

THE WHITE HOUSE

Tom + Mary -

Bruce + I promised
Richard Socarides that
we would prepare an
executive order
prohibiting discrimination
in ~~the~~ ^{federal/civilian} hiring on the
basis of race, sex, national
origin, etc - including
sexual orientation.

Could you speak w/Rich-
ard + prepare such an
order? Many Thanks.

Elana

P.S. I am sending you the

file Richard sent to me.

As of June 19, 1997 (1:06 pm)

Richard Socarides

Elana --

Here is the background material for the employment
non-discrimination Executive Order we discussed with
Bruce. Sorry for the delay in getting it to you. It had
been mis-placed.

Thanks.





UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

MEMORANDUM FOR MICHAEL MCCURRY,
ASSISTANT TO THE PRESIDENT AND
WHITE HOUSE PRESS SECRETARY

THROUGH: RICHARD SOCARIDES,
SPECIAL ASSISTANT TO THE PRESIDENT FOR PUBLIC LIAISON

FROM: JANICE R. LACHANCE
CHIEF OF STAFF

A handwritten signature in cursive script, reading "Janice R. Lachance", is written over the printed name and title.

SUBJECT: Discrimination Based upon Sexual Orientation in Federal Employment

DATE: April 21, 1997

The following are answers to your questions on discrimination based upon sexual orientation in Federal employment:

Is it OPM's view that discrimination based on sexual orientation is prohibited or banned?

- Although sexual orientation is not specifically mentioned in title 5 of the U.S. Code or in civil rights statutes, section 2302(b)(10) of title 5 prohibits "discrimination for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others." It is OPM's position that discrimination based upon sexual orientation would be a prohibited personnel practice if it was found, on a case by case basis, that sexual orientation did not adversely affect the performance of the employee or applicant or the performance of others. This is the longstanding "nexus" test that has been adopted by the courts in Federal employment matters.
- Section 2302(c) of title 5 holds agency heads responsible for the prevention of this prohibited personnel practice. Thus, OPM has continued to remind agency heads and personnel directors of the importance of publicizing non-discrimination policies, avenues of redress, and issuing policy statements which send a strong message that agency management will not tolerate any discriminatory actions which are based on conduct which does not adversely affect the performance of the employee or applicant or the performance of others.

- In 1980, the first OPM Director, Alan Campbell, issued a policy statement affirmatively stating that "applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community or social affiliations, or sexual orientation."
- In February 1994, Director King reiterated that "the 1980 memorandum continues to reflect the Federal Government's long standing policy on the matter of discrimination based on non-job-related conduct." In the memo he outlined avenues of redress. These may include appeal to the Merit Systems Protection Board, filing a complaint with the Office of Special Counsel, utilizing a Negotiated Grievance Procedure or other agency grievance procedure or review by the agency's Office of Inspector General. The proper channel depends upon the circumstances.
- In March 1997, OPM again distributed the 1980 and 1994 memoranda and reiterated OPM's commitment "to helping agencies ensure that Federal employees or applicants for Federal employment are protected against actions taken for non-job-related conduct such as religious beliefs, community or social affiliations, or sexual orientation." OPM specifically recommended that agencies issue strong policy statements and communicate this policy throughout their organizations and incorporate the policy into orientation sessions for new employees to ensure that all employees understand the agency's position.

What is the policy of the Department of Defense?

Based on our inquiry to them, the Department of Defense has issued no policy on this matter.

CC: Kitty Higgins

05/04/87 09:18
Congress of the United States

Washington, DC 20515

0065 1725
cc: am
T-CGL

February 27, 1997

Mr. James B. King
Director
Office of Personnel Management
1900 E Street, N.W.
Washington, DC 20415

Dear Director King:

As strong proponents of equal rights for gay and lesbian Americans, we applaud the steps the Administration has taken to implement sexual orientation non-discrimination policies in the federal workplace. However, we are concerned by reports that several federal agencies have not yet adopted these policies for their civilian federal employees.

According to a recent survey by the Washington Blade, a number of federal agencies have not added the category of "sexual orientation" to their employee non-discrimination policy statements. By some accounts, the number of employees working in these agencies totals nearly 75,000.

Although most gay and lesbian federal employees are protected under Office of Personnel Management regulations that classify sexual orientation discrimination as "a prohibited personnel practice," many have not received any notification that sexual orientation discrimination is illegal. We are particularly disturbed by reports that many personnel or public affairs officials in the agencies in question are unaware that sexual orientation discrimination is prohibited in the federal workforce. This is unacceptable.

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Particularly in light of the Administration's endorsement of legislation (the Employment Non-Discrimination Act) to prohibit discrimination in the workplace against gays and lesbians, it is incumbent upon the Office of Personnel Management to ensure that all federal agencies promptly adopt policy statements on sexual orientation discrimination. We would appreciate being informed of what steps are being taken in this regard.

Thank you for attention to this matter.

Sincerely,

Rita Loney
Charles E. Scherer

Jonnie Morella
Barney Frank

Ronald V. Bell

Arle E. Kildes

John Hammond

John D. Smith

John W. Oliver

W. J. Allen

Vin Fayir

Jane Harnum

Wm. Jefferson

W. Wm. Ricketts

Dana Dought

Barney H. Davis

Sam Fann

Am. V. Guttery

Maurice Diefhey

Woodward Brown

Pete Stark

Edward F. Hart

George E. Brown, Jr.

James P. The Downer

Pete A. Fayir



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT

WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

DRAFT

Honorable Dale E. Kildee
U.S. House of Representatives
Washington, DC 20515

Dear Representative Kildee:

I want to thank you, and the other members of Congress who concurred in the February 27, 1997, letter, for your strong commitment to ensuring that Federal employees are protected from actions taken on the basis of non-job related issues such as an employee's race, religion, sex, color, national origin, age, disabling condition, marital status or political affiliation, community or social affiliations, or sexual orientation. OPM is equally committed to this goal and has continued to remind agency heads and personnel directors of the importance of publicizing non-discrimination policies. We firmly believe that policy statements which send a strong message that agency management will not tolerate any discriminatory actions based on conduct which does not negatively affect the performance of employees, or even applicants for employment, will help foster an environment that is free from discrimination. Of equal importance, these policies explain to employees the avenues of redress available if they believe their rights have been violated.

In February 1994, I issued a statement to the Heads of Departments and Independent Establishments which clarified the Federal Government's long standing policy prohibiting any action taken based on non-job related activities which have no adverse impact on the Federal service. That memorandum outlined the avenues of redress available to employees who believe such an action has been taken against them. On February 3rd of this year, we circulated copies of that memorandum to Directors of Personnel with a reminder that agencies should be communicating their policy statements throughout their organizations to ensure that all employees understand the agency's position on non-discrimination.

Based on the concerns raised in your letter, I authorized a second memorandum to Directors of Personnel which once again expressed OPM's strong belief in the need for a policy statement and in the equally important need that all employees be informed of the appropriate avenues of redress if they believe that discriminatory action has been taken against them. This memorandum also states

DRAFT

OPM's recommendation that agency policies be incorporated into orientation sessions for new employees and that these sessions include coverage of the merit principles and prohibited personnel practices contained in the law. Further, we have identified an OPM office which will serve as a clearinghouse for agency policy statements that can be shared with other agencies who are still in the early stages of developing their statement. This memorandum was issued on March 10, 1997, and a copy is enclosed for your information.

Please be assured that I share your concerns, and that I am personally committed to the process of publicizing policies prohibiting discrimination based on non-job related conduct.

Sincerely,

James B. King
Director

Enclosure

INTERAGENCY ADVISORY GROUP

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415

Secretariat
1900 E St., NW

MAR 10 1997

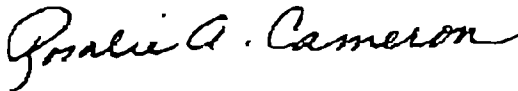
MEMORANDUM FOR DIRECTORS OF PERSONNEL

FROM:

Rosalie A. Cameron

Chair

Interagency Advisory Group



SUBJECT:

Policy Statement on Discrimination on the Basis of Conduct Which
Does Not Adversely Affect the Performance of Employees or Applicants
for Employment

The Office of Personnel Management is committed to helping agencies ensure that Federal employees or applicants for Federal employment are protected against actions taken for non-job related conduct such as religious beliefs, community or social affiliations, or sexual orientation. Therefore, OPM recommends that agencies:

1. Issue a strong management statement which clearly defines the Federal Government's policy with regard to discrimination based on conduct which does not adversely affect the performance of employees or applicants for employment.
2. Communicate to employees the avenues of redress available should employees believe they have been subject to discriminatory actions based upon non-job related misconduct, and;
3. Incorporate the policy in orientation sessions for new employees, including coverage of merit principles and prohibited personnel practices.

To assist you in developing a policy statement, I have attached two memoranda previously sent to Heads of Departments and Independent Establishments which define the Federal Government's policy on discrimination on the basis of conduct which does not adversely affect the performance of employees or applicants for employment. The 1994 memorandum discusses avenues of redress available to employees who believe they have been subject to such discrimination which is a prohibited personnel practice.

Should you wish to share copies of your agency's policy statement, which may be helpful to agencies that are in the process of developing their own, please send them to Marjorie Marks, Office of Personnel Management, 1900 E Street N.W., Washington, D.C. 20415, Room 7412 or fax to 202-606-0967. Questions regarding this memorandum or its attachments may be directed to the Employee Relations Policy Center on 202-606-2020 or Internet at MAMARKS.OPM.GOV.

Attachments



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

FEB 17 1994

MEMORANDUM FOR HEADS OF DEPARTMENTS AND INDEPENDENT ESTABLISHMENTS

FROM: JAMES B. KING
DIRECTOR

SUBJECT: Discrimination Based on Non-Job-Related Conduct

We have received a number of inquiries about the attached 1980 memorandum from then-OPM Director Alan K. Campbell, and the appropriate avenues of redress for matters governed by this policy. We have been asked to forward the following material to departments and independent establishments for clarification.

The 1980 memorandum continues to reflect the Federal Government's longstanding policy on the matter of discrimination based on non-job-related conduct. An allegation that an agency official committed a prohibited personnel practice under 5 U.S.C. 2302(b) may be raised in several ways, depending on the circumstances. If the allegation results from an agency action against the employee that is appealable to the Merit Systems Protection Board (MSPB), the employee may raise it as a challenge to the agency action in the appeal to MSPB. Actions appealable to the MSPB include major personnel actions such as removals, lengthy suspensions or performance-based actions.

In addition, an employee who claims to have been subjected to a prohibited personnel practice may file a complaint with the Office of Special Counsel (OSC) whether or not the agency's action is otherwise appealable to the MSPB. The OSC is an independent agency authorized to investigate and seek corrective action from MSPB concerning allegations of prohibited personnel practices.

Other remedies may be available within the employing agency. In general, a bargaining unit employee may grieve through a Negotiated Grievance Procedure (NGP) "any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment." This language from the Civil Service Reform Act of 1978, is intentionally broad. Occasionally, some collective bargaining agreements name specific matters (for example, short suspensions) that the parties have agreed to exclude from the NGP. In such cases, the employee may file an administrative grievance with the agency, as discussed below. If

the matter is grievable through the NGP, but is also appealable to the MSPB, the employee must choose one forum or the other.

Most agencies also have an agency grievance system to resolve disputes that fall outside other formal review channels. In general, these systems will attempt to achieve a relatively informal resolution between the immediate parties before elevating the dispute to higher levels of management. Specific procedures vary greatly from agency to agency, and an employee contemplating such a grievance should read the rules governing the agency's system.

informal
resolution

Finally, an employee's allegation of discrimination based upon non-job-related conduct could be reviewed by the agency Office of Inspector General if the conduct was part of an alleged overall pattern being disclosed as fraud, waste, and/or abuse.

We hope this information is useful to you. If you have questions about this memorandum or its attachment, please contact the Office of Labor Relations and Workforce Performance on telephone extension (202) 606-2920.

May 12, 1980

MEMORANDUM

SUBJECT: Policy Statement On Discrimination On The Basis of
Conduct Which Does Not Adversely Affect The Performance
Of Employees Or Applicants For Employment

FROM: Alan K. Campbell /s/ AKC
Director

TO: Heads of Departments and Independent Establishments

This memorandum, which is the second in a series advising agencies of OPM policy on provisions of the Civil Service Reform Act, transmits the Office of Personnel Management's policy statement on discrimination on the basis of conduct which does not adversely affect the performance of employees or applicants for employment, a prohibited personnel practice established by the Civil Service Reform Act of 1978.

Specifically, 5 U.S.C. §2302(b) prohibits any employee who has authority to take personnel actions from discrimination for or against any employee, or applicant for employment on the basis of conduct which does not adversely affect either the employee's own job performance or the performance of others. Subsection (c) of 5 U.S.C. §2302 further goes on to give notice to agency heads that they will be held responsible for the prevention of prohibited personnel practices.

I am therefore recommending that each of you take a strong leadership role by initiating the following actions:

1. Issue a strong management statement clearly defining the policy of the Federal Government as an employer with regard to discrimination on the basis of conduct which does not adversely affect the performance of an employee, an applicant for employment, or other employees.
2. Emphasize this policy as part of new employee orientation covering the merit principles and prohibited personnel practices' and
3. Make employees aware of the avenues for seeking redress, and the actions that will be taken against employees violating this policy.

Attachment

**Policy Statement On Discrimination On The Basis Of
Conduct Which Does Not Adversely Affect The
Performance of Employees or Applicants for Employment**

In accordance with the policy of the Federal Government to recruit from all segments of society, and to select and promote individuals on the basis of ability, knowledge, and skills, under fair and open competition, the Civil Service Reform Act specifically prohibits employees who are authorized to take personnel actions from discriminating on the basis of conduct which does not adversely affect the performance of employees or applicants for employment.

5 U.S.C. §2302(b) states that "[any] employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority -

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining the suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, or the District of Columbia, or of the United States;

Furthermore, subsection (c) of 5 U.S.C. §2302 goes on to give agency heads specific notice that they will be held responsible for the prevention of prohibited personnel practices, as well as for compliance with, and enforcement of, all applicable civil service laws, rules, and regulations.

The privacy and constitutional rights of applicants and employees are to be protected. Thus applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community or social affiliations, or sexual orientation. An applicant or employee is also to be protected against any infringement of due process, self-incrimination or other constitutional rights. (See page 19 of the Senate Report of the Committee on Governmental Affairs, No. 95-969). However, applicants may receive credit for pertinent religious, civic, welfare, service and organizational work performed with or without compensation in connection with an examination for civil service positions.

Federal employees are expected to maintain high standards of honesty, integrity, and impartiality, and to conduct themselves while at their workplace in a manner which will foster public confidence in the Federal Government. While neither OPM nor agencies may regulate the lawful social interactions or relationships freely entered into by Federal employees outside of the workplace, employees and applicants also have a responsibility to conduct themselves in such a manner so as not to impair their agencies' ability to discharge their responsibilities or to carry out their missions.

United States of America
Office of
Personnel Management

Washington, D.C. 20415

MAY 12 1980

MEMORANDUM

SUBJECT: Policy Statement On Discrimination On The Basis of
Conduct Which Does Not Adversely Affect The Performance
Of Employees Or Applicants For Employment.

FROM: Alan K. Campbell
Director

TO: Heads of Departments and Independent Establishments

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1. Issue a strong management statement clearly defining the policy of the Federal Government as an employer with regard to discrimination on the basis of conduct which does not adversely affect the performance of an employee, an applicant for employment, or other employees.
2. Emphasize this policy as part of new employee orientation covering the merit principles and prohibited personnel practices; and
3. Make employees aware of the avenues for seeking redress, and the actions that will be taken against employees violating this policy.

Policy Statement On Discrimination On The Basis Of
Conduct Which Does Not Adversely Affect The
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Federal employees are expected to maintain high standards of honesty, integrity, and impartiality, and to conduct themselves while at their workplace in a manner which will foster public confidence in the Federal Government. While neither OPM nor agencies may regulate the lawful social interactions or relationships freely entered into by Federal employees outside of the workplace, employees and applicants also have a responsibility to conduct themselves in such a manner so as not to impair their agencies' ability to discharge their responsibilities or to carry out their missions.

LAW OFFICES

ANDREW S. PARK

SUITE 700, FOUR PENN CENTER
S.W. COR. 16TH & JOHN F. KENNEDY BLVD.
PHILADELPHIA, PENNSYLVANIA 19103

ANDREW S. PARK

(215) 751-9870

MEMBER OF THE PENNSYLVANIA
AND DISTRICT OF COLUMBIA BARS

FACSIMILE:
(215) 569-1606



November 13, 1995

Marsha Scott, Deputy Assistant to the President
The White House
Washington, D.C.

Dear Ms. Scott:

I enjoyed meeting with you during your visit to Philadelphia. As you may recall, I met with you at City Hall. I am the co-chair of the Liberty City Lesbian & Gay Democratic Club in Philadelphia. I hope you regard your visit to Philadelphia as successful and productive. I came away from our meeting feeling that you had heard our messages of frustration, passed on to us your messages of support for the President, and also left us with useful information about how the White House will interact with the gay and lesbian community. I was particularly interested in your discussion of the roll of gays and lesbians in the Democratic National Committee and the upcoming election. I hope that the Liberty City Lesbian & Gay Democratic Club can be a productive component of the party's activities in Philadelphia.

I write to you today to follow up on your invitation to us to pass on to you suggestions of ways the President could benefit the gay and lesbian community.

Over the past two years, the President has encouraged federal agencies to adopt nondiscrimination policies prohibiting unfair treatment against gays and lesbians. I appreciate and publicly applaud his efforts. However, legally these policies will make little difference in the lives of many, if not most, lesbian and gay federal employees. I believe I have a unique historical perspective on these policies as well as a high level of expertise regarding their enforceability. It is from this experience and expertise that I ask the President to continue his efforts of nondiscrimination and seek to enact an executive order which will cure the deficiencies explained below.

First let me explain my own background regarding these policies. Over two years ago, the Department of Transportation was, I believe, the first cabinet level agency to adopt an agency-

wide policy prohibiting discrimination against gays and lesbians. Prior to the adoption of this policy, during the period of drafting, lobbying and discussion, I was the co-chair of the Gay & Lesbian Attorneys of Washington (GAYLAW) the Lesbian & Gay Bar Association in Washington, DC. GAYLAW served as the legal arm of the Federal Gay, Lesbian or Bisexual Employees Association (Fed. GLOBE). Fed. GLOBE was the primary gay and lesbian organization lobbying for the policy. GAYLAW was instrumental in providing drafting and legal analysis in support of the lobbying effort. During that same period, I also was elected to sit on the National Council of EEOC employees, a body within the American Federation of Government Employees which governed all the local unions representing EEOC workers across the country. In that capacity, I became arbitration counsel, and intimately familiar with federal employee rules and regulations, and procedures. Soon after that, I moved to Philadelphia to assume a position as Administrative Judge with the EEOC. In that position, my sole jurisdiction was adjudicating claims of employment discrimination brought by federal employees against their employing agencies. Most recently, I have opened my own practice which specializes in employment discrimination. Accordingly, I have had experience with executive department anti-discrimination policies from their inception and have had experience in the EEOC, labor, and other administrative fields concerning the management relations in the federal sector.

The executive order, and the various individual policies adopted by federal agencies have suffered from two major problems. First, they do not cover large numbers of management, or non-union employees in the federal sector. This is particularly troublesome when we take into account the value of having openly lesbian and gay management officials serve as role models in federal agencies. Second, these policies are extremely difficult to enforce. As I will explain below, enforcement comes only at a great financial expense to federal employees. In fact, enforcement of sexual orientation policies is more burdensome than enforcement of policies prohibiting discrimination on the basis of race, gender, etc.

In order to explain these two conclusions it is important to briefly understand the various ways federal employees can bring complaints against their employing agencies. There are three primary methods by which to challenge employment decisions: (1) the EEO process, (2) the Merit Systems process, (3) the negotiated grievance process.

The EEO process is based on Title VII of the Civil Rights Act of 1964.¹ Under this process, an employee who believes they have been discriminated against based on age, gender, race, color,

¹ The statutory authority for this process is found in Title 29 of the US Code, and is implemented by regulations found at 29 C.F.R. 1614.

national origin, religion, or disability² can file an administrative complaint. All executive employees, including management and unionized employees, can bring a complaint to challenge any employment decision or any term or condition of employment. The EEO procedures are initiated by contacting an EEO counselor employed by the federal agency where the employee works. The procedure is long and complicated, but includes an investigation at the expense of the federal agency, a formal adversarial hearing before an EEOC Administrative Judge, and opportunities to appeal any unfavorable decisions to the EEOC. As always, the employee has the opportunity to bring their claim to federal court. The EEO process has the advantage of providing the employee with strong investigatory powers, and not placing a high financial burden on the employee.

With regard to gays and lesbians, the EEOC process is, unfortunately, unavailable. Even with the executive order, none of the procedures of the EEO process apply to discrimination against gays and lesbians. Federal employees who have been discriminated against based on sexual orientation in violation of their agencies' policies are not entitled to an investigation through the EEO process and are not entitled to a hearing before an EEOC Administrative Judge. The EEOC has stated, on many occasions, that it has no statutory authority to address discrimination against federal employees based on their sexual orientation.

The second method available to federal employees to challenge actions of their employers is the Merit Systems procedure.³ Under these procedures, a federal employee, who has worked for a federal agency long enough to accrue Merit Systems appeal rights, can challenge actions by their agencies which are defined by Title V of the US Code as "adverse". Adverse actions include traditional disciplinary actions as well as nondisciplinary demotions, terminations, rifts and other specified actions. The employee challenges such actions by filing an appeal with the Merit Systems Protection Board (MSPB), and proceeding to a formal adversarial hearing before an administrative law judge of the MSPB. Again, an employee can appeal unfavorable decisions to MSPB headquarters and then ultimately to federal district or circuit court, depending on several factors.

No

yes

The Merit Systems Protection Board has held that discrimination based on sexual orientation is a "non-merit reason" for an employment action and therefore violates the merit principles it seeks to enforce. Therefore, gay and lesbian employees can challenge employment discrimination, and always have

² The Rehabilitation Act of 1973 prohibits discrimination based on disability. Nevertheless, the Rehabilitation Act is enforced according to the procedures set out under Title VII.

³ The Merit Systems procedures are governed by Title V of the United States Code as implemented by regulations in 5 C.F.R.

been able to challenge such discrimination, before the MSPB. However, many employees must work for the federal government for up to three years before they even have the right to appeal a decision to the MSPB. Further, the vast majority of employment decisions, and the terms and conditions of employment, can not be appealed to the MSPB because they are not considered "adverse" under the statute. Harassment on the job, a denied promotion, unfair work assignments, lack of training, favoritism, denial of pay increases, unfair appraisals and evaluations, denial of opportunities, and other such job decisions can not be appealed to the MSPB, regardless of whether they are based on a person's sexual orientation.

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MSPB
Covers
Promotion

Thus the federal employee is commonly left with the third method of challenging agency actions: the negotiated grievance procedure.⁴ Every contract between a federal agency and the union which represents its workers must include a grievance procedure. Commonly, an employee can challenge a decision on the part of management on the basis that it violates a provision of the negotiated contract. If the grievance is denied, the dispute is raised before an arbitrator who issues a decision which can be appealed to the Federal Labor Relations Authority and then ultimately to the Federal District Court. Only individuals in the collective bargaining unit of the various unions which represent federal workers are able to file such grievances. Accordingly, management officials can not avail themselves of this process. Additionally, it is very common for management and the union to agree that employees can not file grievances based on allegations of discrimination. These restrictions on the content of grievances have been uniformly upheld. In any event, even if the grievance procedure is available to a worker who has been discriminated against based on their sexual orientation, it is usually the decision of the union, not the worker, as to whether to appeal an unfavorable grievance decision to an arbitrator. Because arbitrators charge between \$500 to \$1,000 dollars per day, the vast majority of grievances are never taken to arbitration. Federal employees and their unions simply don't have the financial resources.

Administratively, there are few options for an employee who has been discriminated against because they are gay or lesbian. As always, the last option is bringing a claim against a federal agency in federal district court. Without an attorney and many thousands of dollars available to cover the costs of litigation, depositions, court fees, and other litigation expenses, federal court is not an option particularly if you have been fired or are only making a GS-7 salary. The result is that gays and lesbians are the only "protected class" for whom there is no body which

⁴ Negotiated grievance procedures are governed by the Federal Labor Relations Act as set out in Title V of the US Code. In general, the Federal Labor Relations Authority has the responsibility to enforce the act.

investigates their complaints of discrimination. Even with the recent executive order, there is no adjudicative structure to evaluate the merits of a claim of sexual orientation litigation. Gays and lesbians must ~~bare~~^{bear} the greatest expense of any protected group when seeking to challenge discriminatory practices of their federal employers.

I urge that the White House consider enacting an executive order which would grant authority to a federal agency to investigate claims of gay and lesbian discrimination and to issue findings based on that investigation which will be binding on the employing agency. Please consider assigning some functions to the Office of Federal Operations at the Equal Employment Opportunity Commission. There are also other agencies which have similar investigative and adjudicative roles such as the Office of Contract Compliance Programs, Department of Labor, or the various offices within the Department of Justice which process complaints against public accommodations which are inaccessible under the Americans with Disabilities Act.

I'm eager to hear back from you regarding whether the White House is willing to make an inquiry into this problem and to consider possible administrative solutions. I remain at your disposal if I can help you in any way. In any event, I look forward to working with you and future representatives from the White House and the Democratic National Committee on issues of concern to democrats and gays and lesbians.

Sincerely,



Andrew S. Park

cc: Kevin Vaughan, Executive Director,
Philadelphia Commission on Human Relations
Gil Casellas, Chair, US Equal Employment
Opportunity Commission
The Honorable Chaka Fattah
The Honorable Tom Foglietta



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

FEB 17 1991

MEMORANDUM FOR HEADS OF DEPARTMENTS AND INDEPENDENT ESTABLISHMENTS

FROM: JAMES B. KING
DIRECTOR

SUBJECT: Discrimination Based on Non-Job-Related Conduct

We have received a number of inquiries about the attached 1980 memorandum from then-OPM Director Alan K. Campbell, and the appropriate avenues of redress for matters governed by this policy. We have been asked to forward the following material to departments and independent establishments for clarification.

The 1980 memorandum continues to reflect the Federal Government's longstanding policy on the matter of discrimination based on non-job-related conduct. An allegation that an agency official committed a prohibited personnel practice under 5 U.S.C. 2302(b) may be raised in several ways, depending on the circumstances. If the allegation results from an agency action against the employee that is appealable to the Merit Systems Protection Board (MSPB), the employee may raise it as a challenge to the agency action in the appeal to MSPB. Actions appealable to the MSPB include major personnel actions such as removals, lengthy suspensions or performance-based actions.

In addition, an employee who claims to have been subjected to a prohibited personnel practice may file a complaint with the Office of Special Counsel (OSC) whether or not the agency's action is otherwise appealable to the MSPB. The OSC is an independent agency authorized to investigate and seek corrective action from MSPB concerning allegations of prohibited personnel practices.

Other remedies may be available within the employing agency. In general, a bargaining unit employee may grieve through a Negotiated Grievance Procedure (NGP) "any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment." This language from the Civil Service Reform Act of 1978, is intentionally broad. Occasionally, some collective bargaining agreements name specific matters (for example, short suspensions) that the parties have agreed to exclude from the NGP. In such cases, the employee may file an administrative grievance with the agency, as discussed below. If

- 2 -

the matter is grievable through the NGP, but is also appealable to the MSPB, the employee must choose one forum or the other.

Most agencies also have an agency grievance system to resolve disputes that fall outside other formal review channels. In general, these systems will attempt to achieve a relatively informal resolution between the immediate parties before elevating the dispute to higher levels of management. Specific procedures vary greatly from agency to agency, and an employee contemplating such a grievance should read the rules governing the agency's system.

Finally, an employee's allegation of discrimination based upon non-job-related conduct could be reviewed by the agency Office of Inspector General if the conduct was part of an alleged overall pattern being disclosed as fraud, waste, and/or abuse.

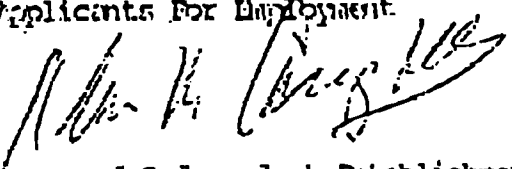
We hope this information is useful to you. If you have questions about this memorandum or its attachment, please contact the Office of Labor Relations and Workforce Performance on telephone extension (202) 606-2920.

United States of America
Office of
Personnel Management Washington, D.C. 20415

MAY 12 1980

MEMORANDUM

SUBJECT: Policy Statement On Discrimination On The Basis Of
Conduct Which Does Not Adversely Affect The Performance
Of Employees Or Applicants For Employment

FROM: Alan K. Campbell
Director 

TO: Heads of Departments and Independent Establishments

This memorandum, which is the second in a series advising agencies of OPM policy on provisions of the Civil Service Reform Act, transmits the Office of Personnel Management's policy statement on discrimination on the basis of conduct which does not adversely affect the performance of employees or applicants for employment, a prohibited personnel practice established by the Civil Service Reform Act of 1978.

Specifically, 5 U.S.C. §2302(b) prohibits any employee who has authority to take personnel actions from discriminating for or against any employee, or applicant for employment on the basis of conduct which does not adversely affect either the employee's job performance or the performance of others. Subsection (c) of 5 U.S.C. §2302 further goes on to give notice to agency heads that they will be held responsible for the prevention of prohibited personnel practices.

I am therefore recommending that each of you take a strong leadership role by initiating the following actions:

1. Issue a strong management statement clearly defining the policy of the Federal Government as an employer with regard to discrimination on the basis of conduct which does not adversely affect the performance of an employee, an applicant for employment, or other employees.
2. Emphasize this policy as part of new employee orientation covering the merit principles and prohibited personnel practices; and
3. Make employees aware of the avenues for seeking redress, and the actions that will be taken against employees violating this policy.

09/11/80 14.02 2

Policy Statement On Discrimination On The Basis Of
Conduct Which Does Not Adversely Affect The
Performance Of Employees Or Applicants For Employment.

In accordance with the policy of the Federal Government to recruit from all segments of society, and to select and promote individuals on the basis of ability, knowledge, and skills, under fair and open competition, the Civil Service Reform Act specifically prohibits employees who are authorized to take personnel actions from discriminating on the basis of conduct which does not adversely affect the performance of employees or applicants for employment.

5 U.S.C. §2302(b) states that "[any] employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority -

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

Furthermore, subsection (c) of 5 U.S.C. §2302 goes on to give agency heads specific notice that they will be held responsible for the prevention of prohibited personnel practices, as well as for compliance with, and enforcement of, all applicable civil service laws, rules, and regulations.

The privacy and constitutional rights of applicants and employees are to be protected. Thus, applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community or social affiliations, or sexual orientation. An applicant or employee is also to be protected against any infringement of due process, self-incrimination or other constitutional rights. (See page 19 of the Senate Report of the Committee on Governmental Affairs, No. 95-269). However, applicants may receive credit for pertinent religious, civic, welfare, service and organizational work performed with or without compensation in connection with an examination for civil service positions.

Federal employees are expected to maintain high standards of honesty, integrity, and impartiality, and to conduct themselves while at their workplace in a manner which will foster public confidence in the Federal Government. While neither OPM nor agencies may regulate the lawful social interactions or relationships freely entered into by Federal employees outside of the workplace, employees and applicants also have a responsibility to conduct themselves in such a manner so as not to impair their agencies' ability to discharge their responsibilities or to carry out their missions.



Jodie R. Torkelson

09/25/96 08:11:12 AM

Record Type: Record

To: SOCARIDES_R @ A1 @ CD @ LNGTWY

cc:

Subject: Sexual Orientation Discrimination

Sorry this took so long so get to you, but yes, the Executive Office of the President does have a written policy prohibiting discrimination based on sexual orientation.

An October 10, 1995 memo was sent to all EOP employees by me titled "Sexual Harassment Prevention Policy and Pamphlet". The first sentence of that memo states "The Executive Office of the President (EOP) does not condone nor tolerate discrimination based on race, color, religion, sex (including sexual harassment), national origin, age (40 and over), mental or physical disability, or sexual orientation in any of its personnel policies, practices and operations."

A January 19, 1994 memo sent to all Office of Administration employees titled "Equal Employment Opportunity Statement" transmitted the Equal Employment Opportunity Statement - Executive Office of the President. That statement's second paragraph reads "This statement reaffirms the policy of the EOP prohibiting unlawful discrimination and sexual harassment. The EOP does not condone nor tolerate discrimination based on race, color, national origin, sex (including sexual harassment), religion, age (over 40), disability or sexual orientation, in any of its personnel policies, practices, and operations.

I have forwarded copies of each of these to you under separate cover.

It is my understanding that you left the EOP on Monday, but I assume someone will be forwarding relevant information either to you or to whomever is now handling this issue.

THE WHITE HOUSE

WASHINGTON

**EQUAL EMPLOYMENT OPPORTUNITY STATEMENT
EXECUTIVE OFFICE OF THE PRESIDENT**

The President is committed to ensuring equal employment opportunity for all Executive Office of the President (EOP) employees. Equally as important, the President is committed to a government that is free of discrimination and which reflects the diversity of this nation.

This statement reaffirms the policy of the EOP prohibiting unlawful discrimination and sexual harassment. The EOP does not condone nor tolerate discrimination based on race, color, national origin, sex (including sexual harassment), religion, age (over 40), disability or sexual orientation, in any of its personnel policies, practices, and operations.

All EOP agency heads and employees have a responsibility to uphold this policy. Each employee must be personally accountable for his or her performance in ensuring and promoting equal opportunity principles and in recognizing diversity as a source of strength for the EOP. Moreover, managers and employees alike must work together to ensure a workplace free of discrimination and sexual harassment.

In general terms, unlawful discrimination involves improperly making employment decisions or carrying out actions based on the factors listed above. Discrimination on the basis of sex includes sexual harassment. Sexual harassment, as defined by the Equal Employment Opportunity Commission and for the purposes of the EOP, is: unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission is made explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

While every EOP employee may raise claims of discrimination and/or sexual harassment, employees' rights, responsibilities, appeals, and remedies may vary. If you believe that you have been discriminated against or sexually harassed, you may pursue an equal employment opportunity claim. You should be aware that the timeframes for raising claims vary for EOP employees from 45 to 180 calendar days from the alleged discriminatory event.

If you have any questions about the process and timeframes for raising a claim or would like more information, please contact Sharon Solomon, Equal Employment Opportunity Manager, Office of Administration, Executive Office of the President, at (202) 395-3996/TDD: 395-1160.

THE WHITE HOUSE

WASHINGTON

October 10, 1995

MEMORANDUM FOR ALL EXECUTIVE OFFICE OF THE PRESIDENT EMPLOYEES

FROM: JODIE R. TORKELOSON
ASSISTANT TO THE PRESIDENT
FOR MANAGEMENT AND ADMINISTRATION

SUBJECT: Sexual Harassment Prevention Policy and Pamphlet

The Executive Office of the President (EOP) does not condone nor tolerate discrimination based on race, color, religion, sex (including sexual harassment), national origin, age (40 and over), mental or physical disability, or sexual orientation in any of its personnel policies, practices and operations. As part of our continuing efforts to prevent discrimination, we periodically remind employees of our anti-discrimination policies through the issuance of policy statements. With this memorandum, we are specifically reaffirming our policy on the prevention of sexual harassment.

Sexual harassment, as defined by the Equal Employment Opportunity Commission and for the purposes of the EOP, is: unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission is made explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

All EOP employees have a responsibility to assist the EOP in preventing, addressing and eliminating any sexual harassment. To that end, we have attached an EOP pamphlet entitled "Preventing and Addressing Sexual Harassment" for your reference. We encourage you to read the pamphlet to become more familiar with what constitutes sexual harassment and approaches for addressing and preventing it. Additionally, our Equal Employment Opportunity Office (EEO), Office of Administration, will continue to periodically sponsor sexual harassment prevention briefings and has available videotapes on the subject. For more information, please call Sharon Solomon, EEO Director, OA, on 395-3996.

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
Washington, D.C. 20503
January 19, 1994

MEMORANDUM FOR OFFICE OF ADMINISTRATION EMPLOYEES

FROM: PATSY THOMASSON *Patsy Thomasson*
SPECIAL ASSISTANT TO THE PRESIDENT
AND DIRECTOR FOR THE OFFICE OF ADMINISTRATION

SUBJECT: Equal Employment Opportunity Statement

It is customary for agencies to periodically issue policy statements to reaffirm their support of equal employment opportunity principles and actions. In keeping with that custom, attached you will find a copy of the Executive Office of the President's Equal Employment Opportunity (EEO) Statement which reflects the Administration's commitment to EEO.

Ours is a diverse society. Diversity is a source of strength for the Office of Administration as we tap the talents, creativity and energy of many. I am also personally pledged to the EEO policy which requires that all persons are treated in a fair and equitable manner. One of my goals is to ensure a participatory work team that allows everyone to contribute to their fullest. I know that many of you too are committed to the goal of ensuring EEO. Although managers must lead the way in ensuring complete support of EEO and diversity, every single employee can share in carrying out this responsibility. Recognizing that communications is the key to preventing misunderstandings, I challenge you to ensure that effective communication is cultivated between you and fellow employees as well as the people with whom we interact. I also challenge you to value the differences, similarities and cultures of others.

If you have any questions or need more information about EEO, please call Sharon Solomon, Equal Employment Opportunity Manager, Office of Administration, Executive Office of the President, on (202) 395-3996.

Attachment

THOMASSON, PATSY L
OFFICE OF ADMINISTRATION
OFFICE OF THE DIRECTOR

EOPB
pm 145

EXECUTIVE OFFICE OF THE PRESIDENT

25-Sep-1996 08:11am

TO: SOCARIDES_R

FROM: Jodie R. Torkelson

SUBJECT: Sexual Orientation Discrimination

Message Creation Date was at 25-SEP-1996 08:11:00

Sorry this took so long so get to you, but yes, the Executive Office of the President does have a written policy prohibiting discrimination based on sexual orientation.

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I have forwarded copies of each of these to you under separate cover.

It is my understanding that you left the EOP on Monday, but I assume someone will be forwarding relevant information either to you or to whomever is now handling this issue.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

AUG 30 1994

MEMORANDUM FOR: All HUD Employees

FROM: Henry G. Cisneros *Henry Cisneros*

SUBJECT: Policy Statement - Equal Employment Opportunity,
Affirmative Employment, Prevention of Sexual
Harassment, Discrimination Based on Sexual
Orientation, Employment and Accommodation of Persons
with Disabilities, and Disabled Veterans

In conformance with the policies expressed in Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; Executive Order 11478, as amended; the Age Discrimination in Employment Act of 1967; the Equal Pay Act of 1962, as amended; the Rehabilitation Act of 1973, as amended; and, the Vietnam Era Veteran's Readjustment Act of 1974, it is the policy and intent of the Department of Housing and Urban Development (HUD) to provide equality of employment opportunity for all persons, and to prohibit discrimination because of race, color, religion, sex, national origin, age, or disability in all facets of employment. Moreover, HUD is committed to promoting affirmative employment through the removal of barriers and by positive actions at every management level. Additionally, sexual harassment and discrimination based on sexual orientation are unacceptable in the workplace and will not be condoned at HUD.

These policies are an integral part of HUD's mission. Their implementation is a high priority of this Administration. I am personally committed to Equal Employment Opportunity and Affirmative Employment (EEO/AE), and I expect all employees to assist by supporting EEO/AE. In carrying out their responsibilities, all managers and supervisors are fully accountable for taking actions to assure that EEO/AE goals and objectives are achieved.

The EEO/AE goals and objectives of the Department are expressed in the multi-year Affirmative Employment Program (AEP) Plan. Further, EEO/AE is a separate critical element in our managerial performance appraisal system, which requires the

11/29/95 HUD OFF HUMAN RESOURCES 1-202-455-3000

Sexual Harassment

It is the policy of HUD that sexual harassment is unacceptable conduct in the workplace and will not be condoned. Any employee found to have engaged in sexual harassment against any other employee may expect appropriate disciplinary action. All new employees shall be informed of this policy during their initial orientation sessions. This policy shall be reiterated for all employees at least once each year. A Fact Sheet on Sexual Harassment is available from the Office of Departmental Employment Equal Opportunity.

Sexual Harassment has been determined by the Equal Employment Opportunity Commission to be "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,
- c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment."

Sexual harassment is a form of sex discrimination under Title VII of the Civil Rights Act of 1964. There may be other causes of action under State and local law in addition to those found under Federal civil rights law. These include assault and battery, intentional infliction of emotional distress, wrongful discharge, and negligence. Some advances may even warrant resort to criminal charges such as sexual assault or rape.

HUD is responsible for creating a working climate free from unsolicited and unwelcome sexual overtures. The law states, "...an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate action. An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action."

HUD managers and supervisors, are responsible for excluding sexual harassment from the workplace.

Discrimination Based on Sexual Orientation

It is the policy of HUD to prohibit discrimination on the basis of sexual orientation. Such discriminatory with respect to employment conduct will not be tolerated by anyone at HUD. For remedy, refer to appropriate administrative procedures and/or appropriate negotiated agreements.

The Civil Service Reform Act, 5 U.S.C. 2302(b) prohibits any employee who has authority to take personnel actions from discriminating for or against any employee or applicant for employment on the basis of conduct which does not adversely affect either the employee's own job performance or the performance of others. Subsection (c) of 5 U.S.C. 2302 gives notice to agency heads that they will be held responsible for the prevention of prohibited personnel practices. This Act has been interpreted by the Office of Personnel Management (OPM) since 1980, to mean that "applicants and employees are to be protected against inquiries into, or actions based upon non-job-related conduct, such as religious, community or social affiliations, or sexual orientation."

FOR YOUR INFORMATION



APR - 4 1995

95-46

TO: ALL EMPLOYEES

FROM: Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks

SUBJECT: Policy Statement on Equal Opportunity

Two of my most important responsibilities are to diversify the Patent and Trademark Office's (PTO) work force and eliminate discrimination in any form.

The statutory framework to guide us in the pursuit of these objectives has existed for many years. Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in the Federal work force on the basis of race, color, religion, sex or national origin. The Equal Pay Act of 1963 prohibits discrimination on the basis of sex. The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age. The Rehabilitation Act of 1973 prohibits discrimination based on physical or mental disability.

Less well known but equally important is a provision of the Civil Service Reform Act, 5 U.S.C. § 2302(b), which states that

Any employee who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority —

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; ...

Accordingly, I want everyone to know that it is the policy of the Patent and Trademark Office to protect the privacy and constitutional rights of its employees and applicants. This means that applicants and employees are to be safeguarded against inquiries into, or actions based upon, non-job-related

conduct, including sexual orientation or membership in an employee organization. Violations of this policy or of the statutes upon which it is founded will not be condoned.

An employee or applicant for employment who feels he or she has been subjected to discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Equal Pay Act, or the Rehabilitation Act may contact the PTO Office of Civil Rights for counseling and assistance.

Anyone who feels he or she has been discriminated against in violation of the Civil Service Reform Act, including discrimination on the basis of sexual orientation, has several avenues of redress. It is very important to note that the deadline for filing varies with each procedure. An employee or applicant for employment may contact an Equal Employment Opportunity (EEO) Counselor, the Office of Civil Rights, or the Employee Relations Division of the Office of Human Resources with their allegations of discriminatory treatment based on sexual orientation. The EEO Counselor will attempt to resolve such contacts within 30 days. Employees can consider several options:

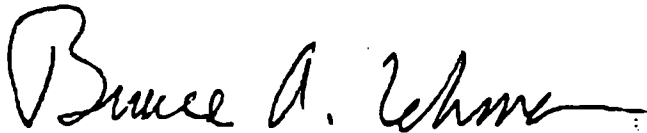
- . If the allegation results from an agency action against the employee that is appealable to the Merit Systems Protection Board (MSPB), e.g., a suspension of fifteen days or more or a removal, the employee may raise it as a challenge to the agency action in the appeal to the MSPB.
- . An employee who claims to have been subjected to a prohibited personnel practice may file a complaint with the Office of Special Counsel (OSC). OSC is an independent agency authorized to investigate and seek corrective action from MSPB concerning allegations of prohibited personnel practices.
- . Employees who are in a bargaining unit may grieve through their negotiated grievance procedure "any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment." Those employees not covered

by negotiated grievance procedures may raise their allegations of discrimination on the basis of sexual orientation through PTO's administrative grievance procedure.

EEO Counselors, if contacted on the issues, will discuss during the initial meeting the alternative forums and the general timelines for filing actions.

We will be offering cultural diversity training throughout the year that will help us learn to work effectively with each other. A supportive and respectful work environment that encourages basic fairness and equitable treatment brings out the best in us all.

The realization of equal opportunity for every employee and applicant is a goal to which I am deeply committed. Each manager and supervisor has a special responsibility for implementing this Office's policy on equal opportunity, including the prohibition on discrimination based on sexual orientation. Discrimination, whether on the basis of race, color, religion, sex, sexual orientation, national origin, age, physical or mental disability, will not be tolerated at the Patent and Trademark Office.

A handwritten signature in black ink, reading "Bruce A. Lehman". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Bruce A. Lehman

FOR YOUR INFORMATION



MEMORANDUM TO ALL EMPLOYEES

JUL 21 1994

FROM: Assistant Secretary of Commerce
and Commissioner of Patents and Trademarks

94-71

SUBJECT: Secretary Brown's Policy on Diversity

Today, Secretary Brown delivered his diversity plan for the Department of Commerce. His speech was given in the Commerce auditorium and broadcast live to other DoC sites in order to reach a large segment of the Commerce family. However, due to technical transmission problems, a portion of the Secretary's speech was not heard at the satellite locations.

In the next few days, we will be receiving a videotape of the Secretary's speech and informing you of the times and location for a series of viewings. We will also be preparing paper copies of the speech and letting you know where you can receive a copy.

We have attached the Secretary's Policy on Diversity. The seven-point policy serves as a model for positive change under Secretary Brown and the Patent and Trademark Office. I applaud Secretary Brown on his leadership in this area. I'm committed to the realization of work force diversity at all levels and look forward to working with you to improve the quality of life for everyone.

For those of you who were present at the live broadcast, we apologize for the technical problems. We hope you will return and see the videotape in its entirety. For those of you who could not be at the live broadcast, we look forward to seeing you at one of our videotape viewings.

A handwritten signature in dark ink, appearing to read "Bruce A. Lehman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bruce A. Lehman

SECRETARY'S POLICY ON DIVERSITY

POLICY NO. 1:

Diversity at all levels of the Department of Commerce is a priority of the Clinton Administration and the Secretary of Commerce. Diversity means the inclusion of all employees, regardless of race, gender, color, religious belief, age, disability or sexual orientation. All employees are valued for their contributions to the Department.

POLICY NO. 2:

The Department will establish aggressive recruitment and career development programs to assure that a diverse pool of qualified candidates is available for all job opportunities.

POLICY NO. 3:

Diversity will be taken into consideration in every aspect of the business of Commerce – in training, seminars, grant work, procurement, technology and trade programs, travel and trade missions, regulatory activities, business liaison, and in every other program area of the Department.

POLICY NO. 4:

All employees are entitled to transparent, fair and timely processing of their complaints. DOC's administrative grievance procedure has been reviewed and will be strengthened immediately.

POLICY NO. 5

The Department will require all managers to participate in training on DOC's Diversity Policies and Conflict Resolution techniques.

POLICY NO. 6

Diversity is a management issue. To assure accountability, each manager will have a diversity critical element added to his/her performance plan by which the manager shall be rated and reviewed. The element will set forth the criteria by which the manager shall be evaluated, including, but not limited to, proactive recruitment, training, and career development of qualified employees and diversification of Department program areas.

POLICY NO. 7

DOC will establish a Diversity Council chaired by the Deputy Chief of Staff, with the Director, Office of Civil Rights, as Vice Chair. The Council will have the responsibility of monitoring the implementation of the diversity policies and programs, evaluating their effectiveness, and facilitating communication on a continuing basis throughout the Department about the diversity programs.



FEB 22 1994

MEMORANDUM FOR All Commerce Employees

SUBJECT: Diversity Policy Statement

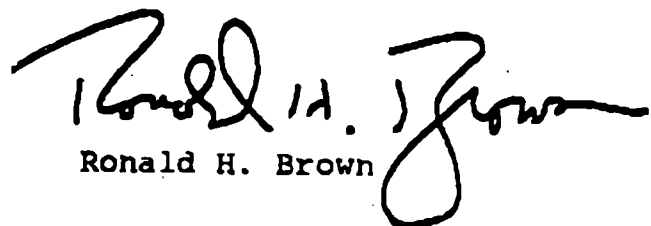
Diversity is a key to the future success of the Department of Commerce. We are charged with effectively competing in a worldwide arena and, if we are to succeed in that competition, each of us must embrace the value of diversity as being critical to the achievement of our mission.

As the Department embarks on new approaches to trade, economic development, technology, and environmental stewardship, workforce diversity is crucial to our continued competitiveness in the 21st century. The more successfully we are able to transact our business in a global marketplace -- the more diverse must be our presentation in that marketplace.

Diversity transcends race and gender, affirmative action and Equal Employment Opportunity. It means respecting and valuing differences, be they based on age, class, ethnicity, gender, sexual orientation, disability, race, religion, language or other differences. In order to collaborate successfully with the diversity of competitive styles abroad, the Department must be cognizant and respectful of our differences at the worksite. Most importantly, all in the Department must rethink their approach to diversity. No longer are such issues matters of social policy or historical reciprocity. Diversity and the respect and understanding of the integrity and worth of all cultures, peoples, and lifestyles is today and will ever more be simply good business. In that spirit, I offer that the Department will:

- increase the diversity of its workforce, including its leadership, to better reflect the diversity of the population of the Nation;
- establish a psychological and emotional environment that creates, fosters, and sustains diversity and pluralism, and eliminates discrimination at all levels;
- educate the workforce on the nature of diversity; and
- encourage diversity initiatives to empower each of you to feel valued and included as full and influential team members.

I call upon each of you to work with me in creating an organizational culture of pluralism that incorporates mutual respect, acceptance, and inclusion of all Commerce employees -- for diversity is in each of us.


Ronald H. Brown



FACSIMILE TRANSMISSION

TO: *Marsha Scott*

FAX NUMBER: *456-5558*

FROM: *Nan D. Hunter*
Deputy General Counsel

Facsimile Phone number - 202-690-7998

Telephone Number - 202-690-7780

ADDRESS: *700-E H.H. Humphrey Building*
200 Independence Avenue, S.W.
Washington, D. C. 20201

COMMENTS:

Total number of pages *7*



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, D.C. 20201

(202) 690-7780

Fax: 690-7998

MEMORANDUM

To: Marsha Scott

From: Nan D. Hunter

A handwritten signature in dark ink, appearing to read "ndh".

Date: 14 September 1995

Re: Anti-discrimination policies for federal employees

Following is the correspondence we handled earlier this year arising from a complaint about Secretary Shalala's statement that Departmental policy prohibits discrimination based on sexual orientation. As you can see, there are extremely solid legal grounds and a rather interesting history. Hope that you find this useful.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

MAR - 2 1995

The Honorable Sam Nunn
United States Senator
Suite 1700
75 Spring Street
Atlanta, Georgia 30303

Attention: Corey Anderson

Dear Senator Nunn:

This is in response to your letter on behalf of Mark O. Benedict. Mr. Benedict had advised you that he had received information to the effect that it was the policy of the Department of Health and Human Services ("HHS") that discrimination against employees and applicants for employment on the basis of sexual orientation is prohibited. Mr. Benedict asked by what authority the Secretary may extend civil rights protection to groups not covered by the Civil Rights Act of 1964 and what, if any, guidelines regulated the scope of groups to which the Department could extend this protection.

On December 6, 1993, Secretary Shalala issued a memorandum to HHS employees restating the Department's policy for equal employment opportunity. She stated that, "[W]e must strengthen our commitment to a workplace that is free of discrimination or harassment of any kind -- a workplace where no one is denied the opportunity to contribute fully because of race, color, religion, gender, national origin, age, disability or sexual orientation." A copy of that memorandum is enclosed.

This view is based on the principle that discrimination in employment matters based on a person's sexual orientation would constitute a personnel practice prohibited by section 2302(b)(10) of Title 5, U.S. Code. That subsection provides:

Any employee who has authority to take, direct others to take, recommend or approve any personnel action, shall not, with respect to such authority --

. . . (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others. . .

Page 2 - The Honorable Sam Nunn

That principle has been established in federal law and policy for more than 20 years. In a Civil Service Bulletin dated December 21, 1973, the Civil Service Commission instructed supervisors and others responsible for suitability evaluations:

You may not find a person unsuitable for Federal employment merely because that person is a homosexual or has engaged in homosexual acts, nor may such exclusion be based on a conclusion that a homosexual person might bring the public service into contempt. You are, however, permitted to dismiss a person or find him or her unsuitable for Federal employment where the evidence establishes that such person's homosexual conduct affects job fitness -- excluding from such consideration, however, unsubstantiated conclusions concerning possible embarrassment to the Federal Service.

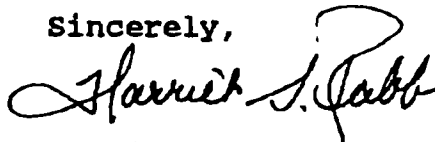
This Bulletin was issued in the wake of several successful court challenges by gay federal employees. The U.S. Court of Appeals cited it as the policy "applicable to the great bulk of employees in the federal service" in Ashton v. Civiletti, 613 F.2d 923, 927 (D.C. Cir. 1979).

In a May 12, 1980 memorandum, Alan K. Campbell, Director of the Office of Personnel Management ("OPM"), elaborated on the application of the statutory provision barring consideration of non-job-related conduct in federal employment matters. He stated, "Thus, applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community or social affiliations, or sexual orientation."

A February 17, 1994 memorandum from current OPM Director James B. King states, "The 1980 memorandum [quoted above] continues to reflect the Federal Government's longstanding policy on the matter of discrimination based on non-job-related conduct."

If you have further questions about this matter, your staff may contact Mr. Timothy M. White. He may be reached at (202) 619-2155.

Sincerely,



Harriet S. Rabb

Enclosure

DEC 6 1993

A Special Message For All HHS Employees

The Department of Health and Human Services has, at the very core of our mission, responsibility for promoting the well-being of all Americans. The respect and dignity with which we treat each other here in the Department is crucial to the successful completion of this mission.

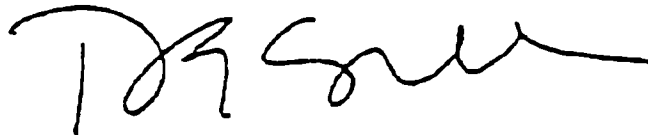
To foster an atmosphere of continuous improvement in our products and services, we must create an environment that fully utilizes the talents and capabilities of each and every one of us, from all backgrounds and at all organizational levels. And to do this, we must strengthen our commitment to a workplace that is free of discrimination or harassment of any kind — a workplace where no one is denied the opportunity to contribute fully because of race, color, religion, gender, national origin, age, disability, or sexual orientation.

My personal commitment to diversity and equality is longstanding and non-negotiable. Quite simply, diversity and inclusion are prerequisites to excellence. I am determined that this Department will always be viewed as a model workplace, where everyone has an equal opportunity to serve.

Let me be clear, both discrimination and harassment are violations of the law as well as the policies of this Department. If you feel you have been the victim of discrimination or harassment, contact your local equal employment opportunity office, local union representative, or servicing personnel office. In addition, your local employee assistance program can help resolve workplace differences and counsel employees who feel they are being treated unfairly.

However, our commitment must go far beyond compliance with anti-discrimination laws. I am asking for the support of all managers, not just in their hiring and promotion decisions, but also in welcoming responsibility for nurturing and capitalizing on the very best that every employee has to give. And I am asking all employees to understand that a culturally diverse workplace is critical to our mission to serve all Americans.

Celebrating cultural diversity will help us better understand each other and our customers. And with better understanding comes a greater capacity to serve. That is our real goal, and it is one that I know we can achieve.



Donna E. Shalala

SAM NUNN, GEORGIA, CHAIRMAN

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United States Senate

COMMITTEE ON ARMED SERVICES
 WASHINGTON, DC 20510-8050

December 13, 1994

Mr. Jerry Kletner
 U.S. Department of Health and Human Services
 Acting Assistant Secretary
 for Legislation
 200 Independence Avenue S.W., Room 4066
 Washington, D.C. 20201

Dear Mr. Kletner:

I recently received the enclosed inquiry from one of my constituents. Please review the matter thoroughly, in accordance with established policies and procedures, and provide me with a full report.

I look forward to hearing from you in the very near future.

Sincerely,


 Sam Nunn



SN:cja

Enclosure

PLEASE REPLY TO:
 Office of Senator Sam Nunn
 Attn: Corey Anderson
 75 Spring Street
 Suite 1700
 Atlanta, Georgia 30303
 404/331-4811

RECEIVED
 OFFICE OF THE
 RELAT
 95 JAN 14 1995

Suite 1700
75 Spring St. SW
Atlanta, GA 30303
404-331-4811

94 DEC -5 PM 3:18
ATLANTA OFFICE

CORRESPONDENCE # 492508
ID # 53566
INDIVIDUAL CODE _____
HHS 46ST CODE _____
INTEREST CODE _____
OFFICE _____
COMMENTS _____

Nov. 2, 1994

Sen. Nunn,

I am affiliated with, but not employed by, an organization under the Department of Health and Human Services and consequently receive administrative information via e-mail and bulletin boards. I receive information from the EEO office indicating that it is the policy of the Department to not discriminate on various bases usually covered by EEO and Title VII of the Civil Rights Act of 1964. In addition, the same information indicates that discrimination on the basis of sexual orientation is also disallowed. However, this latter policy is clearly stated as departmental policy that is NOT covered under the Civil Rights Act of 1964, but rather is directly from Sec. Donna Shalala.

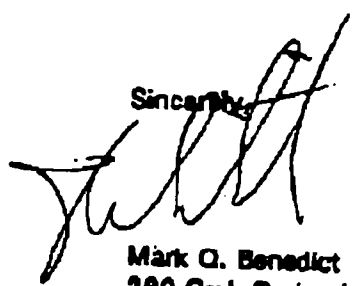
Questions:

By what law has Sec. Shalala been given authority to extend civil rights protection to groups not covered by the Civil Rights Act of 1964?

If the Secretary does legitimately have this authority, what guidelines regulate the scope of groups to which the Department may offer protection?

Thank you for any information you can provide on this matter. I have enclosed an e-mail which contains the kind of efforts being made to not only provide employment protection, but to promote alternate life-style acceptance in this federal agency.

RECEIVED
OFFICE OF HUMAN
RELATIONS
95 JAN -4 PM 1:38

Sincerely,

Mark O. Benedict
280 Crab Orchard Way
Roswell, GA 30076

Atlanta,
This shall get booked
to HHS for
status report, explanation.
Ⓜ



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

AUG 16 1995

TO ALL EMPLOYEES

REAFFIRMATION OF EQUAL EMPLOYMENT OPPORTUNITY POLICY

I am committed to ensuring equal employment opportunity for all VA employees. Equally as important, I am committed to a Department that is free of discrimination and which reflects the diversity of this nation.

This statement reaffirms the policy of VA prohibiting unlawful discrimination and sexual harassment. VA does not condone nor tolerate discrimination based on race, color, national origin, sex (including sexual harassment), religion, age (over 40), disability or sexual orientation, in any of its personnel policies, practices, and operations.

All VA managers and employees have a responsibility to uphold this policy. Each of us must be personally accountable for his or her performance in ensuring and promoting equal opportunity principles and in recognizing diversity as a source of strength for VA. Moreover, managers and employees alike must work together to ensure a workplace free of discrimination and sexual harassment.

It is essential that we recognize that diversity of cultures and life styles exists among employees, as it does in our veteran population. Consequently, it is important that all VA employees work together to create an environment of understanding and respect in order to enhance our collective and individual efforts to serve veterans and their families. I ask that all VA managers and employees support this policy in a positive manner. That means zero tolerance for discrimination or harassment in any form.

If you have questions regarding this policy, you may contact the EEO Manager or EEO Coordinator at your facility or office for assistance. Additional information may also be secured from the Office of Equal Opportunity, telephone 202-482-6724.

A handwritten signature in cursive script that reads "Jesse Brown".

Jesse Brown

August 21, 1996

Richard:

In addition to the Frankel memo, I thought I would take the opportunity to give you a very brief history of how the EEO policy issue came about at NASA so you can have as much info as possible when you make the call to Jeff Lawrence.

In November of last year, just prior to the first furlough, a NASA employee approached our EEO office about filing a harassment claim. The harassment came in the form of an anti-gay note he had received through internal NASA mail. The EEO office looked at the note and told him that there was nothing they could do because the agency had no policy against discrimination or harassment against gays and lesbians. When he told me what had happened, I approached a different EEO officer on his behalf and she gave me the same response. We have no policy so there is nothing that can be done.

At that point, I went to see the Chief of Staff, of the agency, Mike Mott, and he told me he thought we had a policy. When I told him we didn't, he agreed to talk to head of the EEO office, George Reese, about it. He did so during the furlough, and while Reese argued the policy was unnecessary, he asked to talk to me about it. I met with him, and by the time we were done, he had enough doubts about his position to agree to look into the matter further. After that meeting, I wrote a follow up letter to him which included many of the key issues. You should have a copy of that letter in your files.

In the meantime, I also approached NASA Administrator Dan Goldin. He told me he commended me for what I was doing. Because that meeting went so well, I decided to write him a letter and ask him to help push the policy through. Disappointingly, he responded by telling me to work it through the process, that he didn't want to interfere.

A couple of months ago, the quarterly EEO council meeting was held and I was notified by a member of the council that Reese had announced that the sexual orientation policy would be on the agenda for the September meeting. Since then the date has been set for Sept. 17 & 18 at Kennedy Space Center.

In preparation for the meeting, Reese sent a memo to each member of the council and each senior staffer at the agency to poll them on how they feel about this issue. A friend of mine in the EEO office has provided me with a copy of each response they have received to this date, and the tally is about 17-11 -- a majority but not a very comfortable one.

Since that time, the agency's legal council, Ed Frankel, has written a five paged memo opposing the policy. His arguments are two-fold: 1) gays and

lesbians are already protected so a policy isn't necessary and could go further than Congress intends and 2) if we initiate a policy for gays and lesbians, we'll have to initiate one for people who are overweight and unattractive, too. (Yes, he actually says this.) We are currently drafting a response to this memo under the belief that, because of his position, he could sway people to his side. Since that memo came out, one person who supported us has already switched his position and another is holding his final position back.

As it stands now, we are preparing for two things: 1) Your call for Jeff, for which talking points are attached and 2) the EEO council meeting, which Goldin is attending (very rare), as is the chairman of the U.S. EEOC (also rare).

Incidentally, you should also know that there is some talk of having the POTUS come to Kennedy Space Center in September. If the council does not act appropriately and the visit comes after the decision, that could muddy the waters for his visit. If his visit is precedes the council meeting, it could offer us an opportunity for more pressure on the leadership, if you think it would be wise.

We would like for you to contact Jeff Lawrence during the week of September 2 (post-Labor Day). This is two weeks prior to the council meeting, giving him enough time to act. You should also know that we have a White House liaison, Ed Heffernan, but I'm not sure where he stands or how he would respond. Lawrence is the best person for you to contact for the following reasons:

- He is Goldin's chief political advisor, is close to him personally and has excellent political instincts in dealing with the White House.
- Of all NASA appointees, he has the strongest contacts throughout the White House and administration.
- He will have the clearest idea of which levers to pull to make this happen while ruffling the fewest feathers.
- He is personally supportive and will work to make this happen if you convince him that it is in his, Goldin's and the agency's best interest to do so.

Attached are talking points for your call and a copy of Frankel's memo. I'll be back in touch with you the first week of September.

Thanks,

Greta

Attached: memo from Ed Frankel, NASA legal counsel
talking points for NASA phone call

Greta Creech

TALKING POINTS FOR NASA CALL:

- The White House is not happy with the way the decision to implement the President's order to include sexual orientation in federal EEO policies has been carried out at NASA.
- First of all, the agency is three years behind schedule. The President has mandated that this be done and has reiterated it several times since then, most recently the weekend of August 18.
- This notion of polling senior staff members about how it makes them feel gives people the false impression that there is a choice to be made. Further, to put it up for debate at a council meeting only reinforces this false idea. There is no choice here. The President has issued his order and the vast majority of other agencies have complied. What does NASA think it knows that the others don't?
- It is my understanding that the agency legal counsel has announced his opposition to the policy. Not only is he incorrect in saying that gays and lesbians are adequately protected without the policy but it is intolerable that an agency official of his standing would knowingly recommend violating a presidential directive.
- If the agency does not do the right thing and implement this policy at the council meeting, NASA will be the first agency to say "no" to the president on this issue. The administration will receive terrible press in the gay community at a time when we just don't need it. We have broken our collective necks to restore the community's trust in the President since the gays-in-the-military and same-sex marriage fight. We don't need this two months before the election.
- This nonsense has gone on long enough. The President wants the policy implemented as soon as possible and no later than September 18.



Reply to AIN of:

G

JUL 16 1996

TO: E/Acting Associate Administrator for Equal
Opportunity Programs

FROM: G/General Counsel

SUBJECT: Nondiscrimination Policy on the basis of Sexual
Orientation

This memorandum responds to your letter dated May 20, 1996, soliciting comments regarding the establishment of a formal Agencywide policy specifically prohibiting discrimination on the basis of sexual orientation. For the reasons listed below, I am opposed to NASA adopting such a specific and limited policy.

Your letter refers to Section 629 of the Treasury, Postal Service, and General Government Appropriations Act for Fiscal Year 1994, which provides:

No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for fiscal year 1994 shall obligate or expend any such funds, unless such department, agency or instrumentality has in place by July 1, 1994, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from discrimination and sexual harassment. (Tab 1, P.L. 103-123, § 629, 107 Stat. 1227 (1993))

While neither this provision nor its FY 1996 counterpart¹ prohibit any workplace behavior, they do prevent agencies from expending any FY 1994 or FY 1996 appropriated funds unless the agencies have and administer programs designed to prevent certain inappropriate behavior. In other words, the cited provision is an indirect attempt to control workplace discrimination, and it is additive to the direct controls which Congress has enacted and maintained. The strongest examples of

¹The Treasury, Postal Service and General Government Appropriations Act of 1996 contains an essentially identical provision restricting use of FY 1996 funds. (Tab 2, P.L. 104-52, § 622, 109 Stat. 468 (1995)).

these direct controls are the substantive provisions and remedial mechanisms of Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973. NASA is in compliance with both sections since NASA has codified its longstanding policy of nondiscrimination on the bases protected by these acts. Specifically, NASA Management Instruction 3713.2F prohibits discrimination in all aspects of the Agency's organization, facilities, technical programs, management, administration, nonappropriated fund activities and personnel (Tab 3, Copy of NMI 3713.2f). Also, NASA Management Instruction 2090.5A prohibits discrimination in NASA's federally-assisted and federally-conducted programs. (Tab 4, Copy of NMI 2090.5A)

It is, however, well settled that none of the three cited acts prohibits discrimination based on sexual orientation³, and we should be careful not to depart too far from Congress' specific statutory directions. Congress' continuing interest in and support for these remedial statutes is illustrated by the second part of the statutory section to which you refer. That part of Section 629 establishes, as an additional condition precedent to the use of FY 1994 appropriated funds, that each agency have policies designed to ensure "that all of its workplaces are not in violation of" the three statutes cited above.⁴ Thus, Congress, by providing specific and detailed remedies for certain types of discrimination has indicated its careful weighing of the needs of the employee and the employer. Such a level of congressional attention counsels caution to any agency wishing to expand the protection of these laws to areas not included by Congress.

³DeSantos v. Pacific Telephone and Telegraph Co., 608 F.2d 327, 330 (9th Cir. 1979) (Title VII cannot be judicially extended to include homosexuals); Campbell v. Department of Health and Human Services, EEOC Decision, 01831816, 1077/B1 (1983); DeGroat v. Secretary of Air Force, EEOC Decision, 05900409, 2706/R2 (1990) (discrimination on the basis of sex-- gay male--is not within EEO purview).

This exclusion also applies to individuals who undergo sex change surgery or announce an intention to do so. Sommers v. Budget Markets, Inc., 667 F.2d 748, 750 (8th Cir. 1982); Voyles v. Ralph K. Davies Medical Center, 403 F. Supp. 456, 456-57 (N.D. Cal. 1975), aff'd without published opinion, 570 F.2d 354 (9th Cir. 1978) (no Title VII violation where employer fired male employee for misrepresenting himself as female); Powell v. Reads, Inc., 436 F. Supp. 369, 371 (E.D. Md. 1977) (transsexuals not covered by Title VII). See also Ulane v. Eastern Airlines, 742 F.2d 1080 (7th Cir. 1984) reversed 581 F. Supp. 821 (N.D. Ill. 1983), cert. denied 471 U.S. 1017 (1985); Smith v. Department of Navy, EEOC Decision 01841205, 1459/G3 (1986).

⁴Again, this restriction also applies to FY 1996 funds. See, note 1, *supra*.

While there are no statutory remedies for discrimination based on sexual orientation, there are numerous Federal policies and procedures, in addition to P.L. 103-123, which broadly prohibit a range of improper activities including such discrimination. In 1980, OPM issued the following broad policy statement:

... applicants and [Federal] employees are to be protected against inquiries into, or actions based upon non-job-related conduct, such as religious, community or social affiliation, or sexual orientation.
(Emphasis in the original) (Tab 5, Copy of May 12, 1980 Memorandum issued by Alan K. Campbell, former Director, OPM)

In 1994, without specifically mentioning sexual orientation discrimination, OPM confirmed the validity of the 1980 memorandum and the Federal Government's longstanding policy prohibiting discrimination based on non-job-related conduct. (Tab 6, Copy of February 17, 1994 Memorandum issued by James B. King, Director, OPM) To support its position, OPM cited 5 U.S.C. § 2302(b):

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority --

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others...

Thus, many forms of discrimination, including discrimination based on sexual orientation is prohibited when non-job-related conduct is involved. Barring some specific situation that does not seem to exist here, there does not appear to be any reason to single out discrimination based on sexual orientation for special attention or emphasis.

In its 1994 memorandum, OPM further identified several remedies available to perceived victims of discrimination based on non-job-related conduct. One remedy is based on merit systems principles. A Federal employee may file a complaint with the Office of Special Counsel (OSC) alleging a prohibited personnel practice where that employee believes he/she has been discriminated against based on his/her sexual orientation. OSC is empowered to investigate and bring an action before the Merit Systems Protection Board against an Agency alleged to have engaged in discriminatory conduct. 5 U.S.C. § 1212. While an employee cannot allege a general violation of merit systems principles absent OSC intervention, an employee may directly appeal to the MSPB any action within the MSPB's jurisdiction such as a removal, a lengthy suspension, a reduction in pay, or any other change in a condition of employment allegedly based on a prohibited personnel practice such as discrimination described in 5 U.S.C. § 2302(b).

A potential remedy for Federal employees covered by collective bargaining agreements is to file a grievance based on sexual orientation discrimination. For example, Goddard Space Flight Center's (GSFC) collective bargaining agreement contains several provisions which permit a union member to grieve perceived sexual orientation discrimination. (Tab 7, selected provisions of GSFC's Collective Bargaining Agreement) To date, GSFC is the only NASA Installation whose collective bargaining agreement permits employees to grieve perceived sexual orientation discrimination.

For matters not directly appealable to the MSPB or covered by a grievance procedure, a Federal employee may often be eligible to utilize his or her agency's internal grievance process. The NASA Grievance System, which is set forth in NASA Handbook (NHB) 3771.C, would allow covered employees to raise discrimination on the basis of sexual orientation--as well as any other kind of non-job related discrimination not covered by EEOC jurisdiction. (Tab 8, Copy of NASA's Grievance System) While certain matters, such as failure to receive a promotion or performance award, are excluded, this process may be invoked for a variety of employment issues, including performance appraisals of General Schedule employees. NASA's grievance procedure also contains a number of procedural advantages, such as allowing a group of employees with a common complaint to file together, and providing for appointment of a neutral factfinder when needed. Also, in appropriate cases, management and a complaining employee may agree to resolve a problem through alternative dispute resolution (ADR) techniques such as mediation and facilitation.

While some agencies have created additional internal procedures for employees to address their allegations of sexual orientation discrimination,⁴ such a process seems unnecessary and redundant if an agency has already implemented its ADR program more broadly, as NASA has done. Further, by singling out one type of impermissible conduct for special treatment and attention, NASA could be seen as deemphasizing other, equally repugnant forms of discrimination. In other words, no basis has been shown for concluding that discrimination based on sexual orientation requires specialized treatment by the agency.

⁴ Several agencies have adopted such internal policies including the Executive Office of the White House, Department of Justice, Department of Agriculture, Department of Transportation, Department of Commerce, Department of the Interior, Department of Health and Human Services, Department of Housing and Urban Development, Department of Labor, Equal Employment Opportunity Commission, Small Business Administration, Peace Corps, and the National Academy of Arts and Sciences (Tab 9, Various agencies' policies).

CONCLUSION

I do not believe there is any demonstrated need for NASA to establish a specific policy regarding sexual orientation. Under existing Federal policy, there are numerous protections for those claiming non-job-related discrimination, of which sexual orientation discrimination is just one type. OPM has issued a broad statement prohibiting non-job-related discrimination on this basis and merit systems principles also prohibit such discrimination.

There are several processes available to Federal employees to resolve issues of sexual orientation discrimination such as, 1) filing a complaint with OSC, 2) filing a grievance under a collective bargaining agreement or other administrative grievance procedure; or 3) using an agency's alternative dispute resolution process. Given the breadth of existing remedies, there is no need for NASA to create additional methods of redress for certain subsets of activity.

Moreover, establishing a specific policy regarding sexual orientation would unjustifiably elevate it above other types of non-job-related discrimination. This result could lead to the unnecessary creation of numerous policies regarding other forms of discrimination based on non-job-related conduct. For example, one could argue that the agency should create a specific policy prohibiting discrimination based on physical attractiveness, weight, smoking habits, and etc. In the end, all such discrimination is equally prohibited and should be equally treated. For that reason, I object to the adoption of an Agency policy specifically aimed at prohibiting discrimination based on sexual orientation.



Edward A. Frankle

Enclosure

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

690-7098
FDX -
Spartan/Kan

AUG 2 1994

MEMORANDUM FOR ALL DOL EMPLOYEES

FROM:

ROBERT B. REICH *Robert B. Reich*

SUBJECT:

DOL Policy on Equal Employment Opportunity

I want all DOL employees to know that we have recently revised and updated our EEO policy. The new policy reflects my commitment to provide for a Federal workforce that is based on inclusion and equal opportunity for all its workers. It also reflects my desire that all employees of the Department be protected from discrimination in any form -- including discrimination on account of sexual orientation.

A copy of the new policy is attached. Please contact the Directorate of Civil Rights or your Regional Civil Rights Officer for additional information.

Attachment

U. S. DEPARTMENT OF LABOR

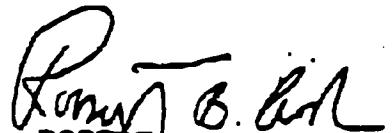
POLICY STATEMENT ON
EQUAL EMPLOYMENT OPPORTUNITY

It is the Department of Labor (DOL) policy to provide equal employment opportunity for all applicants for employment with, and employees of DOL. Therefore, discrimination because of race, color, sex, national origin, religion, age, disability and sexual orientation is prohibited.

All DOL managers and supervisors are expected to take an active role in carrying out the Department's EEO Policy in all employment related matters and will be rated on their effective implementation of this policy in the programs they manage as part of their annual performance evaluation.

The Directorate of Civil Rights will vigorously monitor compliance with this policy and the affirmative employment and nondiscrimination provisions of all applicable laws and regulations.

By upholding and practicing the principles of equal opportunity and inclusion, DOL will serve as a role model for other employers. A DOL workforce strengthened by its diversity will result in a workforce that can meet the challenges that lie ahead.


ROBERT B. REICH
Secretary of Labor
June 1994

U.S. Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210



Reply to the Attention of:

AUG 10 1994

MEMORANDUM FOR ALL DOL EMPLOYEES

FROM:

Annabelle T. Lockhart
ANNABELLE T. LOCKHART
Director
Directorate of Civil Rights

SUBJECT:

Procedures for Filing EEO Complaints Based on
Sexual Orientation

The Secretary's revised EEO Policy Statement was distributed to all Department of Labor (DOL) employees on August 2. It supports the President's commitment to provide for a Federal workforce that is based on inclusion and equal opportunity for all its workers. It also reflects his desire that all employees of the Department be protected from discrimination in any form including sexual orientation.

Federal civil rights laws do not specifically address discrimination on the basis of sexual orientation. However, the Civil Service Reform Act of 1978, 5 U.S.C. § 2302(b)(10), prohibits any employee who has authority to take personnel actions from discriminating for or against any employee or applicant for employment on the basis of conduct which does not adversely affect either the employee's own job performance or the performance of others.

The DOL has signed Memoranda of Understanding with Local 12 and the National Council of Field Labor Locals, AFGE, AFL-CIO, which provide that discrimination based on sexual orientation is prohibited at DOL. Employees who believe that they have been discriminated against on the basis of sexual orientation may now elect either to file a grievance on that issue or to file an EEO complaint with the Directorate of Civil Rights (DCR).

Any employee who files an EEO complaint alleging discrimination on the basis of sexual orientation, can be assured that DCR will process the complaint in accordance with its existing internal complaint procedures. An employee will be provided counseling and if resolution cannot be achieved, will be informed of the right to file a formal complaint. If the complaint is timely filed and accepted, an investigation will be conducted. Upon completion of the investigation, the complainant will be given a copy of the complaint file and can request that a final decision be issued by DOL. However, based on existing Federal civil rights laws, a complainant cannot pursue an EEO complaint of sexual orientation

discrimination outside DOL. This means that a complainant does not have a right to a hearing or appeal rights to other agencies or to the courts from the final decision issued by DOL. Further, although compensatory damages cannot be provided as a remedy, other remedies, such as attorney fees and back pay, may be available in limited situations.

If an employee wishes to complain about a matter which is appealable to the Merit Systems Protection Board, (MSPB) he or she should be aware that filing an EEO complaint alleging sexual orientation discrimination will not preserve his or her MSPB appeal rights.

If you have any questions, please contact DCR or your Regional Civil Rights Officer.



OFFICE OF THE ASSISTANT SECRETARY
PUBLIC AFFAIRS

1500 Pennsylvania Avenue, NW
3442 MT
Washington, D.C. 20220
202-622-2910

FACSIMILE COVER SHEET

DATE: 11-29-95

NUMBER OF PAGES: 5
(Excluding Cover Sheet)

TO: Paul Yandura

ADDRESSEE'S FAX NUMBER: 456 - 5558

ADDRESSEE'S PHONE NUMBER: _____

FROM: Marie Strickler

FAX NUMBER: (202) 622-2808

COMMENTS/SPECIAL INSTRUCTIONS:

*# Jean Secretary's Statement re
Sexual Orientation.*

*If you have any questions, pls contact
Ronald Glaser, EEOP*



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

June 2, 1995

SECRETARY OF THE TREASURY

MEMORANDUM FOR ALL TREASURY EMPLOYEES

FROM: Robert E. Rubin *RE*
SUBJECT: Non-Discrimination Within the Department of the Treasury

It is my goal to make the Treasury Department a model workplace, free from prohibited discrimination, where every employee is assured an equal opportunity to achieve his or her fullest potential.

I wanted to let each of you know that the Department has recently published its Employee Rules of Conduct in the Federal Register. The Rules of Conduct contain a non-discrimination provision, which states:

Employees shall not discriminate against or harass any other employee, applicant for employment or person dealing with the Department on official business on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability. Sexual harassment is a form of sex discrimination and is prohibited by this section.

I expect all employees of the Department, at all levels, will ensure that their actions fully comply with the letter and the spirit of these regulations. All of us have a responsibility to help provide a workplace where employees can thrive. Publishing and enforcing these rules is only a part of what we at Treasury will be doing to advance that goal.

If you have any questions about this policy, or about equal opportunity issues more generally, please do not hesitate to contact Ronald Glaser, Director, Office of Equal Opportunity Program.

Bureau of Unemployment and Sickness Insurance, is authorized to make initial determinations on all issues of eligibility for unemployment and sickness benefits as set forth in paragraphs (b) and (c) of this section, and on any other issue not reserved to the Director by paragraph (e) of this section.

Dated: May 23, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95-13297 Filed 5-31-95; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 0

Employee Rules of Conduct

AGENCY: Department of the Treasury.
ACTION: Interim rule.

SUMMARY: The Department of the Treasury is issuing the Employee Rules of Conduct which will prescribe uniform rules of conduct and procedure for all employees and officials in the Department.

DATES: This interim rule is effective June 1, 1995. Comments must be received or postmarked on or before July 3, 1995.

ADDRESSES: Comments should be submitted to the Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, Room 1410, Washington, DC 20220, Attention: Mr. R. Peter Rittling or by e-mail at the following address: Peter.Rittling@treas.sprint.com.

FOR FURTHER INFORMATION CONTACT: Stephen J. McHale, Henry H. Booth, or R. Peter Rittling, Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, telephone (202) 622-0450, FAX (202) 622-1176, e-mail Peter.Rittling@treas.sprint.com.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics (OGE) published the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635). The Executive Branch-wide Standards became effective on February 3, 1993, superseding many, but not all, of the Department-wide conduct rules published at 31 CFR Part 0 (see also the grace period extension at 59 FR 4779-4780, February 2, 1994). This rule making repeals part 0 in its

entirety and issues a new part 0. The new part 0 includes conduct rules previously published in part 0 that were not superseded and continue to be important to the efficient functioning of the Department. Many of the regulations included in the Rules of Conduct have been revised pursuant to changes in the law or Department policy.

Simultaneously, in a separate rule making, the Department is issuing as a final rule the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury. The Supplemental Standards, to be codified at 5 CFR chapter XXI, prescribe Department-specific ethics regulations supplemental to the Executive Branch-wide Standards.

II. Analysis of the Regulations

Subpart A—General Provisions

The provisions contained in subpart A state the policy and purpose of the Rules of Conduct and the responsibilities of the Department's employees and officials in implementing and complying with the included regulations. Subpart A also includes a definitional section. The United States Savings Bonds Division is omitted from the definition of Bureau in § 0.103 because it was assumed into the Bureau of the Public Debt and no longer exists as a separate component of the Department.

Subpart B—Rules of Conduct

Subpart B sets out the conduct regulations that all Department employees and officials are required to follow. Generally, the rules regulate employee conduct including, for example, the use of Government vehicles or the use of controlled substances and intoxicants while an employee is on duty or on Government property. Regulations concerning conflicts of interest and ethics are contained in the Executive Branch-wide Standards and the Treasury Supplemental Standards.

Subpart C—Special Government Employees

Section 0.301 of subpart C explains that, with little variation, special Government employees employed with the Department are required to comply with the Rules of Conduct to the same degree as regular employees. Further, § 0.303 requires a special Government employee, serving concurrently with another Federal agency, to inform the Department of that fact so that the Department may take the appropriate administrative actions and avoid any conflict in duties or remuneration.

Subpart D—Advisers to the Department

Subpart D includes a definition of adviser to the Department and instructs individuals uncertain about their relationship with the Department to seek advice from the appropriate ethics official. Further, § 0.401(b) explains that it is the Department's policy that advisers should refer to the Rules of Conduct for guidance when working with the Department even though they are not required to follow the Rules.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Department finds that good cause exists for waiving the notice and comment requirements contained in 5 U.S.C. 553(b) and (d). The Department of the Treasury Employee Rules of Conduct contain statements of policy; interpretive rules, and conduct regulations relating solely to agency management and personnel. Moreover, this rule making essentially reissues in revised form many of the conduct rules previously published in 31 CFR Part 0. However, because this rule may be improved, comments may be submitted on or before July 3, 1995. All comments will be analyzed and any appropriate changes to the rule will be incorporated in the subsequent publication of the final rule.

Executive Order 12866, Regulatory Planning and Review

This rule is limited to agency organization, management and personnel matters; therefore, it is not subject to Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only Federal employees.

List of Subjects in 31 CFR Part 0

Government employees.

Dated: January 29, 1995.

Edward S. Knight,

General Counsel, Department of the Treasury.

For the reasons set forth in the preamble, 31 CFR part 0 is revised to read as follows:

PART 0—DEPARTMENT OF THE TREASURY EMPLOYEE RULES OF CONDUCT

Subpart A—General Provisions

Sec.

0.101 Purpose.

0.102 Policy.

0.103 Definitions.

Responsibilities

- 0.104 Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.
- 0.105 Deputy Ethics Official.
- 0.106 Bureau Heads.
- 0.107 Employees.

Subpart B—Rules of Conduct

- 0.201 Political activity.
- 0.202 Strikes.
- 0.203 Gifts or gratuities from foreign governments.
- 0.204 Use of controlled substances and intoxicants.
- 0.205 Care of documents and data.
- 0.206 Disclosure of information.
- 0.207 Cooperation with official inquiries.
- 0.208 Falsification of official records.
- 0.209 Use of Government vehicles.
- 0.210 Conduct while on official duty or on Government property.
- 0.211 Soliciting, selling and canvassing.
- 0.212 Influencing legislation or petitioning Congress.
- 0.213 General conduct prejudicial to the Government.
- 0.214 Nondiscrimination.
- 0.215 Possession of weapons and explosives.
- 0.216 Privacy Act.
- 0.217 Personal financial interests.

Subpart C—Special Government Employees

- 0.301 Applicability of subpart B.
- 0.302 Service with other Federal agencies.

Subpart D—Advisers to the Department

- 0.401 Advisers to the Department.

Authority: 5 U.S.C. 301.

Subpart A—General Provisions**§ 0.101 Purpose.**

(a) The Department of the Treasury Employee Rules of Conduct (Rules) are separate from and additional to the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) (5 CFR part 2635) and the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Treasury Supplemental Standards) (to be codified at 5 CFR part 3101). The Rules prescribe employee rules of conduct and procedure and provide for disciplinary action for the violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards, and any other rule, regulation or law governing Department employees.

(b) The Rules are not all-inclusive and may be modified by interpretive guidelines and procedures issued by the Department's bureaus. The absence of a specific published rule of conduct covering an action does not constitute a condonation of that action or indicate that the action would not result in corrective or disciplinary action.

§ 0.102 Policy.

(a) All employees and officials of the Department are required to follow the rules of conduct and procedure contained in the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards of Ethical Conduct, the Employee Responsibilities and Conduct (5 CFR part 735), and any bureau issued rules.

(b) Employees found in violation of the Rules, the Treasury Supplemental Standards or any applicable bureau rule may be instructed to take remedial or corrective action to eliminate the conflict. Remedial action may include, but is not limited to:

- (1) Reassignment of work duties;
- (2) Disqualification from a particular assignment;
- (3) Divestment of a conflicting interest; or

(4) Other appropriate action.

(c) Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be disciplined in proportion to the gravity of the offense committed, including removal. Disciplinary action will be taken in accordance with applicable laws and regulations and after consideration of the employee's explanation and any mitigating factors. Further, disciplinary action may include any additional penalty prescribed by law.

§ 0.103 Definitions.

The following definitions are used throughout this part: (a) Adviser means a person who provides advice to the Department as a representative of an outside group and is not an employee or special Government employee as those terms are defined in § 0.103.

- (b) Bureau means:
- (1) Bureau of Alcohol, Tobacco and Firearms;
 - (2) Bureau of Engraving and Printing;
 - (3) Bureau of the Public Debt;
 - (4) Departmental Offices;
 - (5) Federal Law Enforcement Training Center;
 - (6) Financial Management Service;
 - (7) Internal Revenue Service;
 - (8) Legal Division;
 - (9) Office of the Comptroller of the Currency;
 - (10) Office of the Inspector General;
 - (11) Office of Thrift Supervision;
 - (12) United States Customs Service;
 - (13) United States Mint;
 - (14) United States Secret Service; and
 - (15) Any organization designated as a bureau by the Secretary pursuant to appropriate authority.

(c) Person means an individual, corporation and subsidiaries it controls,

company, association, firm, partnership, society, joint stock company, or any other organization or institution as specified in 5 CFR 2635.102(k).

(d) *Regular employee or employee* means an officer or employee of the Department of the Treasury but does not include a special Government employee.

(e) *Special Government employee* means an officer or employee who is retained, designated, appointed, or employed to perform temporary duty either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period. See 18 U.S.C. 202(a).

Responsibilities**§ 0.104 Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.**

The Deputy General Counsel is the Department's Designated Agency Ethics Official (DAEO). The DAEO is responsible for managing the Department's ethics program, including coordinating ethics counseling and interpreting questions of conflicts of interest and other matters that arise under the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules. See 5 CFR 2638.203. The Senior Counsel for Ethics is the Alternate Designated Agency Ethics Official.

§ 0.105 Deputy Ethics Official.

The Chief Counsel or Legal Counsel for a bureau, or a designee, is the Deputy Ethics Official for that bureau. The Legal Counsel for the Financial Crimes Enforcement Network is the Deputy Ethics Official for that organization. It is the responsibility of the Deputy Ethics Official to give authoritative advice and guidance on conflicts of interest and other matters arising under the Executive Branch-wide Standards, Treasury Supplemental Standards, and the Rules.

§ 0.106 Bureau Heads.

Bureau heads or designees are required to:

(a) Provide all employees with a copy of Executive Order 12674, as amended by Executive Order 12731, the Executive Branch-wide Standards, the Treasury Supplemental Standards and the Rules; provide all new employees with an explanation of the contents and application of the Executive Branch-wide Standards, Treasury Supplemental Standards and the Rules; and provide all departing employees with an explanation of the applicable post-employment restrictions contained in 18

U.S.C. 207 and 5 CFR part 2641 and any other applicable law or regulation.

(b) Provide guidance and assistance to supervisors and employees in implementing and adhering to the rules and procedures included in the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules; obtain any necessary legal advice or interpretation from the Designated Agency Ethics Official or a Deputy Ethics Official; and inform employees as to how and from whom they may obtain additional clarification or interpretation of the Executive Branch-wide Standards, Treasury Supplemental Standards, Rules, and any other relevant law, rule or regulation.

(c) Take appropriate corrective or disciplinary action against an employee who violates the Executive Branch-wide Standards, Treasury Supplemental Standards or Rules, or any other applicable law, rule or regulation, and against a supervisor who fails to carry out his responsibilities in taking or recommending corrective or disciplinary action when appropriate against an employee who has committed an offense.

§ 0.107 Employees.

(a) Employees are required to:

(1) Read and follow the rules and procedures contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, and Rules;

(2) Request clarification or interpretation from a supervisor or ethics official if the application of a rule contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, or Rules is not clear;

(3) Report to the Inspector General or to the appropriate internal affairs office of the Bureau of Alcohol, Tobacco and Firearms, Customs Service, Internal Revenue Service, or Secret Service; any information indicating that an employee, former employee, contractor, subcontractor, or potential contractor engaged in criminal conduct or that an employee or former employee violated the Executive Branch-wide Standards or the Treasury Supplemental Standards or Rules. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the appropriate Chief or Legal Counsel or the Deputy General Counsel, who shall report such information to the Inspector General or appropriate internal affairs office; and

(4) Report to the Inspector General information defined in paragraph (a)(3) of this section relating to foreign intelligence or national security, as covered in Executive Order 12356. Legal Division attorneys acquiring this type of

information during the representation of a bureau shall report it to the Deputy General Counsel, who shall report such information to the Inspector General.

(b) The confidentiality of the source of the information reported to the Inspector General or the internal affairs office under this section will be maintained to the extent appropriate under the circumstances.

Subpart B—Rules of Conduct

§ 0.201 Political activity.

(a) Employees may:

(1) Take an active part in political management or in political campaigns to the extent permitted by law (5 U.S.C. 7321–7326); and

(2) Vote as they choose and express their opinions on political subjects and candidates.

(b) Employees may not use their official authority or influence to interfere with or affect election results.

(c) Employees may be disqualified from employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government.

Note: The Hatch Act Reform Amendments of 1993 significantly reduced the statutory restrictions on the political activity of most Department employees. However, career members of the Senior Executive Service and employees of the Secret Service, the Internal Revenue Service, Office of Criminal Investigation, the Customs Service, Office of Investigative Programs, and the Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement, remain subject to significant restrictions on their political activities.

§ 0.202 Strikes.

Employees shall not strike against the Government.

§ 0.203 Gifts or gratuities from foreign governments.

(a) The United States Constitution prohibits employees from accepting gifts, emoluments, offices, or titles from a foreign government without the consent of the Congress. Congress has consented to an employee accepting and retaining a gift from a foreign government that is of minimal value and offered as a souvenir or mark of courtesy, unless otherwise prohibited by bureau regulation (5 U.S.C. 7342). Minimal value is prescribed in 41 CFR part 101–49 and was set at \$225.00 on the date that the Rules became effective.

(b) All gifts exceeding minimal value, the refusal of which would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, shall be accepted and deposited with the Department within

sixty days of acceptance. If the gift is travel or expenses for travel taking place entirely outside the United States, it shall be reported within thirty days (see 5 U.S.C. 7342(c)(1)(B)(ii)).

(c) As used in paragraph (b) of this section, *Deposit with the Department* means delivery to the Department Gift Unit or other depository as authorized by the Treasury Directive on Foreign Gifts (Treasury Directive 61–04).

(d) All foreign gifts must be reported as prescribed in the Treasury Directive on Foreign Gifts (Treasury Directive 61–04).

§ 0.204 Use of controlled substances and intoxicants.

Employees shall not sell, use or possess controlled substances or intoxicants in violation of the law while on Department property or official duty, or use a controlled substance or intoxicant in a manner that adversely affects their work performance.

§ 0.205 Care of documents and data.

(a) Employees shall not conceal, remove, alter, destroy, mutilate or access documents or data in the custody of the Federal Government without proper authority.

(b) Employees are required to care for documents according to Federal law and regulation, and Department procedure (18 U.S.C. 2071, 5 U.S.C. 552, 552a).

(c) The term *documents* includes, but is not limited to, any writing, recording, computer tape or disk, blueprint, photograph, or other physical object on which information is recorded.

§ 0.206 Disclosure of information.

Employees shall not disclose official information without proper authority, pursuant to Department or bureau regulation. Employees authorized to make disclosures should respond promptly and courteously to requests from the public for information when permitted to do so by law (31 CFR 1.9, 1.10, and 1.28(b)).

§ 0.207 Cooperation with official inquiries.

Employees shall respond to questions truthfully and under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest when directed to do so by competent Treasury authority.

§ 0.208 Falsification of official records.

Employees shall not intentionally make false, misleading or ambiguous statements, orally or in writing, in connection with any matter of official interest. Matters of official interest include among other things: Transactions with the public.

government agencies or fellow employees; application forms and other forms that serve as a basis for appointment, reassignment, promotion or other personnel action; vouchers; leave records and time and attendance records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with an employee's duties; and reports of any moneys or securities received, held or paid to, for or on behalf of the United States.

§ 0.209 Use of Government vehicles.

Employees shall not use Government vehicles for unofficial purposes, including to transport unauthorized passengers. The use of Government vehicles for transporting employees between their domiciles and places of employment must be authorized by statute (See, e.g., 31 U.S.C. 1344).

§ 0.210 Conduct while on official duty or on Government property.

Employees must adhere to the regulations controlling conduct when they are on official duty or in or on Government property, including the Treasury Building, Treasury Annex Building and grounds; the Bureau of Engraving and Printing buildings and grounds; the United States Mint buildings and grounds; the grounds of the Federal Law Enforcement Training Center; and Treasury-occupied General Services Administration buildings and grounds (see 31 CFR parts 91, 407, 605, 700).

§ 0.211 Soliciting, selling and canvassing.

Employees shall not solicit, make collections, canvass for the sale of any article, or distribute literature or advertising in any space occupied by the Department without appropriate authority.

§ 0.212 Influencing legislation or petitioning Congress.

(a) Employees shall not use Government time, money, or property to petition a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling, through the proper channels, of matters relating to legislation in which the Department of the Treasury has an interest.

(b) Employees, individually or collectively, may petition Congress or Members of Congress or furnish information to either House of Congress when not using Government time, money or property (5 U.S.C. 7211).

§ 0.213 General conduct prejudicial to the Government.

Employees shall not engage in criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government.

§ 0.214 Nondiscrimination.

(a) Employees shall not discriminate against or harass any other employee, applicant for employment or person dealing with the Department on official business on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability. Sexual harassment is a form of sex discrimination and is prohibited by this section.

(b) An employee who engages in discriminatory conduct may be disciplined under these rules. However, this section does not create any enforceable legal rights in any person.

§ 0.215 Possession of weapons and explosives.

(a) Employees shall not possess firearms, explosives, or other dangerous or deadly weapons, either openly or concealed, while on Government property or official duty.

(b) The prohibition in paragraph (a) of this section does not apply to employees who are required to possess weapons or explosives in the performance of their official duties.

§ 0.216 Privacy Act.

Employees involved in the design, development, operation, or maintenance of any system of records or in maintaining records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), shall comply with the conduct regulations delineated in 31 CFR 1.28(b).

§ 0.217 Personal financial interests.

(a) Employees may hold the following financial interests without violating 18 U.S.C. 208(a):

(1) The stocks or bonds of a publicly traded corporation with a value of \$1000 or less; and

(2) The stocks or bonds in the investment portfolio of a diversified mutual fund in which an employee has invested.

(b) The Department has found that the financial interests listed in paragraph (a) of this section are too remote and inconsequential to affect the integrity of an employee's service.

Subpart C—Special Government Employees

§ 0.301 Applicability of subpart B.

The rules of conduct contained in subpart B of this part apply to special Government employees employed with the Treasury Department. The regulations contained in § 0.201 of subpart B, concerning political activity, apply to special Government employees only on the days that they serve the Department. Treasury bureaus are responsible for informing special Government employees employed with them of the applicability of bureau specific statutes or regulations.

§ 0.302 Service with other Federal agencies.

A special Government employee serving concurrently in the Department and in a Federal agency other than the Department is required to inform the Department and the agency in which he serves of the arrangement so that appropriate administrative measures may be taken.

Subpart D—Advisers to the Department

§ 0.401 Advisers to the Department.

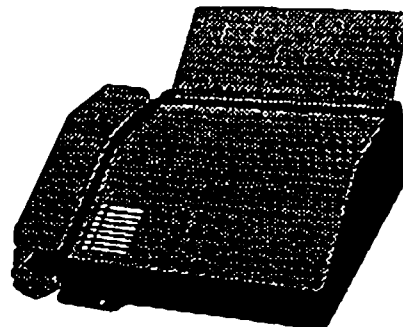
(a) An adviser or advisory committee member includes an individual who provides advice to the Department as a representative of an outside group and is not an employee or special Government employee of the Department. Questions concerning whether an individual serves the Department in the capacity of an adviser, employee, or special Government employee shall be addressed to the Designated Agency Ethics Official or a Deputy Ethics Official.

(b) Advisers or advisory committee members are not required to follow the Rules and are not generally required by the Department to file financial disclosure statements; nevertheless, they should be guided by the regulations in this part covering such issues as public disclosure of official information (§ 0.206), conduct (§ 0.211 and § 0.213), and gifts or gratuities from Foreign governments (§ 0.203).

[FR Doc. 95-13318 Filed 5-31-95; 8:45 am]
BILLING CODE 4810-25-P



FAX COVER SHEET



DATE: 12.1.95

TO: Paul Yandura

FROM: **EQUAL EMPLOYMENT OPPORTUNITY STAFF
JUSTICE MANAGEMENT DIVISION**

Anna Rosario

Number of Pages 4 (excluding this cover)

If you do not receive a good copy, please call

Jan Jenkins at (202) 616-4800
(Fax No. (202) 616-4823)

Message/Remarks:

Please find following this sheet,
a copy of the Dept. of Justice's
policy statement on Sexual Harassment
& Employment.



Office of the Attorney General
Washington, D. C. 20530

August 16, 1994

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM:

THE ATTORNEY GENERAL

SUBJECT:

Equal Employment Opportunity
in the Department of Justice

The Department of Justice is committed to providing equal opportunity for all employees and applicants. We will uphold the principles of equal opportunity by ensuring that all practices and policies of this Department are applied without regard to race, color, sex, national origin, age, religion, disability, sexual orientation or any other non-merit factor. We will vigorously enforce all anti-discrimination laws and regulations and take all necessary steps to ensure that all of our programs and activities are free of discrimination and harassment, including sexual harassment.

I believe that since the Department represents the interests of all our citizens, it is only proper that it reflects the diversity that has been the strength behind this country's success throughout our proud history. I am greatly encouraged by the Department's attempts to achieve a diverse work force. However, I am convinced that much remains to be accomplished.

My vision is to make the Department a model employer where equal opportunity considerations are an integral part of our management programs. We must devise methods and strategies to ensure that we attract, develop, and retain the highest caliber of employees. We must initiate actions to ensure that we identify those areas where extra efforts may be needed to reach audiences of qualified minorities, women, and persons with disabilities. Our policies will be translated into reality once we can cite measurable progress in this area.

I am eager to move forward with plans to strengthen our equal opportunity program, Departmentwide. I am especially concerned about increasing the representation of minorities, women, and persons with disabilities throughout our work force, especially

in high level and policy making positions, as well as in the various key occupational categories, e.g. attorneys, criminal investigators, deputy marshals, border patrol agents, correctional officers, and immigration inspectors.

Our employment of persons with disabilities is also of great concern to me. We must do more in this area. Because law enforcement occupations comprise a large percentage of the jobs here at Justice, and some persons with disabilities may not meet the physical standards required to perform some of these jobs, it is imperative that we increase our efforts to recruit and hire those persons for other positions where such requirements do not exist.

Although the President's commitment and plan to reduce the Federal work force means that recruitment of new Federal employees may be limited, we will pursue all appropriate actions to enhance our equal opportunity program efforts in those instances where opportunities do exist. Limited outside hiring also presents opportunities for us to expand internal career development programs, and to identify capable incumbent employees to advance into higher level positions. We will continue to focus our attention and energies on ways to increase responsiveness in government operations, but we must also ensure that we take into account the need to improve our human resource programs.

I encourage each of you to establish practical and effective programs that will result in a diverse work force within your components. I am establishing the following key objectives in the area of equal employment opportunity for the Department:

- o To foster an environment in which cultural diversity is valued and understood.
- o To achieve work force diversity wherever underrepresentation of minorities, women, and persons with disabilities exists. To utilize innovative approaches to more fully integrate minorities, women and persons with disabilities throughout the Department.
- o To ensure that supervisors and managers are held accountable for EEO implementation through the performance appraisal process.
- o To provide a work environment that is free of discrimination and harassment and to ensure that programs designed to address allegations

of discrimination or harassment are responsive to employee's needs and that employees who elect to utilize such programs are protected from retaliation or reprisal.

I am counting on each of you, your managers, supervisors, and employees to support me in accomplishing these objectives. All managers in the Department must interweave their commitment to equal opportunity with their routine planning in human resource management. It is not enough for managers merely to voice commitment and support for the concept of EEO, it is also necessary to devote specific time, resources, and energy to fulfilling the commitment.

To establish consistency in our efforts across the Department and to ensure that we aggressively address this important program, I am implementing the following special management initiatives. Effective immediately, the head of each major bureau shall:

- o Assess the level of resources allocated to EEO program implementation. Ensure that the EEO Office is located at an organizational level so that EEO officials can provide effective and timely advice to you, your senior managers, employees, and the public.

Additionally, I want the heads of bureaus, offices, boards, and divisions, to take the following actions:

1. Assess your component's work force. Identify organizational units where underrepresentation of minorities, women, and persons with disabilities exist. Your assessment should extend beyond across the board totals and analyze the work force in terms of the different kinds of jobs, and various grade levels.
2. Identify internal and external strategies (including recruitment) utilized by your component to address underrepresentation in key job categories. Review recent hires and promotions to determine if present methods are effective in yielding a diverse work force. Also review selection criteria and practices that may be causing underrepresentation. Modify as necessary to obtain desired results.

3. Establish a system of management accountability to ensure that supervisors and managers, especially SESers are appropriately evaluated on their efforts to implement EEO program initiatives and objectives.
4. Establish a mandatory EEO training program for supervisors and managers to clarify their responsibilities with regard to EEO.
5. Assess current executive development programs to ensure that minorities, women and persons with disabilities are represented among the participants.
6. Assess current promotion procedures to ensure that they are applied equitably with respect to all employees.

I expect each of you to develop a comprehensive report on the above areas. You should submit your report to Stephen R. Colgate, Assistant Attorney General for Administration, within 60 days of receipt of this memorandum. I have asked Steve to review and assess the adequacy of your reports and to advise me if further action is necessary. I have also asked the Justice Management Division to provide you necessary assistance as you address these critical initiatives. You should also seek assistance from your component EEO and personnel staffs in completing your report.

In launching this program, I want to emphasize my personal commitment to its success and to the continued success of the Department of Justice in hiring, retaining, and promoting individuals of remarkable talent. The extra measures that will be required in the short run to ensure that our Department reflects the diversity of our Nation are well worth the effort. I look forward to your enthusiastic support of these vital initiatives.

**U. S. DEPARTMENT OF TRANSPORTATION
DEPARTMENTAL OFFICE OF CIVIL RIGHTS
COMPLIANCE OPERATIONS DIVISION, S-34
400 SEVENTH STREET, S W., RM . 9201
WASHINGTON, D. C. 20590**

FACSIMILE NUMBER: (202) 366-7717

11/30/95

DATE

ATTENTION: Paul Yandura, The White House

TELEPHONE

NUMBER: 202-456-2674

SUBJECT: DOT Policy Statement on Sexual Orientation

(Note: Hard Copy will follow)

TRANSMISSION:

COVER SHEET PLUS 3 PAGES

REPLY TO THE ATTENTION

OF: Gilbert Sandate, Chief, Compliance Operations Division, Departmental
Office of Civil Rights

TELEPHONE NUMBER: 202- 366-9367

This message is intended only for the use of the individual(s) or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone. Thank you.



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

May 27, 1993

MEMORANDUM TO ALL DOT EMPLOYEES

DIVERSITY POLICY STATEMENT

As Secretary of the Department of Transportation, I am totally committed to creating and maintaining a diverse work force which will meet America's growing transportation needs today and into the 21st century. To be successful and recognized as an innovative, highly productive, world class organization, we must create an environment which fully utilizes the talents and capabilities of all civilian and military employees, grantees, and contractors from all backgrounds at all levels of the organization.

Diversity means inclusion--hiring, developing, promoting and retaining employees of all races, ethnic groups, sexual orientations, and cultural backgrounds; the old, the young, and the middle-aged; the able-bodied and the disabled; men and women. My senior managers and I know that there is much to be gained from a diverse work force. We embrace the richer, broader perspective that diverse individuals bring to the workplace, and respect the dignity of ourselves and our customers.

Each manager is responsible for nurturing and capitalizing on the best that every employee has to give. I firmly believe this is done by empowering all employees with the opportunities, tools and support they need to develop to their fullest potential and contribute productively to the mission of the organization. My experience has proven that it is also done by helping employees balance work and family needs and providing appropriate accommodations and support systems for individuals with disabilities.

Although managers must lead the way in ensuring complete support of diversity, every single employee can get involved and participate by valuing the differences and cultures of others as well as their own. This will require mutual adjustment and understanding. These actions are critical to diversity becoming an integral part of the organization, benefiting not only the individual but also the Department and ultimately the Nation.

I know that I can count on you to join me in making the Department a leader in the area of work force diversity.

A handwritten signature in cursive script, reading 'Federico Peña', is located below the text.

Federico Peña



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 27, 1993

MEMORANDUM TO ALL DOT EMPLOYEES
EQUAL OPPORTUNITY POLICY STATEMENT

As Secretary, let me affirm that it is the policy of this Department that no one be denied opportunities because of his or her race, color, religion, sex, age, national origin, disability or sexual orientation.

My commitment extends far beyond simply reducing or preventing discrimination. We have an obligation to do more. I will aggressively promote equal employment opportunity for all persons in our workplace, to fully include minorities, women, individuals of different sexual orientations, the disabled, and older Americans at all levels of the organization and to remove any real or artificial barriers that may limit opportunities.

Every effort will be made to ensure that this commitment is thoroughly understood, rigorously followed and recognized as an integral part of every program of this Department. By our aggressive and affirmative implementation of this policy, we keep faith with the citizens of this Nation. Our citizens have not only entrusted us with the transportation issues of the Nation, but also with the ideals and liberties that are the cornerstones of America.


Federico Peña



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 27, 1993

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S-10

MEMORANDUM TO ALL DOT EMPLOYEES
SEXUAL HARASSMENT POLICY STATEMENT

I am committed, as Secretary of Transportation, to ensure that every employee understands that any form of sexual harassment is unacceptable and will not be tolerated in the Department of Transportation. Harassment can range from demeaning remarks and insulting jokes to pressure for dates, threats and promises based on trading sexual favors, and even sexual assault.

No employee should have to work in an environment which is intimidating, hostile or offensive. Managers and supervisors must take a strong visible stand against sexual harassment and create an office atmosphere that is as comfortable as possible for all employees.

It is imperative that we all recognize that sexual harassment is against the law and the policy of this Department. It will result in appropriate disciplinary sanctions against the offender, up to and including dismissal. Employees who feel they have suffered sexual harassment may use the discrimination complaint process and seek the assistance of EEO counselors for redress.

I am fully committed to the elimination of sexual harassment in the Department and will pursue this policy vigorously. I look to our managers and supervisors to share with me the responsibility of advancing this policy throughout the Department.


Federico Peña



THE SECRETARY OF THE INTERIOR

WASHINGTON

December 7, 1993

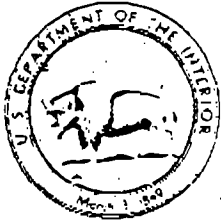
MEMORANDUM

TO: All Employees
FROM: Secretary *B. B. Bullitt*
SUBJECT: Equal Opportunity Policy

As Secretary of the Interior, I want to emphasize my personal commitment to a goal that ensures equal opportunity for all Americans. Through this pledge, it will be the policy of this Department to ensure that individuals will not be denied opportunities in employment or program delivery because of their sex, race, religion, national origin, color, age, disability or any other non-merit factor. Equally important, sexual harassment, in any of its various forms, by any employee of this Department, will not be tolerated. This commitment to equal opportunity further extends to Federal civil rights laws related to programs conducted by or receiving financial assistance from the Department. All equal opportunity and civil rights laws will be strictly enforced.

In order to meet this goal, it is essential that each one of us understands our personal responsibility in this area and that a system of accountability be initiated and enforced. Each employee, at every level, will be held personally accountable for her or his performance in ensuring equal opportunity and in promoting individual civil rights. All executives, managers and supervisors will be evaluated for their performance and the performance of their staffs in these important areas. Assessments of accomplishments will be used as criteria for consideration in granting awards, promotions and any further personnel opportunities. And, of course, appropriate action will be taken where discrimination and harassment are found to exist.

I ask all employees of the Department to work with me to expand opportunities for all employees within the Department, to reach out to surrounding communities and educational institutions to develop interest among all segments of the population in natural resource conservation in general and Department of the Interior programs in particular, to eliminate discrimination where we find it, and to rely on diversity in building a more productive and challenging organization that will better serve our country and all of its people. Again, be assured that I am personally committed to taking whatever actions are necessary to ensure adherence to this policy.



THE SECRETARY OF THE INTERIOR
WASHINGTON

January 26, 1994

MEMORANDUM

TO: All Employees

FROM: Secretary *Barry Bullitt*

SUBJECT: Supplement to the Equal Opportunity Policy; Sexual Orientation

I want to re-emphasize my personal commitment to a goal which ensures equal opportunity for all Americans. To enhance that goal, the Equal Opportunity Policy, dated December 7, 1993, is expanded to include sexual orientation as it relates to all matters of employment.

We will not condone discrimination based on sexual orientation within this Department. We recognize the importance of selecting the best possible person for the work to be done and for providing all Americans with equal employment opportunities. All Interior employees deserve and must be given respect so that the work place is free of intimidation, fear, and other counter productive elements.



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

AUG 16 1995

TO ALL EMPLOYEES

REAFFIRMATION OF EQUAL EMPLOYMENT OPPORTUNITY POLICY

I am committed to ensuring equal employment opportunity for all VA employees. Equally as important, I am committed to a Department that is free of discrimination and which reflects the diversity of this nation.

This statement reaffirms the policy of VA prohibiting unlawful discrimination and sexual harassment. VA does not condone nor tolerate discrimination based on race, color, national origin, sex (including sexual harassment), religion, age (over 40), disability or sexual orientation, in any of its personnel policies, practices, and operations.

All VA managers and employees have a responsibility to uphold this policy. Each of us must be personally accountable for his or her performance in ensuring and promoting equal opportunity principles and in recognizing diversity as a source of strength for VA. Moreover, managers and employees alike must work together to ensure a workplace free of discrimination and sexual harassment.

It is essential that we recognize that diversity of cultures and life styles exists among employees, as it does in our veteran population. Consequently, it is important that all VA employees work together to create an environment of understanding and respect in order to enhance our collective and individual efforts to serve veterans and their families. I ask that all VA managers and employees support this policy in a positive manner. That means zero tolerance for discrimination or harassment in any form.

If you have questions regarding this policy, you may contact the EEO Manager or EEO Coordinator at your facility or office for assistance. Additional information may also be secured from the Office of Equal Opportunity, telephone 202-482-6724.

A handwritten signature in black ink, reading "Jesse Brown", is positioned above the printed name.

Jesse Brown

THE SECRETARY OF STATE
WASHINGTON

April 22, 1994

MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

STATEMENT OF POLICY WITH RESPECT TO NONDISCRIMINATION

The Department of State is committed to equal opportunity and fair and equitable treatment for all. The Department shall not discriminate among its employees or candidates for employment on the basis of race, color, national origin, sex, religion, disability, or sexual orientation.

A handwritten signature in cursive script, reading "Warren Christopher".

Warren Christopher



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

Mr. Paul Yandura
The White House
Room 115, OEOB
Washington, D.C.

December 1, 1995

Dear Mr. Yandura:

Enclosed please find the hard copies of the Department Of Transportation's policy statements on diversity, which include sexual orientation. These documents were recently faxed to your attention. Please do not hesitate to contact me directly if I can be of further assistance. I can be reached at (202) 366-9367.

Sincerely,

A handwritten signature in cursive script, reading "Gilbert M. Sandate".

Gilbert M. Sandate
Chief, Compliance Operations Division
Departmental Office of Civil Rights

Enclosure



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

May 27, 1993

MEMORANDUM TO ALL DOT EMPLOYEES
EQUAL OPPORTUNITY POLICY STATEMENT

As Secretary, let me affirm that it is the policy of this Department that no one be denied opportunities because of his or her race, color, religion, sex, age, national origin, disability or sexual orientation.

My commitment extends far beyond simply reducing or preventing discrimination. We have an obligation to do more. I will aggressively promote equal employment opportunity for all persons in our workplace, to fully include minorities, women, individuals of different sexual orientations, the disabled, and older Americans at all levels of the organization and to remove any real or artificial barriers that may limit opportunities.

Every effort will be made to ensure that this commitment is thoroughly understood, rigorously followed and recognized as an integral part of every program of this Department. By our aggressive and affirmative implementation of this policy, we keep faith with the citizens of this Nation. Our citizens have not only entrusted us with the transportation issues of the Nation, but also with the ideals and liberties that are the cornerstones of America.

A handwritten signature in black ink, appearing to read 'Federico Peña', is positioned above the printed name.

Federico Peña



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 27, 1993

MEMORANDUM TO ALL DOT EMPLOYEES

DIVERSITY POLICY STATEMENT

As Secretary of the Department of Transportation, I am totally committed to creating and maintaining a diverse work force which will meet America's growing transportation needs today and into the 21st century. To be successful and recognized as an innovative, highly productive, world class organization, we must create an environment which fully utilizes the talents and capabilities of all civilian and military employees, grantees, and contractors from all backgrounds at all levels of the organization.

Diversity means inclusion--hiring, developing, promoting and retaining employees of all races, ethnic groups, sexual orientations, and cultural backgrounds; the old, the young, and the middle-aged; the able-bodied and the disabled; men and women. My senior managers and I know that there is much to be gained from a diverse work force. We embrace the richer, broader perspective that diverse individuals bring to the workplace, and respect the dignity of ourselves and our customers.

Each manager is responsible for nurturing and capitalizing on the best that every employee has to give. I firmly believe this is done by empowering all employees with the opportunities, tools and support they need to develop to their fullest potential and contribute productively to the mission of the organization. My experience has proven that it is also done by helping employees balance work and family needs and providing appropriate accommodations and support systems for individuals with disabilities.

Although managers must lead the way in ensuring complete support of diversity, every single employee can get involved and participate by valuing the differences and cultures of others as well as their own. This will require mutual adjustment and understanding. These actions are critical to diversity becoming an integral part of the organization, benefiting not only the individual but also the Department and ultimately the Nation.

I know that I can count on you to join me in making the Department a leader in the area of work force diversity.

A handwritten signature in black ink, reading 'Federico Peña', is located at the bottom center of the page.

Federico Peña



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 27, 1993

MEMORANDUM TO ALL DOT EMPLOYEES
SEXUAL HARASSMENT POLICY STATEMENT

I am committed, as Secretary of Transportation, to ensure that every employee understands that any form of sexual harassment is unacceptable and will not be tolerated in the Department of Transportation. Harassment can range from demeaning remarks and insulting jokes to pressure for dates, threats and promises based on trading sexual favors, and even sexual assault.

No employee should have to work in an environment which is intimidating, hostile or offensive. Managers and supervisors must take a strong visible stand against sexual harassment and create an office atmosphere that is as comfortable as possible for all employees.

It is imperative that we all recognize that sexual harassment is against the law and the policy of this Department. It will result in appropriate disciplinary sanctions against the offender, up to and including dismissal. Employees who feel they have suffered sexual harassment may use the discrimination complaint process and seek the assistance of EEO counselors for redress.

I am fully committed to the elimination of sexual harassment in the Department and will pursue this policy vigorously. I look to our managers and supervisors to share with me the responsibility of advancing this policy throughout the Department.


Federico Peña



Office of the Attorney General
Washington, D. C. 20530

August 16, 1994

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL *John M. Reno*

SUBJECT: Equal Employment Opportunity
in the Department of Justice

The Department of Justice is committed to providing equal opportunity for all employees and applicants. We will uphold the principles of equal opportunity by ensuring that all practices and policies of this Department are applied without regard to race, color, sex, national origin, age, religion, disability, sexual orientation or any other non-merit factor. We will vigorously enforce all anti-discrimination laws and regulations and take all necessary steps to ensure that all of our programs and activities are free of discrimination and harassment, including sexual harassment.

I believe that since the Department represents the interests of all our citizens, it is only proper that it reflects the diversity that has been the strength behind this country's success throughout our proud history. I am greatly encouraged by the Department's attempts to achieve a diverse work force. However, I am convinced that much remains to be accomplished.

My vision is to make the Department a model employer where equal opportunity considerations are an integral part of our management programs. We must devise methods and strategies to ensure that we attract, develop, and retain the highest caliber of employees. We must initiate actions to ensure that we identify those areas where extra efforts may be needed to reach audiences of qualified minorities, women, and persons with disabilities. Our policies will be translated into reality once we can cite measurable progress in this area.

I am eager to move forward with plans to strengthen our equal opportunity program, Departmentwide. I am especially concerned about increasing the representation of minorities, women, and persons with disabilities throughout our work force, especially

in high level and policy making positions, as well as in the various key occupational categories, e.g. attorneys, criminal investigators, deputy marshals, border patrol agents, correctional officers, and immigration inspectors.

Our employment of persons with disabilities is also of great concern to me. We must do more in this area. Because law enforcement occupations comprise a large percentage of the jobs here at Justice, and some persons with disabilities may not meet the physical standards required to perform some of these jobs, it is imperative that we increase our efforts to recruit and hire those persons for other positions where such requirements do not exist.

Although the President's commitment and plan to reduce the Federal work force means that recruitment of new Federal employees may be limited, we will pursue all appropriate actions to enhance our equal opportunity program efforts in those instances where opportunities do exist. Limited outside hiring also presents opportunities for us to expand internal career development programs, and to identify capable incumbent employees to advance into higher level positions. We will continue to focus our attention and energies on ways to increase responsiveness in government operations, but we must also ensure that we take into account the need to improve our human resource programs.

I encourage each of you to establish practical and effective programs that will result in a diverse work force within your components. I am establishing the following key objectives in the area of equal employment opportunity for the Department:

- o To foster an environment in which cultural diversity is valued and understood.
- o To achieve work force diversity wherever underrepresentation of minorities, women, and persons with disabilities exists. To utilize innovative approaches to more fully integrate minorities, women and persons with disabilities throughout the Department.
- o To ensure that supervisors and managers are held accountable for EEO implementation through the performance appraisal process.
- o To provide a work environment that is free of discrimination and harassment and to ensure that programs designed to address allegations

of discrimination or harassment are responsive to employee's needs and that employees who elect to utilize such programs are protected from retaliation or reprisal.

I am counting on each of you, your managers, supervisors, and employees to support me in accomplishing these objectives. All managers in the Department must interweave their commitment to equal opportunity with their routine planning in human resource management. It is not enough for managers merely to voice commitment and support for the concept of EEO, it is also necessary to devote specific time, resources, and energy to fulfilling the commitment.

To establish consistency in our efforts across the Department and to ensure that we aggressively address this important program, I am implementing the following special management initiatives. Effective immediately, the head of each major bureau shall:

- o Assess the level of resources allocated to EEO program implementation. Ensure that the EEO Office is located at an organizational level so that EEO officials can provide effective and timely advice to you, your senior managers, employees, and the public.

Additionally, I want the heads of bureaus, offices, boards, and divisions, to take the following actions:

1. Assess your component's work force. Identify organizational units where underrepresentation of minorities, women, and persons with disabilities exist. Your assessment should extend beyond across the board totals and analyze the work force in terms of the different kinds of jobs, and various grade levels.
2. Identify internal and external strategies (including recruitment) utilized by your component to address underrepresentation in key job categories. Review recent hires and promotions to determine if present methods are effective in yielding a diverse work force. Also review selection criteria and practices that may be causing underrepresentation. Modify as necessary to obtain desired results.

3. Establish a system of management accountability to ensure that supervisors and managers, especially SESers are appropriately evaluated on their efforts to implement EEO program initiatives and objectives.
4. Establish a mandatory EEO training program for supervisors and managers to clarify their responsibilities with regard to EEO.
5. Assess current executive development programs to ensure that minorities, women and persons with disabilities are represented among the participants.
6. Assess current promotion procedures to ensure that they are applied equitably with respect to all employees.

I expect each of you to develop a comprehensive report on the above areas. You should submit your report to Stephen R. Colgate, Assistant Attorney General for Administration, within 60 days of receipt of this memorandum. I have asked Steve to review and assess the adequacy of your reports and to advise me if further action is necessary. I have also asked the Justice Management Division to provide you necessary assistance as you address these critical initiatives. You should also seek assistance from your component EEO and personnel staffs in completing your report.

In launching this program, I want to emphasize my personal commitment to its success and to the continued success of the Department of Justice in hiring, retaining, and promoting individuals of remarkable talent. The extra measures that will be required in the short run to ensure that our Department reflects the diversity of our Nation are well worth the effort. I look forward to your enthusiastic support of these vital initiatives.



DEC 6 1993

A Special Message For All HHS Employees

The Department of Health and Human Services has, at the very core of our mission, responsibility for promoting the well-being of all Americans. The respect and dignity with which we treat each other here in the Department is crucial to the successful completion of this mission.

To foster an atmosphere of continuous improvement in our products and services, we must create an environment that fully utilizes the talents and capabilities of each and every one of us, from all backgrounds and at all organizational levels. And to do this, we must strengthen our commitment to a workplace that is free of discrimination or harassment of any kind — a workplace where no one is denied the opportunity to contribute fully because of race, color, religion, gender, national origin, age, disability, or sexual orientation.

My personal commitment to diversity and equality is longstanding and non-negotiable. Quite simply, diversity and inclusion are prerequisites to excellence. I am determined that this Department will always be viewed as a model workplace, where everyone has an equal opportunity to serve.

Let me be clear, both discrimination and harassment are violations of the law as well as the policies of this Department. If you feel you have been the victim of discrimination or harassment, contact your local equal employment opportunity office, local union representative, or servicing personnel office. In addition, your local employee assistance program can help resolve workplace differences and counsel employees who feel they are being treated unfairly.

However, our commitment must go far beyond compliance with anti-discrimination laws. I am asking for the support of all managers, not just in their hiring and promotion decisions, but also in welcoming responsibility for nurturing and capitalizing on the very best that every employee has to give. And I am asking all employees to understand that a culturally diverse workplace is critical to our mission to serve all Americans.

Celebrating cultural diversity will help us better understand each other and our customers. And with better understanding comes a greater capacity to serve. That is our real goal, and it is one that I know we can achieve.

Donna E. Shalala



FACSIMILE TRANSMISSION

TO: *Marsha Scott*

FAX NUMBER: *456-5558*

FROM: *Nan D. Hunter*
Deputy General Counsel

Facsimile Phone number - 202-690-7998

Telephone Number - 202-690-7780

ADDRESS: *700-E H.H. Humphrey Building*
200 Independence Avenue, S.W.
Washington, D. C. 20201

COMMENTS:

Total number of pages

7



Office of the General Counsel
Washington, D.C. 20201

(202) 690-7780

Fax: 690-7998

MEMORANDUM

To: Marsha Scott

From: Nan D. Hunter *ndh*

Date: 14 September 1995

Re: Anti-discrimination policies for federal employees

Following is the correspondence we handled earlier this year arising from a complaint about Secretary Shalala's statement that Departmental policy prohibits discrimination based on sexual orientation. As you can see, there are extremely solid legal grounds and a rather interesting history. Hope that you find this useful.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

MAR - 2 1995

The Honorable Sam Nunn
United States Senator
Suite 1700
75 Spring Street
Atlanta, Georgia 30303

Attention: Corey Anderson

Dear Senator Nunn:

This is in response to your letter on behalf of Mark O. Benedict. Mr. Benedict had advised you that he had received information to the effect that it was the policy of the Department of Health and Human Services ("HHS") that discrimination against employees and applicants for employment on the basis of sexual orientation is prohibited. Mr. Benedict asked by what authority the Secretary may extend civil rights protection to groups not covered by the Civil Rights Act of 1964 and what, if any, guidelines regulated the scope of groups to which the Department could extend this protection.

On December 6, 1993, Secretary Shalala issued a memorandum to HHS employees restating the Department's policy for equal employment opportunity. She stated that, "[W]e must strengthen our commitment to a workplace that is free of discrimination or harassment of any kind -- a workplace where no one is denied the opportunity to contribute fully because of race, color, religion, gender, national origin, age, disability or sexual orientation." A copy of that memorandum is enclosed.

This view is based on the principle that discrimination in employment matters based on a person's sexual orientation would constitute a personnel practice prohibited by section 2302(b)(10) of Title 5, U.S. Code. That subsection provides:

Any employee who has authority to take, direct others to take, recommend or approve any personnel action, shall not, with respect to such authority --

. . . (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others. . .

That principle has been established in federal law and policy for more than 20 years. In a Civil Service Bulletin dated December 21, 1973, the Civil Service Commission instructed supervisors and others responsible for suitability evaluations:

You may not find a person unsuitable for Federal employment merely because that person is a homosexual or has engaged in homosexual acts, nor may such exclusion be based on a conclusion that a homosexual person might bring the public service into contempt. You are, however, permitted to dismiss a person or find him or her unsuitable for Federal employment where the evidence establishes that such person's homosexual conduct affects job fitness -- excluding from such consideration, however, unsubstantiated conclusions concerning possible embarrassment to the Federal Service.

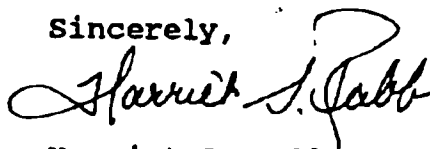
This Bulletin was issued in the wake of several successful court challenges by gay federal employees. The U.S. Court of Appeals cited it as the policy "applicable to the great bulk of employees in the federal service" in Ashton v. Civiletti, 613 F.2d 923, 927 (D.C. Cir. 1979).

In a May 12, 1980 memorandum, Alan K. Campbell, Director of the Office of Personnel Management ("OPM"), elaborated on the application of the statutory provision barring consideration of non-job-related conduct in federal employment matters. He stated, "Thus, applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community or social affiliations, or sexual orientation."

A February 17, 1994 memorandum from current OPM Director James B. King states, "The 1980 memorandum [quoted above] continues to reflect the Federal Government's longstanding policy on the matter of discrimination based on non-job-related conduct."

If you have further questions about this matter, your staff may contact Mr. Timothy M. White. He may be reached at (202) 619-2155.

Sincerely,



Harriet S. Rabb

Enclosure

DEC 6 1993

A Special Message For All HHS Employees

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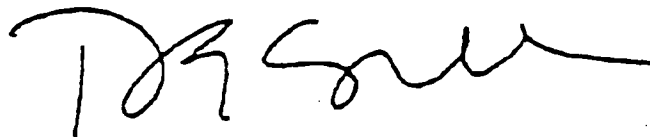
To foster an atmosphere of continuous improvement in our products and services, we must create an environment that fully utilizes the talents and capabilities of each and every one of us, from all backgrounds and at all organizational levels. And to do this, we must strengthen our commitment to a workplace that is free of discrimination or harassment of any kind - a workplace where no one is denied the opportunity to contribute fully because of race, color, religion, gender, national origin, age, disability, or sexual orientation.

My personal commitment to diversity and equality is longstanding and non-negotiable. Quite simply, diversity and inclusion are prerequisites to excellence. I am determined that this Department will always be viewed as a model workplace, where everyone has an equal opportunity to serve.

Let me be clear, both discrimination and harassment are violations of the law as well as the policies of this Department. If you feel you have been the victim of discrimination or harassment, contact your local equal employment opportunity office, local union representative, or servicing personnel office. In addition, your local employee assistance program can help resolve workplace differences and counsel employees who feel they are being treated unfairly.

However, our commitment must go far beyond compliance with anti-discrimination laws. I am asking for the support of all managers, not just in their hiring and promotion decisions, but also in welcoming responsibility for nurturing and capitalizing on the very best that every employee has to give. And I am asking all employees to understand that a culturally diverse workplace is critical to our mission to serve all Americans.

Celebrating cultural diversity will help us better understand each other and our customers. And with better understanding comes a greater capacity to serve. That is our real goal, and it is one that I know we can achieve.



Donna E. Shalala

SAM NUNN, GEORGIA, CHAIRMAN

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CARL LEVIN, MICHIGAN
FRANK R. RUSSELL, MASSACHUSETTS
JIM BROWN, NEW MEXICO
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ARNOLD L. PUMARO, STAFF DIRECTOR

RICHARD I. REYNOLD, STAFF DIRECTOR FOR THE MINORITY

United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, DC 20510-8050

December 13, 1994

Mr. Jerry Kletner
U.S. Department of Health and Human Services
Acting Assistant Secretary
for Legislation
200 Independence Avenue S.W., Room 4066
Washington, D.C. 20201

Dear Mr. Kletner:

I recently received the enclosed inquiry from one of my constituents. Please review the matter thoroughly, in accordance with established policies and procedures, and provide me with a full report.

I look forward to hearing from you in the very near future.

Sincerely,


Sam Nunn



SN:cja

Enclosure

PLEASE REPLY TO:
Office of Senator Sam Nunn
Attn: Corey Anderson
75 Spring Street
Suite 1700
Atlanta, Georgia 30303
404/331-4811

RECEIVED
OFFICE OF THE
RELAT
95 JAN 11 PM 11:35

Bufile 1700
75 Spring St. SW
Atlanta, GA 30303
404-331-4811

ATLANTA OFFICE

CORRESPONDENCE # 492508
ID # 53566
PERSONAL CODE
ADMINISTRATIVE CODE
INTEREST CODE
OFFICE
COMMENTS

Nov. 2, 1994

Sen. Nunn,

I am affiliated with, but not employed by, an organization under the Department of Health and Human Services and consequently receive administrative information via e-mail and bulletin boards. I receive information from the EEO office indicating that it is the policy of the Department to not discriminate on various bases usually covered by EEO and Title VII of the Civil Rights Act of 1964. In addition, the same information indicates that discrimination on the basis of sexual orientation is also disallowed. However, this latter policy is clearly stated as departmental policy that is NOT covered under the Civil Rights Act of 1964, but rather is directly from Sec. Donna Shalala.

Questions:

By what law has Sec. Shalala been given authority to extend civil rights protection to groups not covered by the Civil Rights Act of 1964?

If the Secretary does legitimately have this authority, what guidelines regulate the scope of groups to which the Department may offer protection?

Thank you for any information you can provide on this matter. I have enclosed an e-mail which contains the kind of efforts being made to not only provide employment protection but to promote alternate life-style acceptance in this federal agency.

Sincerely,

Mark G. Benedict
280 Crab Orchard Way
Roswell, GA 30078

Atlanta,
This shall get bucked
to HHS for
status report, explanation.

(P)

RECEIVED
OFFICE OF HUMAN
RELATIONS

95 MAR -4 11:11:38



U.S. Small Business Administration
Office of Women's Business Ownership

Date : _____

To: _____

Subject : _____

Recorded - Don't pay attention to page numbers.

Fax Number : _____

Pages : _____

From : _____

Anne Morillon

phone 205-7286

Voice : _____

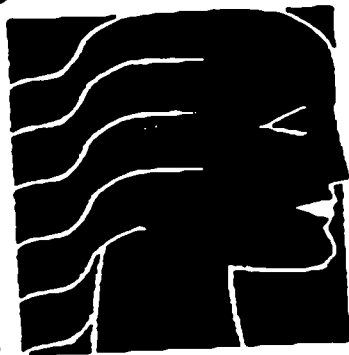
Notes :

As we discussed - I believe Marsha could assist O'Leary in addressing at least the first few letters that require a response. I consider all of these letters because

Office of Women's Business Ownership

409 Third Street, S.W.
Washington D.C. , 20416
Phone: (202) 205-6673
Fax: (202) 205-7287

CHANGING THE FACE OF



AMERICA'S ECONOMY

MICHAEL D. CRAPO

U.S. Senator, Idaho

HOUSE REPUBLICAN

LEADERSHIP

1990 CLASS LEADER

DEPUTY WHIP

WESTERN UNITED STATES

REPUBLICAN POLICY COMMITTEE

BEEF CAUCUS CO-CHAIRMAN

CONGRESSIONAL RURAL CAUCUS

CONGRESSIONAL SPORTSMEN'S CAUCUS

CONGRESSIONAL WATER CAUCUS

Congress of the United States

House of Representatives

Washington, DC 20515-1202

COMMERCE COMMITTEE

SUBCOMMITTEES

COMMERCE, TRADE,

HAZARDOUS MATERIALS

ENERGY AND POWER

OVERSIGHT AND INVESTIGATIONS

AGRICULTURE COMMITTEE

SUBCOMMITTEES

RESOURCE CONSERVATION, RESEARCH,

AND FORESTRY

DEPARTMENT OPERATIONS, NUTRITION,
AND FOREIGN AGRICULTURE

October 19, 1995

The Honorable Hazel R. O'Leary
Secretary of Energy
Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

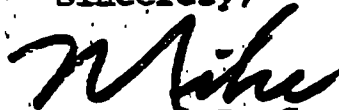
Dear Secretary O'Leary:

I am beginning to hear from constituents employed at the Idaho National Engineering Laboratory (INEL) who are concerned about a recent memorandum sent to all Department of Energy (DOE) employees. I have attached a copy of the memo, dated September 12, 1995. In correspondence with my constituents, I have indicated that I would relay their concerns onto you.

Many of those who have contacted me view this memo as a threat from the DOE and an inappropriate forum for sanctioned endorsement of certain private sexual behavior. Please advise me as to the genesis of this memorandum and how discrimination allegations will be addressed. In addition, please respond as to how the formation of this organization helps achieve Department realignment and cost-savings goals.

I appreciate any additional information you can share with me regarding this memorandum.

Sincerely,



Michael D. Crapo
Member of Congress

MDC:shw

Enc.

WASHINGTON, DC
433 CANNON BUILDING
WASHINGTON, DC 20515
205-6331

304 NORTH 8th STREET
ROOM 305
BOISE, ID 83702
304

555 CHANNING WAY
SUITE 200
IDAHO FALLS, ID 83404
(208) 625-6701

FEDERAL BUILDING
250 SOUTH 4th, ROOM 200
POCATELLO, ID 83201
(208) 232-6724

625 BLUE LAKES BLVD. NORTH
TWIN FALLS, ID
83303 734

THE WHITE HOUSE
WASHINGTON

10/13/95

DATE

MEMORANDUM FOR:

DOE-7

FROM:

SUE J. SMITH *SJS*
DIRECTOR, OFFICE OF AGENCY LIAISON

SUBJECT:

REFERRAL OF CASEWORK IN BULK

An unprecedented number of individuals still write the President and the First Lady for help. I know that this has meant a far greater volume of mail for your agency than ever before. I appreciate your continuing cooperation in our efforts to be as responsive as possible.

The attached letters have not received a White House Staff Response. I am forwarding this correspondence to your agency for any appropriate action.

Please return the original incoming letter, along with a copy of any written or telephone response, to me at the address below. I also would appreciate your sending a copy of your agency's log of the names and addresses of these individuals. Any misreferrals should be returned to my office. If you have questions you can reach me at 456-7486.

Sue J. Smith
Director, Office of Agency Liaison
Room 6, OEOB
The White House
Washington, D.C. 20500

Again, thank you for your continuing help.

October 1, 1995

President Bill Clinton
The White House
Washington, D. C. 20500

Dear President Clinton:

Enclosed is a copy of a memorandum issued by Secretary Hazel O'Leary. In it she announces the Department of Energy's partnership with DOE-GLOBE [GLOBE - an acronym for Gay, Lesbian, and Bisexual Employees] and support of it with activities which will promote GLOBE's agenda.

I request you demand the resignation of Secretary O'Leary and any other federal agency officials who have endorsed GLOBE for their agencies.

I demand a stop to federal agencies' partnership, support, or endorsement of GLOBE, and any activities that may assist GLOBE and its agenda.

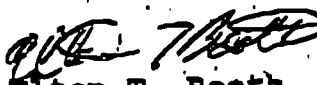
I am outraged that so much as one dollar of my taxes have been spent for support of such an organization and its agenda. Further, I resent DOE and other government agencies forcing federal employees to form and serve on committees supporting GLOBE.

In addition, I am incensed that government contractors already are being required to form committees and take affirmative action to support dictates from such committees as DOE-GLOBE.

Such dictates coerce people to act against their will, and forces the majority of taxpayers to pay for something they strongly oppose. Remember one thing, members and supporters of GLOBE are a small percentage of this country's population and voters.

Such actions by federal agency officials take our nation one more step toward moral and financial bankruptcy. What kind of message does such federal action send citizens, particularly our youth?

Sincerely,


Elton T. Booth
1843 Paris Avenue,
North Augusta, S. C. 29841



Department of Energy
Abuquerque Field Office
P.O. Box 5400
Abuquerque, New Mexico 87185-5400

OCT 13 1995

Hazel R. O'Leary
Secretary of Energy
Forrestal Building
1000 Independence Avenue S.W.
Washington, D.C. 20585

Madam Secretary,

I recently received your memorandum, entitled "Partnership with Gay, Lesbian, and-Bisexual Employees (DOE-GLOBE), dated September 12, 1995. There are several issues that you present which I wish to share as perhaps, undisclosed perspective on: (1) whether or not sexual orientation should be a factor of the Diversity program, (2) utilizing the Diversity program to support a specific personal orientation/preference, and (3) your demonstrated insensitivity to the personal values and beliefs of others. It is also necessary that I address the misuse and misrepresentation of federal discriminatory law in your Diversity Policy Statement of June 20, 1994.

Sexual Orientation as a Factor in Diversity?

Madam Secretary, it is critical that the meaning of the term sexual orientation is fully understood before being used so casually. Sexual orientation is a persons awareness/understanding of sexuality whether chosen, learned, trained, or biologically inherited. Sexual Orientation is not simply limited to heterosexuality, homosexuality, and bisexuality but also: abstinence, pedophilia, necrophilia, bestiality, etcetera. (Some of which are illegal.) Sexual orientation is an internal personal issue similar to a person's orientation on: abortion, capital punishment, literature, euthanasia, et al — none of which have any relevance to professional business interactions and work environments. The following excerpts of your Diversity Policy Statement, begins to define diversity in the workplace as, "Creating an atmosphere that fully utilizes the talents and capabilities of a diverse work force . . ." and "Through diversity we hear different points of view and approaches to problem-solving."

Sexual orientation, legal or illegal, provides no benefit to workplace diversity.

Utilizing the Diversity Program to Support a Specific Personal Orientation/Preference

It has been my understanding that the Diversity Program was instituted to improve workplace productivity through endeavoring to create an intrinsic desire within each employee to respect, appreciate, and empathically listen to the differences (i.e., cultural, physical, experiential, gender, and age) that each individual brings to benefit the business environment. Furthermore, I understood Diversity as a program designed to define methodologies to utilize the various qualities and perceptions that each individual has to offer in the pursuit of excellence in the workplace. Based upon this understanding of the Diversity Program I cannot decipher your rationale for using the program to protect and enforce a specific group's personal orientation/preference: GLOBE. Your memorandum is contrary to what workplace diversity is all about. It would seem that the issue of sexual orientation would be more appropriately addressed under equal employment opportunity. If you are intending to use the Diversity program to be a platform in which to placate vocal personalities and to support personal agendas you will no longer have a diversity program designed to promote the utilization of the full potential individuals have to offer but one that will create and fuel a negative occupational environment.

Demonstrated Insensitivity to the Personal Values and Beliefs of Others

You have taken one specific interest groups personal set of values/beliefs and are forcibly imposing them on the employees of the DOE under the perverted guise of a conglomeration of Partnership, Diversity, and Equal Opportunity. Apparently, you have not considered the Civil Rights of all of those employees who possess different values and beliefs. Madam Secretary, I and many of my colleagues take extreme offense to your demonstrated insensitivity to all of us who hold different personal values and beliefs than those of GLOBE, by your unwarranted promotion of this particular group.

Misuse and Misrepresentation of Federal Law

In your memorandum to all federal employees, entitled Diversity Policy Statement, dated June 20, 1994, second paragraph, you stated, "Discrimination based on race, color, religion, gender, age, national origin, disability, or sexual orientation violates the law, as well as the policies of this Department." You again referenced your policy on discrimination based on sexual orientation in your September 12, 1995, memorandum pertaining to DOE-GLOBE. Madam Secretary, legal counsel has been sought to determine if Sexual Orientation is covered by Federal Discriminatory Law. I have been advised that Sexual Orientation is not covered by Equal Opportunity nor any other federal discriminatory law in the manner by which you implied in your memorandums. Your use of the terms equal opportunity combined with the valid issues of equal opportunity (race, religion, disability, gender, age, and national origin) in your memorandums, direct a reader to believe sexual orientation is a valid factor covered by the Federal Equal Opportunity program. It is not! Sexual Orientation is simply a Departmental Policy that you have imposed.

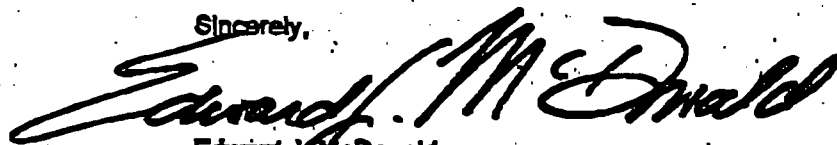
I ask that you reevaluate your rationale on continuing to support your present Departmental position regarding sexual orientation and its applicability in the workplace. If you continue your efforts to support one group's personal orientation/preference you will only dilute the validity of Equal Opportunity issues (race, color, religion, sex/gender, or national origin), distort and degrade what Diversity in the workplace is designed to accomplish, and generate needless animosity and concern.

Your effort to eliminate or reduce personal bias in the workplace through attempting to protect a specific group's orientation/preference benefits no one. Animosity is only fueled and personal positions only strengthened. The Department needs to refocus any misdirected resources to the areas of: training programs (i.e., ethics and interaction/interpersonal skills), accountability programs, and valid employee assistance programs. It is programs such as these that will better equip federal employees to interact more effectively which in turn improves the work environment as well as productivity.

I would appreciate your written response to my commentary pertaining to your memorandum. Please include what your actions will be in the future regarding the issue of sexual orientation and recognition of GLOBE. This letter will be enclosed with a personal letter to the President of the United States, selected Congressional and Senate representatives, selected interest/lobbying groups, and selected national news agencies.

I can be reached to answer any questions at (505) 846-5534.

Sincerely,



Edward J. McDonald
Security and Nuclear Safeguards Division
Albuquerque Operations Office

In many states, the conduct of gay and lesbians is illegal (sodomy). I mean, that is what we are talking about here! We are talking about where people prefer to place their sex organs. Homosexual conduct is not normal.

I guess if you support the gay rights movement, you also support NAMBLA - North American Man Boy Love Association. These pedophiles like little boys. Also, they are members of international gay and lesbian organizations. That's what we need to do! Recognize potential child molesters as being normal.

Have you ever heard of "fisting?" "Glory holes?" "Gerbling?" "Rimming?" These are some of the most twisted and perverted sex acts (if you call them sex acts) imaginable.

I do not believe in discriminating against anyone. However, unless I am told a person is gay, I normally would not know the person was gay. If I don't know they are gay, how could I discriminate. A couple of years ago, U.S.A. Today carried an article stating that gays were better paid and better educated than the average American. It seems the issue that is at stake is whether or not the average American regards homosexuality as normal. If Americans do not regard it normal, the next move is to legislate normalcy. This is what you are doing and it won't work.

Bottom line- If I experience what I feel is heterophobia, I will file a complaint. A two way street exists. I expect to be able to work without any harassment.

Lastly, Biblically, homosexuality is an abomination.

Your partnership with gay and lesbian employees is a waste of tax payer money.

Signed

"Right"

Roger D. Rollins
1651 Banks Mill Road
Aiken, SC 29803

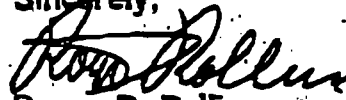
September 23, 1995

Hazel R. O'Leary
The Secretary of Energy
Washington, DC 20558

Dear Secretary O'Leary:

Enclosed is a memo you recently sent to all employees of the Department of Energy. The memo makes me sad. I respect much of what you have tried to do with the DOE. Your memo, however, takes the wrong approach in dealing with a very real problem. DOE-GLOBE is not a professional organization, and treating it as such does everyone a disservice, including the members of GLOBE. I am and have been a member of numerous professional organizations. GLOBE is not the same. There are certain rules ordained by God that neither you nor I nor GLOBE can change. I have sincere concern for the members of GLOBE, and would like to see them receive proper help. Recognizing them as a professional organization is not the answer. Please reconsider. The Truth cannot be altered, by you, me, or GLOBE.

Sincerely,



Roger D. Rollins

Sunday - September 24, 1995
Page 4A
Page 1 of 1

SOUTH CAROLINA EDITION

DOE protects deviates

Voters and their elected representatives have repeatedly expressed their distaste for the homosexual lobby and its inherently anti-family agenda. That rock-solid majority makes "gay rights" legislation a non-starter, and soundly rejects the specious claim that homosexual behavior deserves legal protections equal to those specified for race, sex and religious affiliation.

Thus, as is the case with many other items on the far-left agenda, "gay rights" advocates are attempting to circumvent the people's representatives in Congress through the courts and by federal-agency rules.

This well-traveled path served feminists and the affirmative-action crowd in the past, so it's no surprise the homosexual lobby would follow their liberal fellow travelers. But what's shocking is the degree to which federal bureaucrats agree to — or worse, gleefully welcome — "gay rights" rules.

An example is a fawning Sept. 12 memo by Energy Secretary Hazel O'Leary, touting the DOE's plan to give agency recognition to the "Partnership with Gay, Lesbian and Bisexual Employees" (GLOBE).

The idea, O'Leary gushes, is to "foster diversity" and "create a model organizational culture." To that dubious end, DOE is drawing up rules — with GLOBE's assistance — for "avenues of redress for discrimination on the basis

of sexual orientation for DOE and contractor personnel."

Incredible! Such an action would, in effect, add self-proclaimed "sexual orientation" to the Equal Employment Opportunity rules already governing employment practices. The homosexual lobby, for years, has resoundingly failed in attempts to gain protected status for such "orientation"; can a sympathetic Clinton administration official so easily circumvent Congress by rewriting her agency's rules?

It's frightening, as well, to note that the DOE isn't a rogue agency in this process. O'Leary's memo points out that GLOBE has representatives in 33 federal departments and agencies, 20 of which officially recognize GLOBE deviates as equal to other professional associations. (One wonders how Savannah River Site's engineers feel about their professional associations being put on par with a group that bases its membership on sexual activities.)

Rep. Charlie Norwood, R-Ga., is co-sponsoring a House bill to stop this nonsense in its tracks. HB 852 would prohibit federal funds from being used to support homosexual organizations and agendas.

The bill also prevents pro-homosexual rewrites of work-place employment rules by DOE and other federal agencies. Give Rep. Norwood a call at (202) 225-4101 to voice your support.

TO: The Honorable Hazel D. Leary
Secretary, U.S. Dept. of Energy
Forrestal Bldg.
1000 Independence Ave SW
Washington, D.C. 20585

DATE: 20 SEP 85

FROM: Jennings Chestnut II
834 Ashton St
New Iberia, LA 70560

SUBJECT: Partnership DOE-GLOBE Memo

Ref: Copy of Subject attached

Madam:

I am overwhelmingly appalled and outraged at your support of "civil rights" based on sexual orientation. The behavior in which GLOBE professes to engage is offensive to me, nature, and to God. "Protecting" these people, as your letter indicates, leads me to believe that your values are anti-Christian.

My disgust is furthered by the fact that as an employee of a DOE contractor (Wackenhut Services, Strategic Petroleum Reserve, Weeks Island Site), I could be forced to accept this class of degenerates in my workplace. Woe be unto me if I speak against these people's "choice" at work. Your memo leads me to believe that disciplinary action could result ("... zero tolerance for discrimination or harassment in any form, including discrimination based on sexual orientation.")

I totally oppose any form of Affirmative Action, believing a person should be hired/paid/promoted on his/her individual merits. Now it would appear that quotas are to be established based not only on gender and race, but sexual preference too! Again, the will and "rights" of the liberal minority are being rammed down the throats of God-fearing, heterosexual, Christian conservatives like myself. You, Madam, have put your hands along side others of the current administration on the force-feeding spoon.

Be assured I will make wide distribution of this memo to concerned parties.

I pray that God sees fit to remove you and the rest of this God-forsaking liberal administration in 1996.

Good day, Madam.



9-27-92

Mr O'Leary,
Take off the blinders from the horse. Haven't done
since you've been appointed. Thought your dept.
was DEE (which should be abolished)

The homosexuals have SAME rights as all others,
but no added preference should be made. That's
what problem is now.

We can't DO ALL things for men (still old
fashioned enough to use gender, which a
group of misguided women, who want to change
everything and for WHOSE gain? Forget
GLBT.

Old Fashioned, proud of it
The Member

RESPONSE TO SEPTEMBER 20 MEMORANDUM FROM HAZEL R. O'LEARY

FROM:

Peter H. Kinney
Western Area Power Administration
Watertown Operations Office,
Watertown, South Dakota

SUBJECT:

Partnership with DOE-GLOBE

Myself and those who have signed this response object in the strongest possible way to associating DOE with GLOBE. As Christians, we believe God clearly teaches in His inerrant Word that homosexuality is an abomination and cannot ever be considered a legitimate lifestyle. Therefore the homosexual is wrong for committing the sexual act, wrong for choosing that lifestyle, and wrong for promoting that lifestyle as a legitimate alternative to heterosexuality for themselves or others. God teaches us to love all people, but He does not want us to sanction their sins. In our eyes, this action is tantamount to associating DOE with a group of alcoholics promoting drunkenness as a legitimate alternative to sobriety. With this belief firmly entrenched in our hearts, it is our recommendation that you disassociate DOE with GLOBE. Not to do so is to approve and commend a lifestyle that is destructive to people's lives as well as souls.

We do not believe in discrimination anymore than any other compassionate individual. However, we believe that GLOBE does not have the same minority rights based on homosexuality as groups who are legitimate minorities. To summarily grant GLOBE this right is to give legitimacy to a deviant lifestyle. We understand our views are not in accordance with yourself or the current administration, but to force us as DOE employees to give legitimacy to what we consider an abomination is unconscionable.

Concerned Employees,

Peter H. Kinney
[Signature]

Arthur L. Jensen
[Signature]
David Kean