform to the statutory amendments to Title IX are addressed in this subpart. Section \_\_\_.12 is amended to

incorporate the expanded exemption for entities controlled by religious institutions. Under the CRRA, the exemption is no longer limited to educational institutions that are controlled by religious organizations with tenets contrary to Title IX. Instead, any educational operation of an entity may be exempt from Title IX due to control by a religious organization with tenets that are not consistent with the provisions of Title IX. See 20 U.S.C. 1687. Further, the exemption would apply to a particular education program operated by a recipient if this separate program is subject to religious tenets that are not consistent with Title IX. If a recipient has obtained an exemption from ED, such exemption may be submitted to another funding agency as a basis for an exemption from it.

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

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

As part of the CRRA, Congress also added a definition of "program or activity." See 20 U.S.C. 1687. Congress took this action in order to reverse the meaning and consequences of the Supreme Court's decision in Grove City College, which defined "program or activity" in restrictive terms. 465 U.S. at 572-74; S. Rep. No. 100-64, at 11-16, reprinted in 1988 U.S.C.C.A.N. at 13-18. The Court concluded in Grove City College that Federal student financial assistance provided to a college established Title IX jurisdiction only over the college's financial aid program, not the entire college. Ibid. This interpretation significantly narrowed the prohibitions of Title IX and its counterparts, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq., the Age Discrimination Act of 1975, 42 U.S.C. 6101, et seq., and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. See S. Rep. No. 100-64, at 2-3, 11-16, reprinted in 1988 U.S.C.C.A.N. at 3-4, 13-18.

By statutory amendment, and as set forth in \_\_\_\_ .18(b), Congress restored the broad interpretation accorded the phrase "program or activity" prior to Grove City College. The provision addresses the scope of coverage for four broad categories of recipients: State or local entities, educational institutions, private entities, and entities that are a combination of any of those groups. The scope of coverage is no longer limited to the exact purpose or nature of the Federal funding. If, for example, a State or local agency receives Federal assistance for one of many functions of the agency, all of the operations of the *entire* agency are subject to the nondiscrimination provisions of Title IX. 20 U.S.C. 1687(1)(A). Further, if the aid is distributed to an entity or unit of government that subsequently distributes the assistance to a second agency, the entire agency to which the assistance was initially allocated is subject to Title IX. See 20 U.S.C. 1687(1)(B); S. Rep. No. 100-64, at 16, reprinted in 1988 U.S.C.C.A.N. at 18. With respect to educational institutions, it is critical to remember that *all* of the operations of the institution, whether or not an operation is educational or academic in nature, are subject to Title IX's prohibition on discrimination. Thus, for example, housing programs, a shuttle service, food service, and other commercial operations are covered by Title IX if any part of the entity is a recipient of Federal funds. The degree of coverage of private entities, such as private corporations and partnerships, will vary depending on how the funding is provided, the principal purpose or objective of the entity, and/or how the entity is structured (e.g., physically separate offices or plants). All of the operations of private businesses that are principally engaged in education, health care, housing, social services, or parks and recreation are considered a "program or activity" for purposes of Title IX. 20 U.S.C. 1687(3)(A)(ii). S. Rep. No. 100-64 provides numerous other examples of the scope of coverage with regard to each category of recipient, and readers are referred to this material. S. Rep. No. 100-64, at 16-20, reprinted in 1988 U.S.C.C.A.N. at 18-22.

Finally, it is important to note that the restored, broad interpretation of "program or activity" does not in any way alter the requirement of 20 U.S.C. 1682 that a proposed or effectuated fund termination be limited to the particular program(s) "or part thereof" that discriminate(s), or, as appropriate, to all of the programs that are infected by the discriminatory practices. See S. Rep. No. 100-64, at 20, reprinted in 1988 U.S.C.C.A.N. at 22 ("The bill defines 'program' in the same manner as 'program or activity,' and leaves intact the 'or part thereof' pinpointing language.").

Third, \_\_\_\_ .18(c) reflects the "abortion neutrality" provision in the CRRA, commonly referred to as the Danforth amendment, which provides: "Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion." 20 U.S.C. 1688.

The first sentence of the Danforth amendment is incorporated in subsection \_\_\_\_\_.18(c)(1), which states that recipients are not required to provide or pay for any benefit or service related to an abortion.

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

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<sup>2</sup> This provision is consistent with the Danforth amendment and congressional intent. Statements of numerous senators and representatives, including Sen. Danforth and other sponsors, reiterate the plain meaning of the prohibition, and treat the imposition of penalties as one form of discriminatory treatment against women who have sought or will seek an abortion. *See* 134 Cong. Rec. 242 (1988) (statement of Sen. Danforth) ("In fact, it is prohibited — hospitals, colleges, universities — from *discriminating* against people who have had abortions or who are seeking abortions. So it does not intend to authorize, in fact, it prohibits, *penalties* against people who have made their own choice for abortion.") (emphasis added); *id.* at 353 (statement of Sen. Wilson) ([The second sentence of the Danforth amendment] was language which I and others insisted be in there, precisely to ensure that there could not be *discrimination* against women who either are seeking or have received abortion-related services.") (emphasis added).

Other members of Congress agreed with the Danforth amendment because of the specific inclusion of language prohibiting discrimination. *E.g.*, 134 Cong. Rec. 2945 (1988) (statement of Rep. AuCoin) ("And with their statements [by Sen. Danforth and Wilson, as quoted above] clarifying that this legislation before us today expressly prohibits, and does not in any way permit, discrimination against women who have had or are seeking abortions, I can support this bill."); *id.* at 2948 (statement of Rep. Edwards). *See also id.* at 2935 (statement of Rep. Jeffords) ("The second sentence of the amendment will ensure that a woman is not denied scholarships, promotions, extracurricular activities, student employment or any other benefits because she has received or is seeking an abortion."); *id.* at 2945 (statement of Rep. AuCoin) ("With assurances from the authors of the Danforth amendment, and with the clarification provided by the floor leaders today, it is now clear that this legislation prohibits discrimination based on a person's decision regarding abortion -- in scholarships, in housing, in extracurricular activities, in student or faculty hire and tenure, and in other benefits offered to students or employees under title IX."); *id.* at 2948 (statement of Rep. Edwards) ("Whether it be scholarships, promotions, extracurricular activities, student employment or any other benefits offered to students or employees, under title

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

It also should be noted that some agencies, based on other Federal laws, have promulgated regulations that similarly prohibit discrimination on the basis of sex in programs that receive Federal financial assistance. For example, the Department of Labor issued regulations at 20 C.F.R. part 34 to implement § 167 (the nondiscrimination provisions) of the Job Training Partnership Act, as amended (JTPA), 29 U.S.C. 1577. Section 167 prohibits discrimination on the basis of sex. Further, § 167(a)(1) specifically applies the prohibitions against sex discrimination found in Title IX. Therefore, to eliminate any confusion or duplication, the Department of Labor has determined that recipients of financial assistance under JTPA, by complying with § 167 and 29 CFR part 34, satisfy the obligation to comply with these Title IX regulations.

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

Subpart D addresses nondiscrimination on the basis of sex in education programs and activities. Specific areas covered in this subpart are housing, access to course offerings, access to schools operated by local education agencies, counseling, financial assistance, employment assistance to students, health and insurance benefits and services, consideration of marital and parental status, and athletics. The proposed regulations do not cover a recipient's use of particular textbooks or curricular materials. The time frames identified in section \_\_\_\_ .41(d), which address athletic programs, apply only if the recipient also does not receive funding from the Department of Education; otherwise, such recipient is expected to have complied within the time frames established by the ED regulation.

Subpart E covers the prohibitions of discrimination on the basis of sex in employment in educational programs and activities. Specific aspects of employment that are addressed include hiring and employment criteria, recruitment, compensation,

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IX benefits cannot be withheld from a student or employees because she received or is seeking an abortion.").

job classification and structure, promotion and termination, fringe benefits, consideration of marital or parental status, leave practices, advertising, and preemployment inquiries as to parental and marital status. The subpart also includes a provision to exempt actions where sex is a bona fide occupational qualification. Section \_\_\_\_ .56(b)(2), which concerns the provision of fringe benefits, is modified slightly in order to conform to principles established by the Supreme Court under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.. The Supreme Court has held that fringe benefit plans may not require higher contributions for women than for men to receive the same benefits. See City of Los Angeles Dept. of Water and Power v. Manhart, 435 U.S. 702 (1978). Further, benefit plans may not provide lower benefits to women who made the same contributions as men. See Arizona Governing Comm. v. Norris, 463 U.S. 1073 (1983).

Subpart F addresses the agencies' respective procedures for implementation and enforcement of Title IX. Within 60 days of the publication of this regulation as a final rule, each agency will publish a notice in the *Federal Register* that identifies its respective programs that are covered by this regulation. Agencies will supplement or modify this notice, as appropriate, to reflect changes in coverage.

For those agencies that have regulations to implement Title VI, such procedures will be adopted and incorporated by reference. Titles VI and IX address discrimination in Federally assisted programs and have identical statutory enforcement schemes. The administrative enforcement procedures in Title VI regulations are virtually identical among the participating agencies, and differences are minor. For the Department of the Treasury, the specific text is set forth herein since it does not have a Title VI regulation. In addition, pursuant to Reorganization Plan No. 2 of 1977, the U.S. Information Agency (USIA) continues to be subject to, and incorporates, the Department of State's Title VI enforcement procedures, as set forth herein. See 43 Fed. Reg. 15371 (1978). Further, the Corporation for Community and National Service, which is the successor to ACTION, is subject to the Title VI regulations promulgated by ACTION. See National and Community Service Trust Act of 1993, Pub. L. No. 103-82, § 203(c)(2), 107 Stat. 785, 892; 45 CFR Part 1203. To the extent an agency has regulations, based on other statutes, that address nondiscrimination on the basis of sex in programs or activities that receive Federal financial assistance, such regulations remain in force and are not affected by this regulation.

#### *Applicable Executive Orders and Regulatory Certifications*

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

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The participating agencies have

determined that this rule is a "significant regulatory action" under Executive order 12866, § 3(f), Regulatory Planning and Review, yet it is not "economically significant" as defined in § 3(f)(1), and, therefore, the information enumerated in § 6(a)(3)(C) of the order is not required. Pursuant to Executive order 12866, this rule has been reviewed by the Office of Management and Budget.

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

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

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

#### Paperwork Reduction Act of 1995

Section \_\_\_\_ .4 contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Department of Justice, on behalf of the participating agencies, has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

#### Collection of Information: Assurances of compliance.

These regulations require applications for Federal financial assistance for an education program or activity to be accompanied by an assurance from the applicant or

recipient that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these regulations.

The public reporting and recordkeeping burden for this collection of information for all participating agencies is estimated to be \_\_\_\_\_ hours in order to read and complete the assurance form. This burden is incurred when an applicant or recipient completes an application for Federal financial assistance from a participating agency for the first time or if there is a break in continuity of assistance from such agency. It is estimated that approximately 25% of recipients seek assistance from more than one Federal agency; thus, the Department of Justice estimates that assurances would be required an average of 1.25 times rather than once, per recipient.

Based on data provided by all participating agencies, the estimated burden for reading and completing this form was calculated as follows:

|                         |       |                  |
|-------------------------|-------|------------------|
| Respondents             | _____ |                  |
| Responses               | x     | 1.25             |
| Hours per respondent    | x     | .25 (15 minutes) |
|                         |       | -----            |
| Annual reporting burden | _____ |                  |

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Justice.

The Department of Justice will consider comments by the public on this proposed collection of information in --

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the participating agencies, including whether the information will have a practical use;
- Evaluating the accuracy of the participating agencies' collective estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department of Justice or participating agencies on the proposed regulation.

#### Text of the Proposed Common Rule

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

#### [PART/Subpart] \_\_\_\_--NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

##### Subpart A-Introduction

- § \_\_\_\_ .1 Purpose and effective date.
- § \_\_\_\_ .2 Definitions.
- § \_\_\_\_ .3 Remedial and affirmative action and self-evaluation.
- § \_\_\_\_ .4 Assurance required.
- § \_\_\_\_ .5 Transfers of property.
- § \_\_\_\_ .6 Effect of other requirements.
- § \_\_\_\_ .7 Effect of employment opportunities.
- § \_\_\_\_ .8 Designation of responsible employee and adoption of grievance procedures.
- § \_\_\_\_ .9 Dissemination of policy.
- § \_\_\_\_ .10 [Reserved]

##### Subpart B-Coverage

- § \_\_\_\_ .11 Application.
- § \_\_\_\_ .12 Educational institutions and other entities controlled by religious organizations.
- § \_\_\_\_ .13 Military and merchant marine educational institutions.
- § \_\_\_\_ .14 Membership practices of certain organizations.
- § \_\_\_\_ .15 Admissions.
- § \_\_\_\_ .16 Educational institutions eligible to submit transition plans.
- § \_\_\_\_ .17 Transition plans.
- § \_\_\_\_ .18 Statutory amendments.
- § \_\_\_\_ .19-20 [Reserved]

##### Subpart C-Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

- § \_\_\_\_ .21 Admission.
- § \_\_\_\_ .22 Preference in admission.
- § \_\_\_\_ .23 Recruitment.
- § \_\_\_\_ .24-30 [Reserved]

**Subpart D-Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

- § \_\_\_\_ .31 Education programs and activities.
- § \_\_\_\_ .32 Housing.
- § \_\_\_\_ .33 Comparable facilities.
- § \_\_\_\_ .34 Access to course offerings.
- § \_\_\_\_ .35 Access to schools operated by LEAs.
- § \_\_\_\_ .36 Counseling and use of appraisal and counseling materials.
- § \_\_\_\_ .37 Financial assistance.
- § \_\_\_\_ .38 Employment assistance to students.
- § \_\_\_\_ .39 Health and insurance benefits and services.
- § \_\_\_\_ .40 Marital or parental status.
- § \_\_\_\_ .41 Athletics.
- § \_\_\_\_ .42 Textbooks and curricular material.
- § \_\_\_\_ .43-50 [Reserved]

**Subpart E-Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

- § \_\_\_\_ .51 Employment.
- § \_\_\_\_ .52 Employment criteria.
- § \_\_\_\_ .53 Recruitment.
- § \_\_\_\_ .54 Compensation.
- § \_\_\_\_ .55 Job classification and structure.
- § \_\_\_\_ .56 Fringe benefits.
- § \_\_\_\_ .57 Marital or parental status.
- § \_\_\_\_ .58 Effect of state or local law or other requirements.
- § \_\_\_\_ .59 Advertising.
- § \_\_\_\_ .60 Pre-employment inquiries.
- § \_\_\_\_ .61 Sex as a bona fide occupational qualification.
- § \_\_\_\_ .62-70 [Reserved]

**Subpart F-Procedures**

- § \_\_\_\_ .71 Notice of Covered Programs.
- § \_\_\_\_ .72-90 [Reserved]

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

**Subpart A--Introduction**

- § \_\_\_\_ .1 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any

education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be 30 days after publication of the final rule.

§ \_\_\_\_\_.2 Definitions.

As used in these Title IX regulations, the term:

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

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

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

Designated agency official means [to be inserted by agency].

Educational institution means a local educational agency ("LEA") as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the agency:

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

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

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

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

(3) Provision of the services of Federal personnel.

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

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

Institution of graduate higher education means an institution that:

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

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

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

Institution of undergraduate higher education means:

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

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

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

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

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary

purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

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

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681-1688) (except sections 904 and 906 thereof), as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Pub. L. 94-482, 90 Stat. 2234, and by Section 3 of Pub. L. 100-259, 102 Stat. 28, 28-29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Title IX regulations means the provisions set forth at [to be inserted by agency.]

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

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

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

(b) Affirmative action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964-1965 Comp., p. 339.

(c) Self-evaluation. Each recipient educational institution shall, within one year of

the effective date of these Title IX regulations:

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

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

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

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

§ \_\_\_\_ .4 Assurance required.

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

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

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

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

(c) Form. (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient "will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: . . . Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, 1685-1688)." This text may be modified at the discretion of, or upon application by an agency and approval by, the Office of Management and Budget.

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

#### § \_\_\_\_ .5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ \_\_\_\_ .11 through \_\_\_\_ .20.

#### § \_\_\_\_ .6 Effect of other requirements.

(a) Effect of other Federal provisions. The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended, 3 CFR, 1964-1965 Comp., p. 339; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

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

(c) Effect of rules or regulations of private organizations. The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any

applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives or benefits from Federal financial assistance.

§ \_\_\_\_ .7 Effect of employment opportunities.

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

§ \_\_\_\_ .8 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

§ \_\_\_\_ .9 Dissemination of policy.

(a) Notification of policy. (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless §§ \_\_\_\_ .21 through 30 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § \_\_\_\_ .8, or to the designated agency official.

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

(i) Local newspapers;

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

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

(b) Publications. (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

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

§ \_\_\_.10 [Reserved]

#### Subpart B--Coverage

§ \_\_\_.11 Application.

Except as provided in §§ \_\_\_.11 through \_\_\_.20, these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives or benefits from Federal financial assistance.

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

(a) Exemption. These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) Exemption claims. An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

§ \_\_\_\_ .13 Military and merchant marine educational institutions.

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ \_\_\_\_ .14 Membership practices of certain organizations.

(a) Social fraternities and sororities. These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls. These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) Voluntary youth service organizations. These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ \_\_\_\_ .15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) Administratively separate units. For the purposes only of this section, §§ \_\_\_\_ .16 and \_\_\_\_ .17, and §§ \_\_\_\_ .21 through \_\_\_\_ .30, each administratively separate

unit shall be deemed to be an educational institution.

(c) Application of §§ \_\_\_\_ .21 through \_\_\_\_ .30. Except as provided in paragraphs (d) and (e) of this section, §§ \_\_\_\_ .21 through \_\_\_\_ .30 apply to each recipient. A recipient to which §§ \_\_\_\_ .21 through \_\_\_\_ .30 apply shall not discriminate on the basis of sex in admission or recruitment in violation of such sections.

(d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ \_\_\_\_ .21 through \_\_\_\_ .30 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) Public institutions of undergraduate higher education. §§ \_\_\_\_ .21 through \_\_\_\_ .30 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§ \_\_\_\_ .16 Educational institutions eligible to submit transition plans.

(a) Application. This section applies to each educational institution to which §§ \_\_\_\_ .21 through \_\_\_\_ .30 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

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

(b) Provision for transition plans. An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ \_\_\_\_ .21 through \_\_\_\_ .30 unless it is carrying out a transition plan approved by the Secretary of Education as described in § \_\_\_\_ .17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

§ \_\_\_\_ .17 Transition plans.

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

(b) Content of plans. In order to be approved by the Secretary of Education, a

transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

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

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

(c) Nondiscrimination. No policy or practice of a recipient to which § \_\_\_\_ .16 applies shall result in treatment of applicants to or students of such recipient in violation of §§ \_\_\_\_ .21 through \_\_\_\_ .30 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

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

§ \_\_\_\_ .18 Statutory amendments.

This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(a) These Title IX regulations shall not apply to or preclude:

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

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

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

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(b) *"Program or activity"* or *"program"* mean all of the operations of any entity described in paragraphs (b)(1)-(4) of this section, any part of which is extended Federal financial assistance:

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

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

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

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

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

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

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

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

(4) Any other entity that is established by two or more of the entities described in paragraphs (b)(1), (2), or (3) of this section.;

(5) Such term does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(6) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a "program or activity" subject to these Title IX regulations if the college, university, or other institution receives or benefits from Federal financial assistance.

(c)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (c)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives or benefits from Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

§§ \_\_\_\_ .19 through \_\_\_\_ .20 [Reserved]

Subpart C--Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ \_\_\_\_ .21 Admission.

(a) General. No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ \_\_\_\_ .21 through \_\_\_\_ .30 apply, except as provided in §§ \_\_\_\_ .16 and \_\_\_\_ .17.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ \_\_\_\_ .21 through \_\_\_\_ .30 apply shall not:

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

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

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

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ \_\_\_\_ .21 through \_\_\_\_ .30 apply:

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

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

(3) Subject to § \_\_\_\_ .18(c), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such

inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ \_\_\_\_\_.22 Preference in admission.

A recipient to which §§ \_\_\_\_\_.21 through \_\_\_\_\_.30 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ \_\_\_\_\_.21 through \_\_\_\_\_.30.

§ \_\_\_\_\_.23 Recruitment.

(a) Nondiscriminatory recruitment. A recipient to which §§ \_\_\_\_\_.21 through \_\_\_\_\_.30 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § \_\_\_\_\_.3(a), and may choose to undertake such efforts as affirmative action pursuant to § \_\_\_\_\_.3(b).

(b) Recruitment at certain institutions. A recipient to which §§ \_\_\_\_\_.21 through \_\_\_\_\_.30 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ \_\_\_\_\_.21 through \_\_\_\_\_.30.

§§ \_\_\_\_\_.24 - \_\_\_\_\_.30 [Reserved]

Subpart D--Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

§ \_\_\_\_\_.31 Education programs and activities.

(a) General. Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives or benefits from Federal financial assistance. Sections \_\_\_\_\_.31 through \_\_\_\_\_.50 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ \_\_\_\_\_.21 through \_\_\_\_\_.30 do not apply, or an entity, not a recipient, to which §§ \_\_\_\_\_.21 through \_\_\_\_\_.30 would not apply if the entity were a recipient.

(b) Specific prohibitions. Except as provided in §§ \_\_\_\_\_.31 through \_\_\_\_\_.50, in

providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

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

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

(2) Such recipient:

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

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

§ \_\_\_\_ .32 Housing.

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

(b) Housing provided by recipient. (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

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

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

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

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

(A) Proportionate in quantity; and

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

(ii) A recipient may render such assistance to any agency, organization, or person

that provides all or part of such housing to students of only one sex.

§ \_\_\_\_ .33 Comparable facilities.

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

§ \_\_\_\_ .34 Access to course offerings.

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

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

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

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

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

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

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

§ \_\_\_\_ .35 Access to schools operated by local education agencies (LEAs).

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

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

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

§ \_\_\_\_ .36 Counseling and use of appraisal and counseling materials.

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

(b) Use of appraisal and counseling materials. A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

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

§ \_\_\_\_ .37 Financial assistance.

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

(1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services,

assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

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

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

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

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

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

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

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § \_\_\_\_\_.41.

§ \_\_\_\_\_.38 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient that assists any agency, organization, or person in making employment available to any

of its students:

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

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

(b) Employment of students by recipients. A recipient that employs any of its students shall not do so in a manner that violates §§ \_\_\_\_\_.51 through \_\_\_\_\_.70.

§ \_\_\_\_\_.39 Health and insurance benefits and services.

Subject to § \_\_\_\_\_.18(c), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ \_\_\_\_\_.51 through \_\_\_\_\_.70 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ \_\_\_\_\_.40 Marital or parental status.

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

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

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

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the

student as provided in paragraph (b)(1) of this section, shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

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

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

#### § \_\_\_.41 Athletics.

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

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

(c) Equal opportunity. (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively

accommodate the interests and abilities of members of both sexes;

- (ii) The provision of equipment and supplies;
- (iii) Scheduling of games and practice time;
- (iv) Travel and per diem allowance;
- (v) Opportunity to receive coaching and academic tutoring;
- (vi) Assignment and compensation of coaches and tutors;
- (vii) Provision of locker rooms, practice, and competitive facilities;
- (viii) Provision of medical and training facilities and services;
- (ix) Provision of housing and dining facilities and services;
- (x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

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

§ \_\_\_\_ .42 Textbooks and curricular material.

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

§§ \_\_\_\_ .43 through \_\_\_\_ .50 [Reserved]

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

**§ \_\_\_\_ .51 Employment.**

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

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

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ \_\_\_\_ .51 through \_\_\_\_ .70, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) Application. The provisions of §§ \_\_\_\_ .51 through \_\_\_\_ .70 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth,

false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ \_\_\_\_ .52 Employment criteria.

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

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ \_\_\_\_ .53 Recruitment.

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

(b) Recruitment patterns. A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ \_\_\_\_ .51 through \_\_\_\_ .70.

§ \_\_\_\_ .54 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of

sex:

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

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

§ \_\_\_\_ .55 Job classification and structure.

A recipient shall not:

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

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

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

§ \_\_\_\_ .56 Fringe benefits.

(a) "Fringe benefits" defined. For purposes of these Title IX regulations, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § \_\_\_\_ .54.

(b) Prohibitions. A recipient shall not:

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

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

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

§ \_\_\_\_ .57 Marital or parental status.

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

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

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

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

(c) Pregnancy as a temporary disability. Subject to § \_\_\_\_ .18(c), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) Pregnancy leave. In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ \_\_\_\_ .58 Effect of state or local law or other requirements.

(a) Prohibitory requirements. The obligation to comply with §§ \_\_\_\_ .51 through \_\_\_\_ .70 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

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

§ \_\_\_\_ .59 Advertising.

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

§ \_\_\_\_ .60 Pre-employment inquiries.

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

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

§ \_\_\_\_ .61 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ \_\_\_\_ .51 through \_\_\_\_ .70 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

§§ \_\_\_\_ .62 - \_\_\_\_ .70 [Reserved]

SUBPART F--PROCEDURES

§ \_\_\_\_ .71 Notice of covered programs.

Within 60 days of the final publication of this Title IX regulation, the agency shall publish in the Federal Register a notice of the programs covered by this regulation. The agency shall periodically republish the notice to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the agency's office that enforces Title IX.

§§ \_\_.72- \_\_.90 [Reserved]

[NOTE: see agency adoption of common rule for text specific to each agency.]

DEPARTMENT OF JUSTICE

28 CFR part 42

AG Order No.

RIN 1190-AA28

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief,  
Coordination and Review Section, Civil Rights Division, Department of Justice, P.O.  
Box 66560, Washington, D.C. 20036-6560, (202) 307-2222.

List of Subjects in 28 CFR Part 42

Administrative practice and procedure, Age discrimination, Aged, Blind, Buildings and  
facilities, Civil rights, Colleges and universities, Education, Educational facilities,  
Educational research, Educational study programs, Elementary and secondary  
education, Equal educational opportunity, Equal employment opportunity, Grant  
programs - Education, Individuals with disabilities, Investigations, Loan programs -  
Education, Religious discrimination, Reporting and recordkeeping requirements, Sex  
discrimination, Student aid, Women.

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Janet Reno  
Attorney General

For the reasons stated in the preamble, the Department of Justice proposes to amend 28

CFR part 42 as follows:

**PART 42-NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY;**

**POLICIES AND PROCEDURES**

1. Subpart J, consisting of §§ 42.801 through 42.890 (§§ \_\_\_\_ .1 through \_\_\_\_ .90), is added to part 42 as set forth at the end of the common preamble to read as follows:

**Subpart J-Nondiscrimination on the Basis of Sex in Education Programs and Activities**

**Receiving or Benefiting from Federal Financial Assistance**

**Sec.**

**Introduction**

- 42.801 Purpose and effective date.
- 42.802 Definitions.
- 42.803 Remedial and affirmative action and self-evaluation.
- 42.804 Assurance required.
- 42.805 Transfers of property.
- 42.806 Effect of other requirements.
- 42.807 Effect of employment opportunities.
- 42.808 Designation of responsible employee and adoption of grievance procedures.
- 42.809 Dissemination of policy.
- 42.810 [Reserved]

**Coverage**

- 42.811 Application.
- 42.812 Educational institutions and other entities controlled by religious organizations.
- 42.813 Military and merchant marine educational institutions.
- 42.814 Membership practices of certain organizations.
- 42.815 Admissions.
- 42.816 Educational institutions eligible to submit transition plans.
- 42.817 Transition plans.
- 42.818 Statutory amendments.
- 42.819-42.820 [Reserved]

**Discrimination on the Basis of Sex in Admissions and Recruitment Prohibited**

- 42.821 Admission.
- 42.822 Preference in admission.
- 42.823 Recruitment.
- 42.824-42.830 [Reserved]

**Discrimination on the Basis of Sex in Education Programs and Activities Prohibited**

42.831 Education programs and activities.  
42.832 Housing.  
42.833 Comparable facilities.  
42.834 Access to course offerings.  
42.835 Access to schools operated by LEAs.  
42.836 Counseling and use of appraisal and counseling materials.  
42.837 Financial assistance.  
42.838 Employment assistance to students.  
42.839 Health and insurance benefits and services.  
42.840 Marital or parental status.  
42.841 Athletics.  
42.842 Textbooks and curricular material.  
42.843-42.850 [Reserved]

Discrimination on the Basis of Sex in Employment in Education Programs and  
Activities Prohibited

42.851 Employment.  
42.852 Employment criteria.  
42.853 Recruitment.  
42.854 Compensation.  
42.855 Job classification and structure.  
42.856 Fringe benefits.  
42.857 Marital or parental status.  
42.858 Effect of state or local law or other requirements.  
42.859 Advertising.  
42.860 Pre-employment inquiries.  
42.861 Sex as a bona fide occupational qualification.  
42.862-42.870 [Reserved]

Procedures

42.871 Notice of covered programs.  
42.872 Enforcement procedures.  
42-873-42.890 [Reserved]

Authority: 5 U.S.C. 301; 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

2. The designations for Subparts A-F as set forth in the common rule are removed.
3. In § 42.802 (§ \_\_\_\_ .2) in the definition of "designated agency official," the brackets and text within brackets are removed and "the Assistant Attorney General, Civil Rights Division" is added in its place.
4. In § 42.802 (§ \_\_\_\_ .2) in the definition of "Title IX regulations," the brackets and text within brackets are removed and "§§ 42.801 through 42.890" is added in its place.

5. Section 42.872 (§ \_\_\_\_ .72) is added to read as follows:

**§ 42.872 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to this subpart. These procedures may be found at 28 CFR 42.106 through 42.111.

Draft 12/30/97

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.<sup>1</sup>

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.<sup>2</sup> 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

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<sup>1</sup> Other programs, particularly those that may be more questionable or controversial on coverage, could be described here to show the intent for coverage.

<sup>2</sup> This sentence is from the President's June 17, 1997, memo.

Federal employees (prohibited by Title VII).<sup>3</sup> 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.

Furthermore, stability is an essential element of economy and efficiency. Discriminatory practices cause interruption, loss of productivity, inefficiency, instability in the work environment, and interference with the learning process, and, thus, disrupt the orderly delivery of services.

NOW, THEREFORE, to promote economy and efficiency in government procurement of supplies and services<sup>4</sup>, 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 section \_\_\_ of title \_\_\_, United States Code<sup>5</sup>; sections 471, et seq., including section 486, title 40, United States

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<sup>3</sup> This sentence is slightly modified from text of the President's June 17, 1997, memo.

<sup>4</sup> Several Executive orders that impose obligations on contractors begin with a narrative of how such action (e.g., publication of environmental actions, compliance with immigration law provisions, hiring of displaced workers, etc.), will ensure a more stable procurement program with the government, and therefore promote economy and efficiency. See Exec. Order No. 12,969, 3 C.F.R. 403 (1995 Comp.) (Federal Acquisition and Community Right-to-Know); Exec. Order No. 12,933, 3 C.F.R. 927 (1994 Comp.) (Nondisplacement of workers on follow-on contracts).

<sup>5</sup> This is the citation for the establishment of DOD's domestic and overseas school programs.

Code<sup>6</sup>; section 7301, title 5, United States Code<sup>7</sup>; 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<sup>8</sup> an education or training program or activity of any Executive department or agency<sup>9</sup> 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.

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<sup>6</sup> This is the authority for Exec. Order No. 11,246's coverage of contractors, although it is not specifically cited in the order.

<sup>7</sup> This is the authority to govern conduct of federal employees.

<sup>8</sup> The phrase "be denied the benefits of, . . . be subject to," is the operating text of Title VI, Title IX, and Section 504 of the Rehabilitation Act.

<sup>9</sup> See subsection 8-803, which addresses independent agencies. As an alternative, we may consider using specific definitions of "agency" and "independent agency," based on 42 U.S.C. § 3502, Paperwork Reduction Act, to distinguish who is/is not covered. Other orders cite to 5 U.S.C. § 105, which defines Executive agencies as "an Executive department, a Government corporation, and an independent establishment." It is doubtful that § 105 can be utilized for this order.

1-102. The provisions of this Order shall apply to education programs and activities that are operated by the Department of Defense Dependents Schools.<sup>10</sup>

Section 2. Definitions.

2-201. "Program or activity" includes programs or activities conducted, operated, administered, or undertaken by an executive department or agency, or by a contractor to an executive department or agency in carrying out its Federal contract.<sup>11</sup>

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 4, that are subject to and exempt from coverage by this order, respectively.

2-204. "Contractor" means an entity that has submitted the

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<sup>10</sup> Training programs conducted overseas that are solely for foreign nationals, including law enforcement and anti-terrorism training, will not be covered by this Executive order.

<sup>11</sup> Exec. Order No. 12,892, which addresses fair housing in federally assisted and conducted activities, defines "program or activity" as follows: ". . . shall include program and activities operated, administered, or undertaken by the Federal government, [federally assisted programs], and Federal supervision or exercise of regulatory responsibility (including regulatory or supervisory authority over financial institutions)." 3 C.F.R. 849 (1994 Comp.).

successful bid or proposal in response to a competitive [acquisition] solicitation."<sup>12</sup>

Section 3. Application to certain contractors of executive departments and agencies.<sup>13</sup>

3-301. Each executive department and agency shall, [to the maximum extent practicable], include in contracts expected to equal or exceed \$100,000, with the contractors described in subsection 3-302, the following clause:

COMPLIANCE WITH EXECUTIVE ORDER \_\_\_\_\_

"Consistent with the efficient performance of this contract, the contractor shall comply with the terms of this order, and any implementing regulations, rules, policies, or

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<sup>12</sup> This definition is from Exec. Order No. 12,969, Acquisition and Community Right-to-Know. An alternative definition from another Executive order is: "'Contractor' shall have the meaning as defined in subpart 9.4 of the Federal Acquisition Regulation."

<sup>13</sup> There are numerous issues associated with coverage of contractors, including the Federal Acquisition Streamlining Act (FASA) and rulemaking procedures associated with the Federal Acquisition Regulations (FAR). In addition, there is tremendous variation among Executive orders that affect contracting; some require consultation with the Federal Acquisition Regulation Council before development of contract clauses (Exec. Order No. 12,933), some include specific contract provisions or requirements within the text of the order (Exec. Order No. 12,969), others identify policy yet specifically state there will be no contract clause developed (Exec. Order No. 12,989). As a result, the enforcement mechanisms and sanctions for violations vary significantly.

The format of Section 4 is a compilation of Exec. Order No. 12,969, Acquisition and Community Right-to-Know, which has an elaborate scheme for requirements on acquisition contracts, and Exec. Order No. 12,933, which concerns right of first refusal with respect to follow-on maintenance/custodial contractors.

guidance. If it is determined by an agency, pursuant to regulations, rules, policies, or guidance issued by the Attorney General, that the contractor is not in compliance with the requirements of this clause or any implementing regulations, rules, policies, or guidance, appropriate sanctions may be imposed and remedies invoked against the contractor, as provided in Executive Order \_\_\_\_ and its implementing regulations, rules, policies, or guidance."

3-302. Contractors subject to the eligibility criterion described in subsection 3-301 above are those who conduct, in the performance of their contracts with executive departments and agencies, education or training programs for individuals other than their own employees.<sup>14</sup>

3-303. As consistent with Title IV of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, and section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11), the requirements of this order are only applicable to

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<sup>14</sup> As currently drafted, all contracts that exceed \$100,000 would include this phrase, for subsequent determination as to whether they in fact conduct education programs subject to this order.

It appears that the largest contingent of contractors that could be subject to this order are the "Management and Operating (M&O) contractors" that operate the national laboratories for the Department of Energy. While as a percentage of total operating budget this is minimal, I would estimate at least a couple million dollars are spent on programs in community schools, internships, direct fellowships, etc. It should be noted that Energy assert that training provided by its contractors for its *respective employees* should not be covered by the EO. The text of subsection 3-302 accommodates this view.

competitive acquisition contracts expected to equal or exceed \$100,000.<sup>15</sup>

3-304. The Attorney General, in consultation with the Federal Acquisition Regulation Council, may identify additional provisions to be included in contracts subject to this order.<sup>16</sup>

Section 4. Exemptions from coverage.

4-401. The provisions of this Order do not apply to \_\_\_\_\_  
[military programs.]

4-402. This Order does not apply to, affect, interfere, or modify in any way the operation of any otherwise lawful affirmative action plan.

4-403. 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.<sup>17</sup>

4-404. 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

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<sup>15</sup> This sentence is duplicative of text included in Exec. Order No. 12,969.

<sup>16</sup> The regulations issued for Exec. Order No. 12,933 include provisions to be incorporated in contracts that are in addition to a specific clause stated in the EO itself.

<sup>17</sup> This text, with slight modifications, was proposed by the Department of Interior (DOI). DOI's proposed text referred specifically to "Indians, natives of certain territories, and Alaska natives." This sentence is also very similar to text of ED's Title VI provision, 34 C.F.R. 100.3(d).

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.

4-405. This order does not apply to the selection process utilized and/or decisions made by any entity other than the executive department or agency, or a contractor, regarding who may attend or participate in an education or training program conducted by an executive department or agency, or a contractor.

Section 5. Administrative enforcement.

5-501. 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 or contractors.

5-502. (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.

5-503. 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.)<sup>18</sup>

5-504. If the designated office within an executive department or agency concludes that a contractor to the executive department or agency has not complied with this order or any implementing rules, regulations, policies, or guidance, such office shall

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<sup>18</sup> This sentence, apart from parenthetical reference to "employment" rather than "service," is verbatim from Exec. Order No. 12,564, 3 C.F.R. \_\_\_\_ (1986?), reprinted in 5 U.S.C. § 7301 app. (1986) (Drug-free Federal Workplace).

endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion. In the event of failure of such informal means, the executive department or agency, in conformity with implementing rules, regulations, policies, or guidance, shall impose sanctions including, but not limited to:

- a. cancellation or termination of contracts with such contractor;
- b. refusal to enter into future contracts with such contractor until it is satisfied that the contractor will comply with the rules, regulations, and procedures issued or adopted pursuant to this order;
- c. any other action as may be appropriate.<sup>19</sup>

Section 6. Implementation and Agency Responsibilities.

6-601. Within 180 days of the issuance of this order, the Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance<sup>20</sup>, as deemed appropriate by her, to be followed by all executive departments and agencies.<sup>21</sup> The Attorney General shall address:

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<sup>19</sup> Exec. Order No. 12,933 allows for debarment of the contractor for 3 years for a failure to comply with an agency order or a "willful violation."

<sup>20</sup> Exec. Order No. 12,969, community right to know, requires that EPA issue "guidance" to be published in the Federal Register.

<sup>21</sup> Depending on resolution of the form of subsequent material, this phrase and Sections 5-504 and 6-602 may be modified to refer to agencies' promulgation of regulations.

- 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 4;
- b. examples of discriminatory conduct;
- c. applicable legal principles;
- d. provisions to be included in contracts;
- e. enforcement procedures with respect to complaints against employees and contractors;
- f. remedies;
- g. requirements of an agency's annual report as set forth in Section 7;
- h. and such other matters as deemed appropriate.

The Attorney General may, at such times as deemed appropriate by her, issue supplemental rules, regulations, policies, or guidance on implementation of this order.

6-602. 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, and education and training programs and activities of its contractors.<sup>22</sup> Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or

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<sup>22</sup> Many Executive orders include delegation of lead authority to one agency, with the obligation that others follow such instructions or issue regulations subject to approval of the lead agency.

guidance issued by the Attorney General within 60 days of issuance.

6-603. The head of each executive department and agency shall be responsible for ensuring compliance with this order.<sup>23</sup>

6-604. 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.<sup>24</sup>

6-604. 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.<sup>25</sup>

#### Section 7. Annual Report.

7-701. 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

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<sup>23</sup> This sentence is in Exec. Order No. 12,898 (Environmental justice) and other executive orders.

<sup>24</sup> Identical language can be found in Exec. Order No. 12,969 (Acquisition and community right-to-know), and others.

<sup>25</sup> Identical language is included in Exec. Order No. 12,969 (contracting and community right-to-know), 1995 comp., p. 406; similar language is in Exec. Order No. 12,892, Sec. 3-303(a) (Fair housing).

days of the end of the preceding year's activities.<sup>26</sup>

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

Section 8. *General Provisions.*

8-801. 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.

8-802. 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.

8-803. Independent agencies are requested to comply with the provisions of the order and implementing regulations, rules, policies, or guidance.

Section 9. *Judicial Review.*

9-901. This order creates no rights under the Contracts Disputes Act, and disputes regarding the requirement of the contract clause shall be disposed of only as provided by the Attorney General in regulations, rules, policies, or guidance issued by the Attorney General.<sup>27</sup> 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

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<sup>26</sup> Several Executive orders require that annual reports be submitted.

<sup>27</sup> This sentence stems from Exec. Order No. 12,933.

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.<sup>28</sup>

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<sup>28</sup> The text of the last two sentences can be found in Exec. Order No. 12,969 and Exec. Order No. 12,989. Similar text is contained in Exec. Order No. 12,933.



Office of the Assistant Attorney General

Washington, D.C. 20035

DEC 1 1997

MEMORANDUM FOR ROBERT L. WEINER  
Senior Counsel  
White House Counsel's Office

ELENA KAGAN  
Deputy Assistant to the President  
for Domestic Policy

FROM: Isabelle Katz Pinzler *Isabelle Katz Pinzler*  
Acting Assistant Attorney General  
Civil Rights Division

SUBJECT: Status of Activities on Title IX and Federally  
Conducted Education Programs Initiative

The purpose of this memorandum is to provide an overview of our objectives and proposed timetable with respect to the President's initiative on Title IX and federally conducted education and training programs. In summary, it is our objective to publish a proposed regulation to enforce Title IX by 24 agencies and to submit a draft Executive order for review by the end of this year. Publication of the proposed regulation will be difficult to achieve in this time frame, however, unless there is substantial coordination and prompt attention by all of the participating agencies, the Office of Federal Register (OFR), the Department's Office of Legal Counsel (OLC), and the Office of Management and Budget (OMB). Therefore, after you have reviewed this memo, I would like to discuss with both of you how communication to involved agencies from either of your respective offices may help ensure that the remaining activities receive prompt attention, so that we can meet our December 31, 1997, publication goal. I will address activities concerning Title IX and the Executive order in turn.

Actions to Invigorate Title IX

1. Preparation of Notice of Proposed Rulemaking

Our primary effort with respect to the invigoration of Title IX of the Education Amendments of 1972 is the development of a regulation that will be promulgated by 24 agencies. We are preparing a common rule; thus, one document will be published in

the Federal Register by all participating agencies that will show the common text and agency adoptions. Agency adoptions include definitions and minor revisions that are unique to that agency and the agency's adoption, or approval of, the text of the common rule.

Thus far, we have drafted the text of the notice of proposed rulemaking (NPRM), and obtained comments from the Department of Education (ED) and the Equal Employment Opportunity Commission (EEOC). The EEOC has authority to review the NPRM pursuant to Executive order 12067 and we solicited ED's opinions since our proposal is based on their Title IX regulation. We also have obtained preliminary comments from OFR as to form.

In addition, on November 21 and 24, 1997, copies of the draft regulation and agency adoption forms were delivered to the 24 participating agencies. We asked that agencies provide comments and return the adoption forms to us by December 10, 1997. Our correspondence to agencies also solicited information that we need to complete forms for purposes of the Paperwork Reduction Act. We also provided a copy of the NPRM to OLC for review.

As explained more fully below, in order to publish the NPRM in the Federal Register, the following steps must be completed:

1. Return of agency adoption forms and comments from agencies, and comments from OLC;
2. Incorporation of edits from agencies and OLC;
3. Submission to OMB for review and approval; and
4. Submission to OFR for review and printing.

In order for OFR to publish the NPRM, OFR must receive the draft in proper form with agency adoptions that are signed by the designated official. In many cases, agencies have identified the head of the agency as the individual who must sign proposed regulations. I have enclosed a list of those individuals designated to sign the regulation for each of the participating agencies. As stated above, we are providing agencies approximately two weeks in which to review the draft regulation and return the signed adoption. The agencies have been notified orally of the proposed edits; thus, they have some expectation of the text of the document. While we notified agencies of our proposed deadline of December 10, 1997, our experience is that we do not always receive timely responses, particularly when materials must be reviewed by the head of the agency. The Thanksgiving holiday and the tight time frame raise the specter that we will not receive all material, notwithstanding best efforts.

We do not expect substantial edits from the agencies; however, we do need time to review their responses. OLC also has suggested that they may have substantive comments on certain provisions. Upon incorporation of edits and any changes from OLC, the material then will be submitted to OMB for review. Upon their approval, the document then may be submitted to OFR for review. Of course, OFR also needs time to review the document prior to publication. It is my understanding that they receive a substantial amount of material for review for publication by year's end beginning in mid-December and, if we receive approval from the other agencies in rapid fashion, we will be part of the rush by agencies for year-end publication.

## 2. Department of Interior Participation in NPRM

I also wish to bring to your attention a matter concerning the Department of Interior (DOI). While DOI has expressed its interest in participating in the common rule, they have not determined the full reach, or limits, of Title IX as it applies to its programs. Based on discussions among our staff and employees of DOI, it is our understanding that DOI is reviewing the applicability of Title IX to programs, particularly schools, operated by Indian tribes, and considering what impact tribal sovereignty has on the reach of Title IX. If DOI decides that Title IX is applicable to schools run by tribes, it is possible that language may need to be added to the proposed regulation to accommodate the influence of tribal customs on certain programs in these schools. Notwithstanding our requests that DOI state its views in writing, we have not received any material to date. I have attached to this memorandum a letter that I sent to DOI regarding this matter. In response to my letter, staff at DOI have orally informed us that DOI likely will be seeking an extension, until December 31, 1997, to report their views, in part because of the recent appointment of the Assistant Secretary of Indian Affairs. I also will solicit informal views from OLC.

Given the complexities of these issues, it is unclear when this matter will be resolved, and it is unclear what impact this will have on the NPRM. Nevertheless, DOI can participate in the common rule because it has other programs subject to Title IX. If we proceed with publication of the NPRM and subsequently it is decided that additional language is needed to address Indian programs, this matter will need to be addressed in a supplemental notice in the Federal Register.

## 3. Delegation Agreement

On November 21, 1997, we distributed to ED, and the Departments of Health and Human Services (HHS), and Veterans Affairs (VA) a draft delegation agreement that will allow for the sharing of enforcement responsibilities with respect to recipient educational institutions that are funded by more than one agency.

This agreement will allow agencies that fund certain types of educational institutions to refer complaints to ED, HHS, and VA if the recipient educational institution also is funded by ED, HHS, or VA. For example, an agency may refer a complaint that concerns programs or activities of an elementary and secondary education system, and institutions of higher education and vocational education to ED; complaints regarding programs and activities involving schools of medicine, dentistry, nursing, other health-related schools to HHS; and matters concerning programs or activities of proprietary educational institutions (i.e., private, for profit, non-college degree granting institutions that provide technical and skilled training) to VA. Similar agreements exist for Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, but only a few such agreements exist to date for Title IX. Upon receipt of comments from ED, HHS, and VA, we will prepare a revised draft for submission to the remaining participating agencies. Once a document has been agreed upon by the participating agencies, it will be published in the Federal Register. We do not expect the agreement to take effect until issuance of the final rule.

#### Actions Regarding the Executive Order

As you know, on September 30, 1997, members of the Civil Rights Division and the Office of Legal Counsel met with you to discuss various issues associated with collecting inventories from Federal agencies and drafting an Executive order. We received guidance on several of these matters shortly thereafter. Since then, we have made numerous contacts and received at least an initial submission from all agencies.

Unfortunately, the Department of Defense (DOD) has not completed its inventory of federally conducted education programs, nor has it submitted data regarding what constitutes "military" programs, despite an agreement that we would receive this material by October 29, 1997. As was discussed at our meeting, in order to identify exceptions or draw distinctions between "military" and "civilian" programs in the order, we need to know what programs fall within each category. It is my understanding that the DOD Office of General Counsel is preparing a memorandum on the issue of an exemption for "military" programs, separate from efforts by the Equal Opportunity office to collect the inventory data from the multiple DOD entities. Given the lack of responsive data from DOD, I believe it is necessary that your office intervene at this point.

In addition, at your request, we drafted an interim report with respect to receipt of agency inventories and preparation of the Executive order. A copy of this draft was submitted to both

of you for comment. We can modify one sentence to report that we have received responses from all agencies yet need supplemental data from a few. We await your comments prior to submitting this report to the Attorney General.

We are continuing to explore other matters associated with the Executive order. It is possible that another meeting to discuss issues will be helpful as we continue in this process. Of course, I will keep you informed as our work progresses.

Please feel free to contact me at (202)514-6715, or Lisalyn Jacobs at (202) 616-2732, to discuss these matters.

Attachments



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

NOV 24 1997

Mr. John Leshy  
Solicitor  
U.S. Department of Interior  
1849 C Street, N.W.  
Room 6351  
Washington, D.C. 20240

Mr. John Berry  
Assistant Secretary - Policy,  
Management, and Budget  
U.S. Department of Interior  
1849 C Street, N.W.  
Room 1063  
Washington, D.C. 20240

Dear Mr. Leshy and Mr. Berry:

As part of President Clinton's initiative to reinvigorate the enforcement of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. (Title IX), the Department of Justice (DOJ) is preparing a common rule to enforce Title IX. Representatives of the Department of Interior's (DOI's) Solicitor's office and Office for Equal Opportunity (OEO) have attended meetings held on June 30 and September 30, 1997, hosted by DOJ's Civil Rights Division's Coordination and Review Section, that have addressed the proposed text of this regulation. In addition, members of these offices have engaged in numerous telephone conversations with DOJ staff regarding the common rule. I understand that DOI has decided to participate in the notice of proposed rulemaking (NPRM) of the common rule, and the purpose of this letter is to address an issue that is unique to DOI's participation. For reference, I have enclosed a copy of the draft notice and the text for your agency's adoption of this rule.

Over the last few months, during several discussions on the common rule with members of DOI's OEO and the Solicitor's Office, Division of Indian Affairs, and more recently with the Bureau of Indian Affairs, DOJ staff raised the issue of whether schools operated by Indian tribes are subject to Title IX. DOJ staff preparing the common rule explained our need to know DOI's views, in writing, on this matter given the upcoming publication of the NPRM. While we are no longer asking agencies to publish an appendix that identifies programs covered by the proposed rule, the application of Title IX to tribally run schools remains a matter that DOI and DOJ need to address. If it is decided that

Title IX does apply to such schools, we would like your views as to whether additional provisions are desired in order to accommodate any operations within such schools. It also would be helpful for us to know, prior to issuance of the NPRM, if DOI believes that this regulation does not reach such schools.

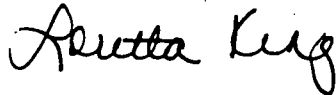
Please note that because DOI has many programs apart from tribally run schools that fall within the scope of Title IX, we do not foresee that this issue would prevent DOI from participating in the NPRM. Because this issue may require special provisions, however, and the process is further complicated if it is addressed after publication of the NPRM, we need your input so that we may resolve this matter as quickly as possible. I appreciate the complexities of this issue; however, in order for us to assess what impact this issue may have on the NPRM, and because of time constraints on publishing this notice, we are requesting a memorandum that states DOI's view on whether Title IX applies to tribally operated schools by December 10, 1997.

For your information, I also have enclosed a copy of a letter addressed to Ms. E. Melodee Stith, Director, Office for Equal Opportunity, which sets forth a summary of the regulation and various steps that must be taken in order to complete this notice for publication in the Federal Register.

If you have any questions regarding this matter, please contact Ms. Loretta King, Deputy Assistant Attorney General, at (202) 616-1278 or Ms. Jennifer Levin, an attorney who is coordinating the common rule, at (202) 305-0025.

Thank you for your assistance.

Sincerely,



for Isabelle Katz Pinzler  
Acting Assistant Attorney General  
Civil Rights Division

Enclosures

cc: Ms. E. Melodee Stith  
Director  
Office for Equal Opportunity



U.S. Department of Justice

Civil Rights Division

---

Coordination and Review Section  
P.O. Box 66560  
Washington, DC 20035-6560

NOV 24 1997

Ms. E. Melodee Stith  
Director  
Office for Equal Opportunity  
U.S. Department of Interior  
1849 C Street, N.W.  
Mailstop 5221  
Washington, D.C. 20240

Dear Ms. Stith:

I have enclosed for your review a draft notice of proposed rulemaking (NPRM) of a common rule prepared by the Department of Justice to implement Title IX of the Education Amendments of 1972, and the text for your agency's adoption of this rule.

Set forth below is a summary of the regulation and various steps that must be taken in order to complete this notice for publication in the Federal Register. Because of time constraints on publishing this notice, I ask for your continuing cooperation and timely response for the information and forms requested by December 3 or December 10, 1997, as noted.

As explained in prior meetings hosted by the Civil Rights Division's Coordination and Review Section, the text of this proposed regulation is based on the Department of Education's (ED's) Title IX regulation, with additions to reflect statutory amendments, one modification to be consistent with Supreme Court precedent, and procedural or schematic modifications to allow for publication as a common rule. To assist your review, our modifications to the ED regulation are reflected by shading for additions of new text and ~~strike-outs~~ for deletions of existing text.

In addition, I have enclosed the text for your agency's adoption of the rule. This form is based on the data you submitted, and, where appropriate, modifications based on subsequent conversations between Ms. Jennifer Levin and you or a member of your staff. We also have worked closely with the Office of Federal Register (OFR) as we prepared the NPRM and the agency adoptions. Based on certain OFR requirements, it was necessary to change some of the forms. For example, if the proposed list of subjects included terms that OFR does not accept, they were deleted. In addition, we were advised by OFR that the term or phrases "Civil rights, Sex discrimination, and Women" should be included as part of every agency's list of

subjects. Thus, these words were added when agencies did not include such language.

Further, some agencies are adding this regulation as a subpart to an existing part. Depending on whether the authority citations for the part are reported collectively or individually for each subpart, the authority citation for this adoption may include all sources of authority (statutes, Executive orders, etc.) that are appropriate to the entire part, or only the authority for the subpart on Title IX. Please pay particular attention to reviewing this text, where appropriate.

It is important that you take several steps in order that we may complete the process for publication of the NPRM in a timely manner:

1. Please ensure that the **agency adoption form is signed** and that the **original** is returned to the Department of Justice by **Wednesday, December 10, 1997**. If someone other than the name identified in fact signs the document, please type that person's full name and title beneath the name and title listed. The OFR will not accept a document that does not have the name and title of the signatory. It is essential that we have the document with the original signature. Please have this hand-delivered to:

Jennifer Levin  
Attorney  
Coordination and Review Section  
Civil Rights Division  
U.S. Department of Justice  
1425 New York Avenue, N.W., Room 4015  
Washington, D.C. 20005

If you believe edits are needed to the form, please contact Ms. Levin as soon as possible. She can be reached by telephone at (202) 305-0025, or by facsimile at (202) 307-0595.

Please be advised that it is possible that the OFR will have additional edits to these forms. For that reason, we have limited the text on the signature page. Of course, we will notify you if OFR requires any edits. Since OFR accepts hand-written corrections, we likely can accomplish corrections without requiring you to submit modified forms for a second signature.

2. With the assistance of your agency Federal Register liaison, **notify the Office of Federal Register's CFR unit** of your reservation of the part or subpart designated for purposes of the Title IX regulation. In order to avoid a conflict

with another office within the agency that may choose the same location within the CFR, it is essential to notify the OFR CFR unit as soon as possible. They can be reached at (202) 523-3419.

3. Submit any comments on the proposed regulation to the Department of Justice by **Wednesday, December 10, 1997**. Comments may be delivered to Ms. Levin, sent by facsimile ((202) 307-0595), or if minimal in nature, addressed by telephone. Given time constraints, we cannot guarantee consideration of your comments if they are received after that date.
4. Paperwork Reduction Act requirements: Pursuant to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., two types of notices and approval from the Office of Management and Budget (OMB) are required; one notice for the regulation that includes information collection, and a second notice for the form itself. First, if a proposed regulation includes information collection requirements that fall within the scope of the Paperwork Reduction Act (PRA), a notice of this fact must be published with, or as part of, the NPRM. It is our view, in light of amendments to the PRA in 1995, that only assurance forms are subject to the Act. See 5 C.F.R. § 1320.3(h)(1).

We have incorporated notice of the PRA requirement into the NPRM (see pages 12-14). The NPRM currently explains that an assurance form is required when an applicant or recipient completes an application for Federal financial assistance from a participating agency for the first time or if there is a break in continuity of assistance from such agency. We estimate that approximately 25% of recipients seek assistance from more than one Federal agency; thus, we estimate that assurances would be required 1.25 times rather than once, per recipient. The public may comment on this information collection requirement, including comments on our assumptions about the burdens imposed.

In addition to the information included in the NPRM, forms that provide more detailed estimates of the time and financial burdens on government agencies and recipients relating to the assurance form must be submitted to OMB. We seek your views on our estimates, as well as certain other information in order that we may complete these forms on behalf of all participating agencies. We currently are

preparing the notice and associated forms based on the following assumptions and estimates:

1. Length of time for a recipient to fill out an assurance form: 20 minutes
2. Capital and startup costs to a recipient imposed by the assurance form requirement in the NPRM: None.
3. Operating and maintenance costs to a recipient imposed by the assurance form requirement in the NPRM: None.
4. Cost to the Federal government per recipient: \$7.00. This figure is based on:
  - a. Estimated cost to develop this form (broken down per recipient): \$.05
  - b. Salary of a GS-7/1 clerical worker who assembles, mails, receives, and processes the form (assuming half an hour total labor, and a salary of \$12.71/hour): \$6.35
  - c. Estimated cost of copying form (assuming two pages, \$.04 per page): \$.08
  - d. Estimated cost of supplies and postage: \$.50/form
  - e. Estimated cost of storing form (portion of file cabinet per form): \$.02

If you think these estimates are significantly in error, please provide your views with alternative cost assessments by Wednesday, December 3, 1997. In addition, please provide the following information by Wednesday, December 3, 1997:

1. An estimated number of recipients of Federal financial assistance from your agency who will complete an assurance form in FY 1998; and
2. An estimated number of how many recipients are colleges, universities, postsecondary schools, or other educational institutions.

We understand that you may not have sufficient data in order to provide an exact figure. Reasonable estimates are acceptable. Please include a brief description as to how the estimate was calculated. This need not be more than a few sentences.

Second, as mentioned, apart from giving the public an opportunity to comment on the proposed information collections, an agency must also seek OMB approval and a control number for its information collection forms; in this case, the assurance form. If your agency does not have a control number from OMB for its assurance forms, and you choose to use a form that is different than the OMB standard assurance forms (SF 424b for non-construction programs or SF 424d for construction programs), you must have this form cleared by OMB. To do this, please contact the Clearance Officer of your agency. You will need to prepare notices of information collection review for publication in the Federal Register and to submit an application packet to OMB to obtain its approval of your form. This notice and approval process is distinct from that associated with the rule itself, and must be done by each agency.

Finally, please note that this draft NPRM has not yet been reviewed by the OMB or the Department of Justice's Office of Legal Counsel. If substantive changes are made by either office, we will so inform you.

Again, if you have any questions regarding the agency adoption form, please contact your agency Federal Register liaison or Ms. Levin at (202) 305-0025. If you have specific questions for the OFR, our contact at that office for this common rule is Ms. Ruth Pontius, Scheduling Unit, (202) 523-3187.

Thank you for your continued cooperation and prompt responses as we continue the process of preparing the common rule.

Sincerely,

*Merrily A. Friedlander*

Merrily A. Friedlander  
Chief  
Coordination and Review Section  
Civil Rights Division

Enclosures

Individuals Signing Agency Adoptions for Title IX Common Rule

William M. Daley  
Secretary of Commerce

L. M. Bynum  
Alternate OSD Federal Register Liaison Officer  
Department of Defense

Andrew Cuomo  
Secretary of Housing and Urban Development

Brooks Yeager  
Acting Assistant Secretary - Policy, Management, and Budget  
Department of Interior

Janet Reno  
Attorney General

Alexis M. Herman  
Secretary of Labor

Bonnie R. Cohen  
Under Secretary of State for Management

Rodney Slater  
Secretary of Transportation

Robert E. Rubin  
Secretary of Treasury

Hershel W. Gober  
Acting Secretary for Veterans Affairs

Stewart A. Davis  
Acting General Counsel  
Corporation for National and Community Service

Carol M. Browner  
Administrator  
Environmental Protection Agency

James L. Witt  
Director  
Federal Emergency Management Agency

James M. Taylor  
Acting Associate Administrator for Equal Employment Opportunity  
General Services Administration

Linda Bell  
Director, Policy, Planning, and Budget  
Institute of Museum and Library Sciences

Daniel S. Goldin  
Administrator  
National Aeronautic and Space Administration

Jane Alexander  
Chairman  
National Endowment for the Arts

Michael S. Shapiro  
General Counsel  
National Endowment for the Humanities

Lawrence Rudolph  
General Counsel  
National Science Foundation

John C. Hoyle  
Secretary of the Chairman  
Nuclear Regulatory Commission

Aida Alvarez  
Administrator  
Small Business Administration

Frank Alford  
Manager, Supplier and Diverse Business Relations  
Tennessee Valley Authority

Jessalyn L. Pendarvis  
Director, Office of Equal Opportunity Programs  
Agency for International Development

Joseph Duffey  
Director, U.S. Information Agency

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

### **Index**

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

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

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

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

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

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

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

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

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

William A. Clinton

93/30/97

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

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

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

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

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

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

|                                        |                             |                                                                                                      |
|----------------------------------------|-----------------------------|------------------------------------------------------------------------------------------------------|
| HHS                                    | August 27, 1997             |                                                                                                      |
| HUD                                    | August 19, 1997             | 4 programs by Training Academy                                                                       |
| Interior                               | September 10, 1997          | Incomplete; supplement needed on scope of BIA programs and impediments concerning BIA programs       |
| Justice                                |                             | Due September 8, 1997 per Attorney General's Memo; data not provided by all components               |
| Labor                                  | August 18, 1997             |                                                                                                      |
| State                                  | August 29, 1997             |                                                                                                      |
| Transportation                         | September 4, 1997           | Incomplete; data not provided on all components, additional information may be needed on impediments |
| Treasury                               | August 18, 1997             |                                                                                                      |
| Veterans Affairs                       | August 19, 1997             | 3 programs                                                                                           |
| <b><u>INDEPENDENT AGENCIES</u></b>     | <b><u>DATE RECEIVED</u></b> | <b><u>STATUS</u></b>                                                                                 |
| Advs. Comm'n on Intergov. Relations    |                             | No covered programs (oral statement; letter to follow)                                               |
| Advs. Council on Historic Preservation | August 22, 1997             | 1 program                                                                                            |
| African Development Foundation         | August 5, 1997              | No covered programs                                                                                  |
| AID                                    |                             | T/C 9/22: EO office checking status of survey response                                               |

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

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

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

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

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

Susquehanna River Basin  
Commission

August 5, 1997

Not subject to memorandum;  
not a federal agency

Tennessee Valley  
Authority

August 26, 1997

5 programs

Trade and Development  
Agency

August 11, 1997

No covered programs (although  
mentions 1 volunteer internship)

United States Enrichment  
Corporation

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

United States Information  
Agency

August 25, 1997

9/30/97

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

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

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

- iv. Do statutory limits on damages for real property damage/death of aliens caused by volunteer or employee restrict the potential for relief under an executive order for alleged discriminatory practices of a volunteer? (22 U.S.C. § 2509(b))
    - v. (If protections of Executive order extend to aliens abroad,) allowances for cultural norms of host country; distinct from actions by volunteer
  - b. Issues relating to claims asserted by volunteers against agency staff
    - i. Given unique status, will volunteers have additional rights, similar to the public, to pursue claims against employees of the Peace Corps under an Executive order? (Volunteers have rights under FTCA and "any other Federal tort liability statute," § 2504(h); may not include Title VII, although agency practice may accept complaints)
6. Extent of exclusion for "military" programs (Different treatment under Titles VI and VII, and 504)
    - a. define by program (Note: some "military" programs allow civilians)
    - b. define by employee status
    - c. Merchant marines, coast guard
    - d. Public health service hospitals
  7. Application of order's prohibitions to Federal government contractors (e.g., Department of Energy M&O contractors and its employees)
    - a. Presume students/third parties have rights against the government because of actions of contractors, such as M&O contractor employees.
    - b. Presume contractor employees will have rights against government employees under Executive order
  8. Extent of exclusion/inclusion for tribal education programs
    - a. Distinction between BIA-operated schools (82) and tribally-run schools (105)
    - b. Potential exclusion for programs that conform to tribal custom and may be contrary to principles of EO
  9. National security concerns raised by the State Department, other agencies (E.g., State Department training program for foreign governments on security matters)
  10. Whether employees who serve as volunteer mentors or provide other educational services on a voluntary basis should be exempt from coverage under the order (not "federally conducted" operations, even if on government time?) (See EO 12820, promotes volunteerism by Federal workforce and EO 12999, promotes giving of computers, volunteer assistance in schools, specific text on lack of enforceable rights )

11. Further details needed to determine status of programs for coverage/exclusion:
    - a. "Adopt-a-school" programs
    - b. USDA Graduate School (unclear if "federally conducted")
    - c. SBA-funded programs (SCORE, Small business development centers, women's business demonstration programs)
    - d. EEOC revolving fund program
  12. Presume coverage for training and seminars that address agency operations, agency enforcement or program statutes, industry regulations, or other training to ensure compliance with grants. What distinction, if any, for speeches, panel participation, etc. by agency employees to discuss agency operations?
  13. Extent of exclusion/inclusion for prisoners (504/federally conducted regulations require that prisoners first exhaust BOP administrative procedures before pursuing complaint system under 504.)
- B. What are the rights protected?
1. Same or different language than Title IX, Title VI, and/or 504/Federally conducted?
  2. Relationship to existing programs that include preferences or considerations based on race and/or gender (Presumption that the executive order will not impinge or impact on programs that lawfully provide preferences or special considerations based on race, ethnicity, or gender, although EO may apply to actions in program apart from selection.)
  3. Extent of allowance, as with Title IX, for single-sex programs if reasonably comparable programs are provided to members of both sexes.
  4. No infringement on existing Executive orders that promote education (E.g., support for HBCUs (12876), Education technology/grant of computers (12999), Presidential Scholars program (11155), Education Excellence for Hispanic Americans (12900))
  5. Selection of participants for Federally conducted education programs: Assumption that order will not reach selection practices of foreign countries/entities that restrict participation in federally conducted programs based on race or gender. Similarly, we assume that individuals may pursue Title VII claims against US employers, or Titles VI, IX complaints if the selecting entity is a recipient of Federal financial assistance.
- C. How are the rights protected? What remedies and means of enforcement?
1. Same/different from 504 federally conducted enforcement? (If follow 504/federally conducted enforcement scheme, this is similar (but not identical) to structure for Title VII claims by employees; therefore, no additional administrative enforcement protections would exist for such persons.)

2. Extent of authority for agencies to issue regulations based on EO
  3. Authority/resources for investigation and enforcement: Should responsibilities be assigned to agency civil rights offices to investigate itself, or other office/agency?
  4. Relief available: limitation to injunctive relief, corrective action, potential discipline of offending employee, no allowance for damages
  5. Likelihood of no private right of action, although potential for judicial review of agency action
- D. Process of drafting the Executive order, additional materials
1. Extent of consultation by the Department of Justice and/or WH with agencies that raise issues (share drafts?)
  2. Timetable for submission of an Executive order, inventories by the Department of Justice
  3. Need to develop implementing regulations for Executive order (agencies to promulgate regulations as drafted by the Department of Justice)?
  4. Additional interpretive guidance for agencies?

THE WHITE HOUSE

WASHINGTON

June 17, 1997

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

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

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

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

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

9/30/97

### **Categories of Education and Training Programs**

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

**1. Formal training centers/academies**

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

**2. Educational facilities operated by the Federal government**

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

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

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

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

Commerce  
DoD/Security Institute  
Justice  
Labor  
State  
Treasury  
CFTC  
EPA  
FTC  
GSA  
ITC  
NRC  
OPM  
Peace Corps

**5. Scholarships/Fellowships**

Agriculture  
DoD/Navy, NSA, DIA  
Education  
Energy  
HHS (NIH, various components)  
Interior  
Justice  
Corporation for National Service  
Panama Canal Commission

**6. Internships**

Energy  
Justice  
Transportation  
Consumer Product Safety Commission  
EPA  
NSA

**7. Short term research opportunities with agency**

DoD  
Energy

**8. Academic credit for employment**

Interior  
Justice

Commission on Civil Rights  
GSA  
NLRB  
Peace Corps

**9. Student volunteers at agency**

DoD/Navy  
Justice  
State  
Transportation  
EPA  
NEA  
OPIC

**10. Educational research**

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

**11. Summer camp programs**

DoD/NSA  
Appalachian Regional Commission

**12. Teacher improvement programs**

DoD/NSA  
Energy  
Interior  
EPA  
NASA  
USIA

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

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

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



U.S. Department of Justice

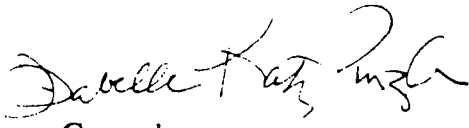
Civil Rights Division

Assistant Attorney General

Washington, D. C. 20530

July 14, 1997

Memorandum for General Counsels

From: Isabelle Katz Pinzler   
Acting Assistant Attorney General

Subject: Inventory of Federally Conducted Education and Training Programs

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

Scope of Programs Covered

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

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

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

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

#### Data for Inventory

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

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

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

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

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

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

This inventory should be delivered to:

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

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

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

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

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

Attachment

Name of Agency: \_\_\_\_\_

| Name of Program | FY 1997<br>Funding<br>Level <sup>1</sup> | Number and Type<br>of Participants <sup>2</sup> | General description of<br>program                         | Authority, Policies, and<br>Possible Impediments                                                                                                                                                                            |
|-----------------|------------------------------------------|-------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 | \$ _____                                 |                                                 | Provide general description<br>of program (2-3 sentences) | Identify source of authority<br>for program (statutory,<br>regulatory, agency<br>directive); policies on<br>nondiscrimination, and<br>note if impediments exist<br>(impediments to be<br>described in separate<br>document) |
|                 |                                          |                                                 |                                                           |                                                                                                                                                                                                                             |
|                 |                                          |                                                 |                                                           |                                                                                                                                                                                                                             |
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<sup>1</sup> Identify funding allocated by the agency. If participants pay to attend the program, identify the total amount of payments received thus far, including whether funds received constitute reimbursement for the agency's expenses (R) or are a supplement to agency expenditures (S).

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

The following agencies were sent a copy of a memorandum addressed to General Counsels from Isabelle Katz Pinzler, Re: Inventory of Federally Conducted Education and Training Programs, dated July 14, 1997, by first class mail, postage pre-paid, on July 15, 1997. Envelopes were addressed to each agency's general counsel and head of the office of civil rights.

Copies of the memorandum will also be sent by facsimile to both agencies' addressees on July 16, 1997. The President's memorandum of June 17, 1997, will be included in the facsimile to the agencies marked with an asterisk.

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

### **The Departments**

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

### **Independent Agencies**

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

Name of Agency: \_\_\_\_\_

| Name of Program | FY 1997 Funding Level <sup>1</sup> | Number and Type of Participants <sup>2</sup> | General description of program                         | Authority, Policies, and Possible Impediments                                                                                                                                                       |
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|                 |                                    |                                              |                                                        |                                                                                                                                                                                                     |
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Small Business Administration  
\*Tennessee Valley Authority  
United States Information Agency

Name of Agency: \_\_\_\_\_

| Name of Program | FY 1997<br>Funding<br>Level <sup>1</sup> | Number and Type<br>of Participants <sup>2</sup> | General description of<br>program                         | Authority, Policies, and<br>Possible Impediments                                                                                                                                                                            |
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<sup>2</sup> Identify whether participation, apart from the sponsoring agency's employees, is (a) open to Federal employees from other agencies ("federal"), (b) open to State and local government employees ("state/local"), and/or (c) open to others (e.g., the general public, private employees, students, family members) ("other"). If more than one group participates, identify the name of each group. In addition, identify the total number (actual or estimated) of participants in FY 1997, and qualify whether such figure is actual "A" or estimated "E."



U.S. Department of Justice

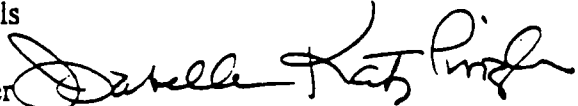
Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

July 24, 1997

Memorandum for General Counsels

From: Isabelle Katz Pinzler   
Acting Assistant Attorney General

Subject: Inventory of Federally Conducted Education and Training Programs

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

Scope of Programs Covered

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

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

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

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

#### Data for Inventory

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

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

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

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

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

This inventory should be delivered to:

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

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

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

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

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

Attachment

Name of Agency: \_\_\_\_\_

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

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

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

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

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

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



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 22 1997

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

*Ellen*  
Dear Ms. Vargyas:

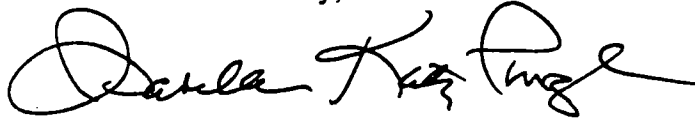
Pursuant to Executive Order 12067, we are submitting for review by the Equal Employment Opportunity Commission (EEOC) a draft notice of proposed rulemaking (NPRM) of a common rule prepared by the Department of Justice to implement Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Isabelle Katz Pinzler". The signature is fluid and cursive, with the first name "Isabelle" being the most prominent part.

Isabelle Katz Pinzler  
Acting Assistant Attorney General  
Civil Rights Division

Enclosure



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 22 1997

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

Dear Ms. Studley:

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

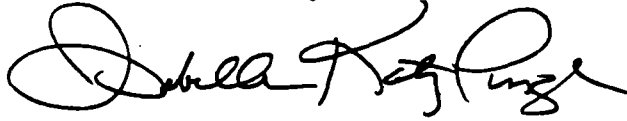
We are providing this to you in draft form as we wish to receive ED's views before the rule is submitted to the participating agencies for review. As you know, the common rule is based on your agency's Title IX regulations. To assist your review, our modifications to the ED regulation are reflected by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

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

- 2 -

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

Sincerely,

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

Isabelle Katz Pinzler  
Acting Assistant Attorney General  
Civil Rights Division

Enclosure

cc: Ms. Norma Cantu  
Assistant Secretary for Civil Rights

**Draft 9/15/97**

**[DOUBLE SPACE DOCUMENT FOR FEDERAL REGISTER]**

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

**DEPARTMENT OF STATE**

**22 CFR Part 146**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 3**

**DEPARTMENT OF JUSTICE**

**28 CFR Part 42**

**DEPARTMENT OF LABOR**

**29 CFR Part 36**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 18**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 4**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**14 CFR Part 1253**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 7**

**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 101**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 19**

**42**

**NATIONAL SCIENCE FOUNDATION**

**45 CFR Part 618**

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

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

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

**ACTION:** Notice of proposed rulemaking.

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

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

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

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

**SUPPLEMENTARY INFORMATION:**

***Background***

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

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

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

#### *Additional Comment Information*

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

#### *Overview*

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

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

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

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

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

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

### *Summary of Regulation*

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

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

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

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

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

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

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

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

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

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

By statutory amendment, and as set forth in \_\_\_\_18(b), Congress restored the broad interpretation accorded the phrase "program or activity" prior to *Grove City College*. The provision addresses the scope of coverage for four broad categories of recipients; State or local entities, educational institutions, private entities, and an entity that is a combination of any of the aforementioned groups. The scope of coverage is no longer limited to the exact purpose or nature of the Federal funding. If, for example, a State or local agency receives Federal assistance for one of many functions of the agency, all of the operations of the *entire* agency are subject to the nondiscrimination provisions of Title IX. 20 U.S.C. 1687(1)(A). Further, if the aid is distributed to an entity or unit of government that subsequently distributes the assistance to a second agency, the entire agency to which the assistance was initially allocated is subject to Title IX. See 20 U.S.C. 1687(1)(B); S. Rep. No. 64 at 16, *reprinted in* 1988 U.S.C.C.A.N. at 18. With respect to educational institutions, it is critical to remember that *all* of the operations of the institution, whether or not such operation is educational or academic in nature, are subject to Title IX's prohibition on discrimination. Thus, housing programs, a shuttle service, food service, and other commercial operations are covered by Title IX. The degree of coverage of private entities, such as private corporations and partnerships, will vary depending on how the funding is provided, the principal purpose or objective of the entity, and/or how the entity is structured (e.g., physically separate offices or plants). All of the operations of private businesses that are principally engaged in education, health care, housing, social services or parks and recreation are considered a "program or activity" for purposes of Title IX. 20 U.S.C. 1687(3)(A)(ii). S. Rep. No. 64 provides numerous other examples of the scope of coverage with regard to each category of recipient, and readers are referred to this material. S. Rep. No. 64 at 16-20, *reprinted in* 1988 U.S.C.C.A.N. at 18-22.

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

Third, \_\_\_\_18(c) reflects the "abortion neutrality" provision in the CRRA, commonly referred to as the Danforth amendment, which provides: "Nothing in this part shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has

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

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

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

1

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

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

Finally, in order to conform ED's existing text to that aspect of the Danforth amendment that does not require or prohibit a recipient from providing services or payment for an abortion, a specific reference to \_\_\_\_18(c)(1) is added to the following four provisions: \_\_\_\_21(c)(3), \_\_\_\_39, \_\_\_\_40(b)(4), and \_\_\_\_57(c).

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

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

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

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

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

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

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

#### *Applicable Executive Orders and Regulatory Certifications*

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

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

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

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

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

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

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

#### Text of the Proposed Common Rule

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

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

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

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

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

## SUBPART A-INTRODUCTION

### § \_\_\_\_ .1 Purpose and effective date.

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

### § \_\_\_\_ .2 Definitions.

As used in this part, the term:

(a) "Title IX" means title IX of the Education Amendments of 1972, Pub. L. 92-318, ~~86 Stat. 373 (except sections 904 and 906 thereof)~~, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, ~~except sections 904 and 906 thereof; by section 432 of Pub. L. 94-482, 90 Stat. 2234; and by Sections 3 of Pub. L. 100-259 and 102 Stat. 2302~~ 20 U.S.C. 1681, 1682, 1683, 1685, 1686, ~~1687, 1688~~.

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

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

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

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

~~cases arising under this part.~~<sup>3</sup>

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

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

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

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

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

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

(3) Provision of the services of Federal personnel.

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

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

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

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<sup>3</sup> This definition is specific to ED's enforcement procedures only.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ \_\_\_\_ .4 Assurance required.

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

(b) Duration of obligation.

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

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

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

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

§ \_\_\_\_ .5 Transfers of property.

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

§ \_\_\_\_ .6 Effect of other requirements.

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

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

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

§ \_\_\_\_ .7 Effect of employment opportunities.

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

§ \_\_\_\_ .8 Designation of responsible employee and adoption of grievance procedures.

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

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

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

§ \_\_\_\_ .9 Dissemination of policy.

(a) Notification of policy.

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

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

(i) Local newspapers;

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

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

(b) Publications.

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

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

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

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

#### SUBPART B—COVERAGE

##### § \_\_\_\_ .11 Application.

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

##### § \_\_\_\_ .12 Educational institutions ~~and other entities~~ controlled by religious organizations.

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

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

##### § \_\_\_\_ .13 Military and merchant marine educational institutions.

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

§ \_\_\_\_ .14 Membership practices of certain organizations.

(a) Social fraternities and sororities. This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls. This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) Voluntary youth service organizations. This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ \_\_\_\_ .15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) Administratively separate units. For the purposes only of this section, §§ \_\_\_\_ .16 and \_\_\_\_ .17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) Application of Subpart C. Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) Public institutions of undergraduate higher education. Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

§ \_\_\_\_ .16 Educational institutions eligible to submit transition plans.

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

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

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

§ \_\_\_\_ .17 Transition plans.

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

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

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

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

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

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

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

#### ~~§ 18. Statutory Amendments.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(B) Assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or~~

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

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

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

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

Benefits from Federal financial assistance

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

(2) Nothing in this section shall be construed to permit a recipient to deny employment to any person or individual because such person or individual has sought or received any benefit or service related to a legal abortion. Additionally, subject to paragraph (2)(1) of this section, no person shall be excluded from participation in, be denied admission to, or be subjected to discrimination under any program, including financial aid, occupational training, employment, or other educational program or activity, if such person is a recipient which receives or benefits from Federal financial assistance because such individual has sought or received or is seeking a legal abortion or any benefit or service related to a legal abortion.

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

**§ \_\_\_\_ .21 Admission.**

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

(b) **Specific prohibitions.**

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

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

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

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

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

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

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

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

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

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

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

§ \_\_\_\_ .22 Preference in admission.

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

§ \_\_\_\_ .23 Recruitment.

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

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

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

#### **SUBPART D-DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES PROHIBITED**

##### **§ \_\_\_\_ .31 Education programs and activities.**

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

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

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

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

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

(d) Programs not operated by recipient.

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

(2) Such recipient;

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

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

§ \_\_\_\_ .32 Housing.

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

(b) Housing provided by recipient.

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

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

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

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

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

(c) Other housing.

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

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

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

§ \_\_\_\_ .33 Comparable facilities.

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

§ \_\_\_\_ .34 Access to course offerings.

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

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

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

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

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

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

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

§ \_\_\_\_ .35 Access to schools operated by LEAs.

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

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

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

§ \_\_\_\_ .36 Counseling and use of appraisal and counseling materials.

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

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

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

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

§ \_\_\_\_ .37 Financial assistance.

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

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

(b) Financial aid established by certain legal instruments.

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

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

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

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

and

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

(c) Athletic scholarships.

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

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

§ \_\_\_\_\_.38 Employment assistance to students.

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

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

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

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

§ \_\_\_\_\_.39 Health and insurance benefits and services.

~~Subject to 28(C)(9) of this part.~~ In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

§ \_\_\_\_ .40 Marital or parental status.

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

(b) Pregnancy and related conditions.

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

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

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

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

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

§ \_\_\_\_ .41 Athletics.

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

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

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

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

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

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

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

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

§ \_\_\_\_ .42 Textbooks and curricular material.

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

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

§ \_\_\_\_ .51 Employment.

(a) General.

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

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

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

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

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

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

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

§ \_\_\_\_ .52 Employment criteria.

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

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

§ \_\_\_\_\_.53 Recruitment.

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

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

§ \_\_\_\_\_.54 Compensation.

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

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

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

§ \_\_\_\_\_.55 Job classification and structure.

A recipient shall not:

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

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

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

§ \_\_\_\_\_.56 Fringe benefits.

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

not subject to the provision of § \_\_\_\_ .54.

(b) Prohibitions. A recipient shall not:

- (1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;
- (2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or
- (3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

§ \_\_\_\_ .57 Marital or parental status.

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

- (1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or
- (2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

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

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

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

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

§ \_\_\_\_ .58 Effect of State or local law or other requirements.

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

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

§ \_\_\_\_ .59 Advertising.

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

§ \_\_\_\_ .60 Pre-employment inquiries.

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

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

§ \_\_\_\_ .61 Sex as a bona-fide occupational qualification.

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

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

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

§ \_\_\_\_ .71 Reserved.

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

Draft 8/14/97

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

A. Purpose

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

B. Parties to this Agreement

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

C. Delegation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**E. Duties of a Participating Agency**

A participating agency shall:

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

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

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

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

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

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

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

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

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

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

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

F. Sharing of Data and Joint Activities

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

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

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

G. Duties Unaffected by this Agreement

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

H. Effect on Prior Delegation

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

I. Review and Modification

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

J. Approval

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

[List names/titles of heads of participating agencies]



# NATIONAL CONFERENCE of STATE LEGISLATURES

*The Forum for America's Ideas*

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## NATIONAL CONFERENCE of STATE LEGISLATURES

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**Diane Bulender**  
Director, Legislative Service Bureau  
Iowa  
Staff Chair, NCSL

**William T. Pound**  
Executive Director

September 25, 2000

The Honorable William Roth  
United States Senate  
104 Hart Senate Office Building  
Washington, D.C. 20510-0801  
Re: H.R. 4923

The Honorable Daniel Patrick Moynihan  
United States Senate  
464 Russell Senate Office Building  
Washington, D.C. 20510-3201  
Re: H.R. 4923

Dear Senators Roth and Moynihan:

The National Conference of State Legislatures urges your support of H.R. 4923, The Community Renewal and New Markets Act of 2000, and further encourages you to complete action on this legislation before Congress adjourns. This legislation provides numerous tools and incentives that NCSL believes will create and expand opportunities to address a wide variety of pressing public policy issues.

NCSL has long-supported increasing the private activity bond cap and adjusting it to keep pace with inflation. An increase in the cap will stimulate increased economic development and jobs, particularly in states and communities within these states that might not have prospered as much during the economic growth of the past decade. An increase in the bond cap also would bolster expansion of private partnerships aimed at resolving economic development needs.

State legislators have long-supported the low income housing tax credit as an irreplaceable means for enhancing the construction of housing for those least able to afford it. H.R. 4923 would both increase the tax credit and index the revised cap to inflation.

NCSL has written to you separately regarding our support for placing the provisions of S.1900 into the community renewal legislation. S. 1900 will strengthen high-speed rail investment and will benefit rail infrastructure nationwide. NCSL believes that providing incentives for investment in the development of high-speed rail corridors could help states bolster a under-developed transportation alternative. It would also assist states that have invested in rail, but do not yet have designated high-speed rail corridors. Overall, S. 1900 would help address problems with our overburdened airways and roadways.

We further expect Senators Graham and Grassley to offer an amendment to restore funding of the Social Services Block Grant, Title XX of the Social Security Act, to the \$2.38 billion mutually agreed to by Congress, the President and the states in 1996 federal welfare reform legislation. That amendment also reinstates states' ability to transfer 10% of their Temporary Assistance for Needy Families (TANF) funds to Title XX. This block grant was designed to give states the flexibility to provide a critical range of services to the elderly, disabled and children and families struggling to achieve self-sufficiency. A commitment of \$2.38 billion will ensure that states are able to protect children and the elderly from abuse and neglect and keep the elderly and disabled in their own homes rather than institutions.

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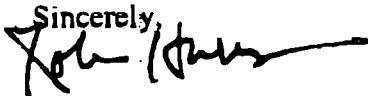
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We look forward to working with you to move this legislation forward. Please contact Michael Bird in NCSL's Washington, D.C. office (202-624-8686) for additional information and assistance.

Sincerely,



Delegate John Hurson  
Majority Leader  
Maryland House of Delegates  
Chair, NCSL Assembly on Federal Issues

cc: Finance Committee