



Recommendation 75-2

Affirmative Action for Equal Opportunity in Nonconstruction Employment

(Adopted June 5-6, 1975)

Executive Order 11246, which concerns equal employment opportunity, applies to all contractors with the Federal Government. Pursuant to this executive order, the Department of Labor has promulgated one set of regulations prohibiting discrimination and requiring affirmative action to govern contractors in the construction industry, and another set of such regulations to govern all other contractors.

A study of the application of the nonconstruction regulations to university faculty employment practices illustrates that the use of a single set of regulations for all nonconstruction employment can fail to take adequate account of important special circumstances of major employment categories. With respect to university faculty employment, for example, the regulations as applied have generated difficulties arising from failure to take account of the limited supply of qualified personnel in various disciplines, the nonquantifiability of standards for academic personnel, the diversity of institutional needs fulfilled by academic personnel (e.g., research, teaching, public service), different types of institutions (e.g., research universities, community colleges), and the concept of peer review in academic employment practices. It seems evident that difficulties of the sorts experienced in the application of the nonconstruction regulations to academic employment in higher education will be encountered in their application to other employment categories as well.

The study further suggests that contract cancellation is in many cases too severe or impracticable as the primary sanction for noncompliance with equal employment opportunity regulations; in practice, cancellation is rarely used. The more common sanction, as in the field of higher education employment, is the declaration of nonresponsibility of an employer. Unlike the procedures leading to other sanctions, such as debarment of a contractor or cancellation of a contract, no opportunity for prior hearing is afforded in connection with a declaration of nonresponsibility. The provision of an opportunity for hearing before imposition of any sanction under the contract compliance program will tend to assure the fairness and reliability of administrative determinations and to encourage responsible and consistent application of policy.



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Recommendation

1. The Department of Labor, in consultation with the compliance agencies, should promptly commence a review of the contract compliance program applicable to nonconstruction contractors to determine whether regulations more closely adapted to the characteristics of specific occupations or industries are required, considering especially: (1) variations in the susceptibility of types of employment to uniform or quantifiable methods of evaluating and predicting performance; and (2) variations in policies of recruitment and advancement and in other personnel practices.

2. The Department of Labor should develop a system of graduated sanctions for breach of the obligation contained in the equal employment opportunity clause of government contracts, and should seek legislation to this end as may be necessary.¹

3. A sanction, including that of declaration of nonresponsibility on equal employment opportunity grounds made prior to the award of a contract, should not be imposed except after opportunity for a hearing (whether evidentiary or informal) at which the validity of the claim of breach, or assertion of nonresponsibility, and the appropriateness of the proposed sanction may be placed in issue.

4. In performing its responsibilities for contract compliance in higher education the Department of Health, Education, and Welfare should: (a) provide regional office staffs with uniform and clearly defined policies, (b) recruit and assign staff who are familiar with institutions of higher education for administration of the program in higher education, (c) consult widely with representatives of higher education institutions and other interested groups in developing and administering its compliance rules and policies, and (d) strengthen coordination of its administration of regulations applicable to higher education with other agencies having overlapping responsibilities, in particular the Equal Employment Opportunity Commission and the Wage and Hour Administration of the Department of Labor.

¹ In this connection the Department should consider Conference Recommendation 71-9: Enforcement of Standards in Federal Grant-in-Aid Programs, and Recommendation 72-6: Civil Money Penalties as a Sanction.



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Citations:

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