

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

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

6-604. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.²⁴

6-604. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.²⁵

Section 7. *Annual Report.*

7-701. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. Such reports shall be submitted annually for the first three years after the effective date of this order, and submitted within 60

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

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

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

days of the end of the preceding year's activities.²⁶

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

Section 8. *General Provisions.*

8-801. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order No. 12250.

8-802. Nothing in this order amends, supplements, or subtracts from an employee's protections and remedies under Title VII of the Civil Rights Act of 1964, as amended. .

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

Section 9. *Judicial Review.*

9-901. This order creates no rights under the Contracts Disputes Act, and disputes regarding the requirement of the contract clause shall be disposed of only as provided by the Attorney General in regulations, rules, policies, or guidance issued by the Attorney General.²⁷ This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order

²⁶ Several Executive orders require that annual reports be submitted.

²⁷ This sentence stems from Exec. Order No. 12,933.

is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, et seq.²⁸

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



U.S. Department of Justice

Civil Rights Division

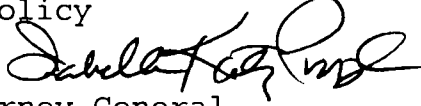
Office of the Assistant Attorney General

Washington, D.C. 20035

DEC 1 1997

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

ELENA KAGAN
Deputy Assistant to the President
for Domestic Policy

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

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

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

Actions to Invigorate Title IX

1. Preparation of Notice of Proposed Rulemaking

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

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

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

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

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

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

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

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

2. Department of Interior Participation in NPRM

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

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

3. Delegation Agreement

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

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

Actions Regarding the Executive Order

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

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

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

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

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

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

Attachments



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

NOV 24 1997

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

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

Dear Mr. Leshy and Mr. Berry:

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

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

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

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

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

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

Thank you for your assistance.

Sincerely,



for Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

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



U.S. Department of Justice

Civil Rights Division

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

NOV 24 1997

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

Dear Ms. Stith:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

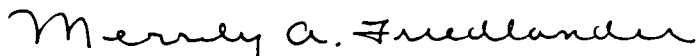
Second, as mentioned, apart from giving the public an opportunity to comment on the proposed information collections, an agency must also seek OMB approval and a control number for its information collection forms; in this case, the assurance form. If your agency does not have a control number from OMB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

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

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

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

Sincerely,



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

Enclosures

Individuals Signing Agency Adoptions for Title IX Common Rule

William M. Daley
Secretary of Commerce

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

Andrew Cuomo
Secretary of Housing and Urban Development

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

Janet Reno
Attorney General

Alexis M. Herman
Secretary of Labor

Bonnie R. Cohen
Under Secretary of State for Management

Rodney Slater
Secretary of Transportation

Robert E. Rubin
Secretary of Treasury

Hershel W. Gober
Acting Secretary for Veterans Affairs

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

Carol M. Browner
Administrator
Environmental Protection Agency

James L. Witt
Director
Federal Emergency Management Agency

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

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

Daniel S. Goldin
Administrator
National Aeronautic and Space Administration

Jane Alexander
Chairman
National Endowment for the Arts

Michael S. Shapiro
General Counsel
National Endowment for the Humanities

Lawrence Rudolph
General Counsel
National Science Foundation

John C. Hoyle
Secretary of the Chairman
Nuclear Regulatory Commission

Aida Alvarez
Administrator
Small Business Administration

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

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

Joseph Duffey
Director, U.S. Information Agency

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

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

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Divider Title: _____

THE WHITE HOUSE

WASHINGTON

June 17, 1997

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

William A. Clinton

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93/30/97

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

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

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

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

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

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

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

INDEPENDENT AGENCIES

DATE RECEIVED

STATUS

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

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

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

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

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

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

Susquehanna River Basin
Commission

August 5, 1997

Not subject to memorandum;
not a federal agency

Tennessee Valley
Authority

August 26, 1997

5 programs

Trade and Development
Agency

August 11, 1997

No covered programs (although
mentions 1 volunteer internship)

United States Enrichment
Corporation

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

United States Information
Agency

August 25, 1997

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Divider Title: _____

9/30/97

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

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

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

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

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

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

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Divider Title: _____

9/30/97

Categories of Education and Training Programs

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

1. Formal training centers/academies

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

2. Educational facilities operated by the Federal government

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

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

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

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

Commerce

DoD/Security Institute

Justice

Labor

State

Treasury

CFTC

EPA

FTC

GSA

ITC

NRC

OPM

Peace Corps

5. Scholarships/Fellowships

Agriculture

DoD/Navy, NSA, DIA

Education

Energy

HHS (NIH, various components)

Interior

Justice

Corporation for National Service

Panama Canal Commission

6. Internships

Energy

Justice

Transportation

Consumer Product Safety Commission

EPA

NSA

7. Short term research opportunities with agency

DoD

Energy

8. Academic credit for employment

Interior

Justice

Commission on Civil Rights
GSA
NLRB
Peace Corps

9. Student volunteers at agency

DoD/Navy
Justice
State
Transportation
EPA
NEA
OPIC

10. Educational research

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

11. Summer camp programs

DoD/NSA
Appalachian Regional Commission

12. Teacher improvement programs

DoD/NSA
Energy
Interior
EPA
NASA
USIA

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

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

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

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Divider Title: _____



U.S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

July 14, 1997

Memorandum for General Counsels

From: Isabelle Katz Pinzler 
Acting Assistant Attorney General

Subject: Inventory of Federally Conducted Education and Training Programs

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

Scope of Programs Covered

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

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

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

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

Data for Inventory

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

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

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

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

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

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

This inventory should be delivered to:

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

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

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

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

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

Attachment

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

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

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

The Departments

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

Independent Agencies

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

Name of Agency: _____

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

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

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



U.S. Department of Justice

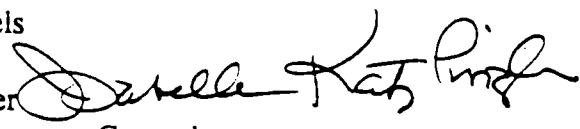
Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

July 24, 1997

Memorandum for General Counsels

From: Isabelle Katz Pinzler 
Acting Assistant Attorney General

Subject: Inventory of Federally Conducted Education and Training Programs

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

Scope of Programs Covered

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

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

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

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

Data for Inventory

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

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

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

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

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

This inventory should be delivered to:

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

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

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

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

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

Attachment

Name of Agency: _____

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

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

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

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

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

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