U.S. Department of Justice

Washington, D.C. 20530

29 June 1982

MEMORANDUM FOR: MICHAEL UHLMANN, ELIZABETH DOLE

FROM: BARBARA HONEGGER
Chair, Working Group on Legal Equity for Women, Cabinet Council on Legal Policy

SUBJECT: WORKING GROUP PARTIAL RECOMMENDATIONS BASED ON DRAFT QUARTERLY REPORT OF THE ATTORNEY GENERAL UNDER EXECUTIVE ORDER 12336, with ADDITIONAL SUGGESTIONS

I understand that the final of the Attorney General's first quarterly report under Executive Order 12336 was forwarded to the White House yesterday. Awaiting the final, I received authorization from Bob D'Agostino to obtain recommendations from Working Group members on the draft of this report, which follow in part. Assuming minor changes from the draft to the final, and depending on how fast you intend to move with the final report to the Cabinet Council, the following recommendations may be of assistance in deciding what to emphasize.

Department of Labor

Member: Lesley Edmonds, Assistant to the Secretary

Recommendations cleared through Asst. Secretary for Policy, Evaluation and Research, Cogan:

1) Regulatory and policy changes pursuant to completed negotiations with the Civil Rights Division and provisions of the Equal Credit Opportunity Act should be incorporated into each State Supplement of the Farmer's Home Administration. (pp. 34-35 of draft quarterly report).

2) Support, in principle, the earnings sharing concept for Social Security reform (pp. 48-75 of the draft quarterly report).

Department of Education

Member: Susan Burton, Special Assistant to the Executive Secretariat

1) Under the General Services Administration section:

3 U.S.C. 102, which presumes that all U.S. Presidents will be male in that it refers to pensions for widows but not also widowers of Presidents, should be changed to read "widows or widowers" or "surviving spouses." (p. 25 of draft report).

Department of Education (continued)

2) 18 U.S.C. 3056, which likewise presumes all U.S. Presidents will be male in that it provides for secret service protection for the wife or widow of a President but not a husband or widower, should be changed to read "spouse or surviving spouse." (p. 21 of Appendix B of quarterly report draft).

3) 28 U.S.C. 375, 604, which assumes that U.S. Court justices will always be male in that it provides for annuities for widows but not widowers of U.S. Court Justices, should be changed to read "surviving spouses." (p. 21 of Appendix B of draft quarterly report).

4) 31 U.S.C. 43, which assumes all Comptrollers General will be male in that it provides for survivorship benefits for widows and children of Comptrollers General, should be changed to read "surviving spouses and children." (p. 38 of Appendix B of draft quarterly report).

5) Education recommends not to submit section on Social Security earnings sharing reform plan to the Cabinet Council.

Department of Transportation

Member: Carole Foryst, Associate Administrator for Policy, Budget and Program Development

1) 10 U.S.C. 9651, which provides for equipment for males only in certain educational institutions, should be changed to read "males and females." (p. 17 of Appendix B of draft quarterly report).

2) Same recommendation as 3) under Dept. of Education above.

3) Remaining discrimination in Social Security section (pp. 24-31 of Appendix B) should be forwarded to National Commission on Social Security Reform in list form.

4) 42 U.S.C. 602(a)(19)(A) bias against father or other male caretaker should be removed (p. 31 of Appendix B).

continued

Department of Transportation (Continued)

5) 42 U.S.C. 602(a)(19)(G)(iv) bias in favor of mother should be removed (p. 31 of Appendix B).

6) 42 U.S.C. 633 bias in favor of unemployed fathers over mothers should be corrected (p. 31-32 of Appendix B).

7) 7 U.S.C. 1923, which provides preference for married or dependent families in certain agricultural loan programs conflicts with the Equal Credit Opportunity Act should be changed to remove this bias. (p. 32 of Appendix B).

8) The use of sex-based actuarial tables in regulations of the Pension Benefit Guarantee Corporation (p. 31 of quarterly draft report) and 42 U.S.C. 1395mm(a)(3)(A)(iv) use of sex as an actuarial factor in determining payments to health maintenance organizations should be eliminated. (p. 39 of Appendix B).

9) Same as 4) under Dept. of Education above.

10) Same as 1), 2), and 3) of Dept. of Education above.

11) 41 U.S.C. 35 and 36 should equalize age (at 16) for both males and females to enter into contracts with federal executive departments, etc. (p. 39 of Appendix B).

Office of Personnel Management

Member: Lura Dillard, Special Assistant to the Deputy Director

1) Emphasis should be placed on eliminating gender bias in all federal programs dealing with women in business.

2) Same as 8) under Dept. of Transportation above.

3) Same as 1) under Dept. of Labor above.

Department of Housing and Urban Development

Member: Dr. June Koch, Deputy Undersecretary for Intergovernmental Relations

continued

Department of Housing and Urban Development (continued)

1) Same as 1) under Dept. of Labor above.

2) All departments and agencies should be tasked to review their regulations, policies and practices for compliance with the Equal Credit Opportunity Act. The Interstate Commerce Commission needs a regulation and enforcement program consistent with the ECOA (p. 29 of draft quarterly report). See also 7) under Dept. of Transportation above.

Department of Health and Human Services

Member: Joanne Gaspar, Deputy Assistant Secretary for Policy and Evaluation

1) 8 U.S.C. 1557 (p. 21 of Appendix B of draft quarterly report): Extend prohibition of transportation of women and girls for purposes of prostitution and debauchery to men and boys.

2) Do not raise combat exclusion issue under military codes.

3) Leave 8 U.S.C. 1101(b)(1)(D) as it stands (i.e. do not change to add "natural father". (p. 22 of Appendix B).

4) Leave 8 U.S.C. 1182(e) and 8 U.S.C. 1253 (h)(1) as they stand (pp. 22-23 of Appendix B).

Under the Social Security Section:

5) In general, leave this entire area to the National Commission on Social Security Reform. Cabinet Council on Legal Policy should not forward earnings sharing protion of quarterly report or Social Security section under Appendix B. At most, Cabinet Council could be asked if it wishes to forward a simple memorandum to the Chairman of the National Commission on Social Security Reform stressing the importance of sensitivity to issues of gender bias in its deliberations and recommendations.

continued

Department of Health and Human Services (continued)

6) Specific comments on Subsections of 42 U.S.C. 402: which establish eligibility requirements for various Social Security benefits:

   a) Subsection 402(b) bias now a nonissue, as the courts have ruled and HHS has a corrective regulation (pp. 24-25 of Appendix B).

   b) Subsections402(e) and (f). Again, the courts have ruled, so old bias in these subsections are a nonissue. HHS is in process of updating their regulations to reflect these court decisions. as housekeeping changes in their regular regulatory review cycle.

   c) Subsection 402(d) bias being challenged ir the Courts. Joanne Gaspar is checking on status. (pp. 26-27 of Appendix B).

   d) Subsection 403(q). Again, a nonissue, as the Courts have ruled. (p. 27 of Appendix B).

7) 42 U.S.C. 411(a)(15) a nonissue, as the Courts have ruled bias unconstitutional (p. 28 of Appendix B).

8) 42 U.S.C. 413(a) should be deferred to the National Commission on Social Security Reform. If anything, the recommendation should be that retirement age should be raised from 62 to 65 for women as well as for men (now at 65).

9) 42 U.S.C. 416. Defer to National Commission on Social Security Reform. Changes would be administratively unworkable. (pp. 28-29 of Appendix B).

10) 42 U.S.C. 417 should be deferred to the National Commission on Social Security Reform. (p. 29-30 of Appendix B).

11) 42 U.S.C. 422, 425 and 426 are nonissues, as the Courts have ruled. (p. 30 of Appendix B).

12) 42 U.S.C. 427. Bias now eliminated. Now extended to husbands and widowers. (p. 30 of Appendix B).

13) 42 U.S.C. 428 should be deferred to the National Commission on Social Security Reform (p. 30-31 of Appendix B).

continued

Dept. of Health and Human Services (cont'd)

Under Welfare Section:

14) 42 U.S.C. 602 is a nonissue, as the Courts have ruled (p. 31 of Appendix B).

15) 42 U.S.C. 602 (a)(19)(A) should be left as stands (p. 31 of Appendix B).

16) 42 U.S.C. 602 (a) (19)(G)(iv) is a nonissue, now that the proposed child welfare block grants are sex neutral. (p. 31 of Appendix B).

17) 42 U.S.C. 633 should be left as stands, as this Administration supports priority in work incentives to unemployed fathers over mothers, (pp. 31-32 of Appendix B).

NOTE: Contrast with recommendation 6) from Dept. of Transportation above.

18) 42 U.S.C. 622(a)(1)(C)(iii) and 42 U.S.C. 625 are nonissues, as bias has been amended out by law, and HHS's proposed Child Welfare block grants are sex-neutral and contain anti-sex-bias provisions.

OMB

Member: Janet Brown, Spec. Asst. to the Administrator for Information and Regulatory Affairs
Has been on vacation. I will forward OMB's recommendations when they come in.

Office of the Vice President

Member: Barbara Hayward

Has no response at the request of an unidentified caller from the White House

Dept. of Justice

Members: Barbara Honegger, Project Manager, Task Force on Legal Equity for Women; and
Stu Oneglia, Chief, Coordination and Review Section, Civil Rights Division

NOTE: My draft recommendations are attached at A. Stu Oneglia has been out of the office today, and I will inform you of any additions or changes she has to add.

A

General Background: The Process

On December 21, 1981, by Executive Order 12336, President Reagan established a three-part federal-level process to systematically identify and correct statutory, regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from federal activities.

Step 1 in this process is the identification of remaining federal laws, regulations, policies and practices which unjustifiably differentiate or which effectively discriminate on the basis of sex. The Attorney General is charged with reporting the findings of this identification effort to the President and Cabinet Council on Legal Policy on a quarterly basis. This Working Group report is based in large part on the first quarterly report of the Attorney General to the Cabinet Council, released _____.

Step 2 in the process consists of decision-making by the President on the advice and counsel of the Cabinet Council on Legal Policy. The Working Group on Legal Equity for Women, of this Cabinet Council, was formed in February 1982 to assist the Cabinet Council identify key issues and options for decision.

Step 3 in the process consists of implementation of the President's decisions regarding changes in regulations, policies and practics of federal departments and agencies, coordinated by the appropriate member of the Task Force on Legal Equity for Women, the implementing body established by Executive Order 12336. (The Cabinet Council may also recommend changes in federal statutes, in which case the appropriate department or agency may draft legislation in coordination with the Office of Congressional Relations).

This Report

The Working Group on Legal Equity for Women has identified 12 issues for initial review by the Cabinet Council on Legal Policy. Background information on each issue as well as proposed action(s) for addressing them are included for each issue.

Proposed Agenda Items for Cabinet Council on Legal Policy
Federal Project on Legal Equity for Women
Initial Meeting

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1. Action to facilitate the staffing of Executive Order 12336

Issue: Should the identification of potential discriminatory effects of proposed and existing major federal rules and regulations be made part of the routine federal regulatory review cycle under Executive Order 12291?

Background: Despite the broad and visible mandate of Executive Order 12336 that the Attorney General or his designee review all federal laws, regulations, policies and practices for gender-discriminatory language or effect and report the findings of this search to the President and Cabinet Council on Legal Policy on a quarterly basis, the realities of fiscal restraint have placed severe limitations on the staffing of this function. At present there is one federal appointee dedicated to this function (Honegger), with additional professional staff in the Office of Civil Rights, Department of Justice assigned to the task when called for short periods of time.

Even if the mandated function were more fully staffed, it still requires the cooperation of every federal department and agency to identify and report gender-discriminatory provisions of its regulations, policies and practices to the Department of Justice. To date, this cooperation has been uneven, with some departments and agencies reporting fully and others not.

What is needed to make the identification function efficient is the identification of staff in each department and agency for whom the identification function could be easily and logically assimilated into their normal duties.

OPTION 1. Make the identification of gender-discriminatory provisions in proposed new federal rules and regulations, and in proposed changes to existing federal rules and regulations, part of the routine regulatory review process established under Executive Order 12291. Regulatory review officers would then report potential gender inequities to OMB with copies to the Attorney General and his designee charged with overseeing the identification process under Executive Order 12336.

This can be accomplished in one of two ways:

OPTION 1A. Amend Executive Order 12291, Section 3d(2) regarding Regulatory Impact Analyses and Reviews as follows:

> "Each preliminary and final Regulatory Impact Analysis shall contain the following information:
>
> ...(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, including potential discriminatory effects of the rule, and the identification of those likely to bear the costs." (proposed addition underlined).

This addition would then also apply to Section 3(i), which already charges agencies to perform Regulatory Impact Analyses on currently effective major rules.

OR

OPTION 1B. As Section 3d(2) of Executive Order 12291 without the addition can already be interpreted to entail the identification of potential gender-discriminatory effects of existing and proposed federal rules and changes in rules, the President, alternatively, could request the Director of the Office of Management and Budget to notify the heads of each federal department and agency in writing that Regulatory Impact Analyses and Reviews, under Executive Order 12291, shall include the identification of such discriminatory effects or potential effects. The Director of OMB would then be charged to report same to the Attorney General and his designee who oversees the identification process under Executive Order 12336.

Advantages

- Both options (1A and 1B) are consistent with the broad mandate of Executive Order 12336.
- The action is cost effective. Even with budgetary cutbacks, the regular regulatory review cycle will continue as a basic function of the federal government.
- The regulatory review officers in each department and agency are ideally situated to assist the Attorney General in this function.
- Their input is, in any case, necessary to the implementation of Executive Order 12336.
- The action is consistent with Executive Order 12291, which already holds that "regulatory action shall not be undertaken unless the potential benefits to society from the regulation outweight the potential costs to society," gender discrimination being a significant cost to society. The action, further, adds no monetary cost to the federal government.
- The action adds no additional regulatory burdens for taxpayers.

2. Social Security: Gender Inequities

Issue: Shall the Cabinet Council on Legal Policy recommend that the President forward the recommended reform of the Social Security system proposed in the Attorney General's first quarterly report under Executive Order 12336 to the National Commission on Social Security Reform? And shall the Cabinet Council recommend endorsement of the proposed changes as consistent with Administration policy?

Background: Economic realities have made it necessary for an increasing number of families to have two incomes. Yet, due to unintended effects of the Social Security benefit formulas, secondary wage earners, who are usually wives, receive little additional protection from the Social Security taxes they pay. Therefore, single-earner families in general receive higher benefits than similarly situated two-earner families, to the detriment of the family unit and the productivity of the nation, as additional work is discouraged.

The report of the Attorney General recommends an earnings sharing plan to overcome the considerable gender inequities present in the current Social Security system. This plan would distribute social security credits within the family unit between spouses, whether one or both worked outside the home. The plan is consistent with the Economic Recovery Tax Act of 1981 which finally recognized surviving spouses as owners of jointly-held property regardless of their financial contribution to its acquisition. Both the Economic Recovery Tax Act and the proposed changes in the Social Security system formally recognize marriage as an economic partnership in which traditional homemaking is valued as highly as wage-earning outside the home. Social Security benefits would be recognized as part of the assets accumulated during marriage, to be shared equally by the spouses regardless of how they choose to allocate home-making and breadwinning responsibilities.

Advantages

The plan encourages traditional family choises, as the mother who chooses to stay home is assured of reasonable protection. And for those women who do choose to also work, the plan guarantees them a fair amount of additional protection from the Social Security taxes they must pay.

OPTION 2A. The President should forward the full text of the Attorney General's recommended reform in the Social Security system to the National Commission on Social Security Reform with endorsement.

OPTION 2B. The President should forward the full text of the Attorney General's recommended reform in the Social Security system to the National Commission on Social Security Reform with assurance that the proposed changes are consistent with Administration policy.

OPTION 2C. The President should forward the full text of the Attorney General's recommended reform in the Social Security system to the National Commission on Social Security Reform with a simple letter of transmittal.

NOTE: Alan Greenspan, Chairman of the Commission, is expecting identified gender inequities identified under Executive Order 12336 and proposed corrections, for review by the Commission.

APPENDIX A, the proposed submission, is the complete text of the recommended reform of the Social Security system from the Attorney General's first quarterly report under Executive Order 12336, together with additional specific gender inequities in the present system identified in the same report.

3. Correcting the Assumption in Law that the President of the United States will not be Female

Issue: Should the Cabinet Council on Legal Policy recommend that the President propose simple changes in federal statutes which assume that the President of the United States will always be male?

Background: Despite the fact that the Constitution makes explicit that the qualifications for the Presidency are gender-neutral, and despite the fact that the American people understand that the Presidency is open to women as well as to men, some federal statutes still contain reference to the assumption that the President will always be male. Specifically, 18 U.S.C. 3056 provides for the secret service protection of the wife or widow

(but not husband or widower) of a U.S. President; and 3 U.S.C. 102 provides for pensions for widows (but not widowers) of U.S. Presidents.

OPTION 3: The Cabinet Council on Legal Policy should recommend that the President propose legislation amending 18 U.S.C. 3056 to refer also to husband or widower, and amending 3 U.S.C. 102 to refer also to widowers.

Advantages

- One of the most visible and popular actions by the President has been the selection of a highly qualified female candidate to fill one of the highest offices in the nation--Supreme Court Justice. As women have already established themselves independently in the legislative branch of the federal government, this simple action would be symbolic of the President's firm commitment to the full equality of men and women in America.

Disadvantages

- Certain groups might criticize the action as being merely symbolic (which it is not; the proposed statutory change is substantive). It should be noted, however, that even groups and individuals not likely to support the President on other issues enthusiastically endorsed an action similar in spirit--the appointment of Justice O'Connor.

4. Correcting the Assumption in Law that United States Court Justices will not be Female

Issue: Should the Cabinet Council on Legal Policy recommend that the President propose a simple change in a federal statute which assumes that U.S. Court Justices will always be male?

Background: 28 U.S.C. 375, 604 provides for annuities to widows (but not widowers) of U.S. Court Justices. Particularly with the appointment of Justice O'Connor, but also with the increasing service of female U.S. justices, this asymmetry in the law requires correction.

OPTION 4: The Cabinet Council on Legal Policy should recommend that the President propose legislation amending 28 U.S.C. 375, 604 to refer also to widowers.

5. Completion of gender reference symmetry in the law

Issue: Should the Cabinet Council on Legal Policy recommend that the President propose amending 1 U.S.C. 1 to generally equalize the treatment of the sexes in federal statutes except where the context of a statute indicates that only one gender was intended for coverage by the law?

Background: Congress has enacted several statutes which go far toward equalizing treatment of the sexes by providing that U.S. Code statutes which refer to one sex only shall be interpreted to include the other sex. Despite this action, the remedy has not been comprehensive because 1 U.S.C. 1 included the feminine within the masculine, but not visa versa. Thus, widowers are not presumed to be extended the same treatment in Code provisions as widows, depriving women in federal employment the same benefits for their spouses and families as similarly situated men.

OPTION 5: The Cabinet Council on Legal Policy should recommend that the President propose amending 1 U.S.C. 1 to include the masculine within the feminine as well as the feminine within the masculine.

Advantages

- The action would in no way threaten laws intended to confer coverage on one sex only. Thus, 1 U.S.C. 1 provides that "in determining the meaning of an Act of Congress, unless the context indicates otherwise...words importing the masculine gender include the feminine as well." OPTION 5 would simply add: "and words importing the feminine gender include the masculine as well."

- The action would efficiently eliminate all unintended sex bias in federal statutes and would counter a commonly heard critique of the President's statute-by-statute correction program that it cannot possibly reach the large number of discriminatory statutes remaining.

- Though there may be some cost associated with the change, it would be minimal compared to the benefits of a significant increase in equity and the political capital acquired by demonstrating the broad applicability of the President's statute-by-statute program. This is particularly valuable at a time when the Equal Rights Amendment, which the President does not support, is likely to be reintroduced in the Congress and the President's alternative program therefore becores the focus of media attention.

6. Gender Equity for Women Business Owners Doing Business with the Federal Government

Issue: Should the Cabinet Council on Legal Policy recommend that the President propose amending 41 U.S.C. 35 and 36, which favor young men over young women for federal contracting?

Background: 41 U.S.C. 35 and 36 establish different minimum ages for male and female persons (16 for males, and 18 for females) who wish to do business with executive departments, independent establishments and other instrumentalities. Such age differences have been eliminated in almost every other aspect of the law. The Department of Labor has already amended its regulations to equalize the treatment of the sexes by requiring a minimum age of 16 for both.

OPTION 6: The Cabinet Council on Legal Policy should recommend that the President propose amending 41 U.S.C. 35 and 36 to equalize the minimum age for both males and females wishing to enter into contracts at 16.

7. Equal Equal Opportunity for Women Small Business Owners Wishing to Do Business with the Federal Government

Issue: Should the Cabinet Council on Legal Policy recommend that the President request the Administrator of the Small Business Administration to eliminate unfair regulatory discrimination against women business owners by declaring women business owners presumed to experience cultural bias for purposes of eligibility for the 8(a) program?

Background: The SBA's 8(a) program makes it possible for certain independently-qualified small businesses to overcome the Catch-22 of "No experience, no contract; no contract, no experience," with regard to federal contracts. With regard to eligibility for the program, Congress has specified, under Public Law 95-507, that the program is designed for small business owners who experience at least one of the following: 1) racial discrimination; 2) ethnic discrimination; or 3) cultural bias.

Not only is it self-evident that cultural bias includes sex discrimination; Congress further made its intent explicit, in the House Committee on Small Business report on the proposed law in March of 1978 (H.R. 95-949), that: "When implementing the eligibility criteria (for the 8(a) program), the Committee intends that the SBA give most serious consideration to, among others, women business owners."

To understand the present discrimination against women business owners in this program, it is necessary to understand that to become 8(a)-certified, a company must pass financial, managerial, ownership and control tests. To even get to these more substantive tests, however, the candidate small business must first pass the initial eligibility test that its owner(s) have experienced at least one of the three listed forms of discrimination.

Congress made it easier for members of certain groups to make it past this first eligibility test than others. That is, it named as presumed to experience either racial discrimination or ethnic discrimination all applying members of the following groups: Black Americans, Hispanic Americans, and Native Americans. Though women Americans were not named as presumed to experience their equivalent--cultural bias--Congress took great care to make sure that the SBA did not discriminate unduly against women business owners relative to the named groups simply because women had to individually show that they had experienced cultural bias. Thus, Congress provided that the SBA should carefully collect information on how many women business owners applied for and were accepted into the 8(a) program, and report that information every 6 months to the Congress.

Not only did the SBA, under the Carter Administration, not report this required data to the Congress; under the previous administration Public Law 95-507 was unfairly interpreted so as to effectively exclude women business owners as women from the 8(a) program and thereby create an almost completely minority program, accepting almost exclusively women business owners if they were also members of one of the named minority groups. Thus, women business owners who got past the first "bias" test did so almost exclusively because of their race or ethnic status, not because they were women. Even without the mandated figures on the number of women business owners who applied for and were rejected by the SBA because they did not make it through the first "bias" test, which Congress needed to test to see whether women business owners also needed to be named as presumed eligible to receive fair treatment, the figures on the number of women business owners actually accepted into the 8(a) program speak for themselves. As of the end of August 1981, the SBA's own figures show that of the 2,264 small businesses which had received 8(a) certification, only 96 of these were women-owned. But of these 96, almost all (89) are owned by minority women who got through the first hurdle automatically. Only seven non-minority women business owners were 8(a)-certified, and, of these, a number had to sue the agency to obtain fair treatment. Of those who sued, furthermore, all were admitted.

Clearly, this record does not fulfill the intent of Congress to give serious consideration to women business owners as women (as opposed to as minorities); or, put differently, to give serious attention and consideration to business owners who experience cultural bias as opposed to racial and/or ethnic discrimination.

Under the Carter Administration, the SBA even went so far as to declare that it did not consider sex discrimination a form of

cultural bias (see APPENDIX B) in order to keep the numbers of non-minority women business owners artificially low in the 8(a) program.

Through administrative inertia, and without clear guidance from the White House, the SBA has continued this discriminative policy which has resulted in women business owners **as women** (as opposed to as minorities) receiving unequal equal opportunity from a program specifically designed to assist them.

As this level of discrimination was perpetuated under the current requirement that women business owners, unlike the members of the named groups, must individually prove that they are a member of a class which has experienced cultural bias as well as that they have individually experienced that bias, it is reasonable to assume that more equitable treatment will be extended women business owners if they are also included as a named group. There is more than sufficient evidence to justify this action. The U.S. Civil Rights Commission, an independent fact-finding body, has determined that women experience similar bias in the business world as members of minority groups, and standing Executive Order 12138 recognizes the many obstacles facing women entrepreneurs as a class.

Since Public Law 95-507 was enacted, furthermore, Congress has acted to specify that the Administrator of the SBA has the authority to administratively determine and declare additional groups presumed to experience prejudice or bias in the business world in order to get past the first hurdle.

OPTION 7 A: The Cabinet Council on Legal Policy should recommend to the President that he request the Administrator of the SBA to include women business owners as a group presumed to experience cultural bias for purposes of individual women business owners reaching the more substantive economic, ownership and control tests of eligibility for the 8(a) program.

Advantages

- Differential treatment of women business owners as women for 8(a) eligibility is a striking example of the nonproductive and discriminatory policies of the Carter Administration. Action on this item in an election year would draw needed attention to the truth about the previous Administration.
- This action is a natural fulfillment of two of the President's most visible and key promises--to do everything possible to strengthen the economy and to ensure equal opportunity for women.
- By encouraging women in business, the action sends a signal to half the productive-aged population of America that we do need their energy and ideas and will help them. As women business owners are a larger percentage of all U.S. business owners than all minority business owners, male and female, combined, this action will spur the creation of new

- Such encouragement also addresses another major national problem--the increase in the numbers of women in the ranks of the elderly poor. This is because the average age of the over 700,000 women business owners as of the 1977 Special Census is over 50.

- The action also sends a strong positive signal to a key target constituency for the 1982 and 1984 elections--non-minority women under 40 who comprise 20% of the voting population. 75% of these women are in the business world, and are the business owners of tomorrow.

Disadvantages:

- There has been, and will be, powerful minority opposition to this action, particularly by members of the groups already named in Public Law 95-507. (Asian-Pacific Americans have since been administratively added to Black Americans, Hispanic Americans, and Native Americans).

  It is important to remember, however, that these groups also fiercely objected to the graduation requirements imposed on the 8(a) program by this Administration. But those requirements were fair, and were adopted.

- The expected opposition will argue that including women business owners as a named group will open a "floodgate" into the program and jeopardize the position of minorities already in the program. In response, it should be noted that the Director of the Office of Women's Business Enterprise at the SBA herself estimates that at present there are at most 200-250 women-owned firms who would be eligible for 8(a) certification were women business owners to become a named group. This is hardly a floodgate, compared to the over 2,200 minority-owned firms already in the program. And it is to be remembered that the new graduation requirements will soon open new "slots" in the program for all qualified firms.

- Some women may object to being labeled "socially disadvantaged" in order that women business owners become a named group. A more accurate characterization of the situation, were that to happen, would be that women business owners were presumed to experience cultural bias in the business world for purposes of fairness and convenience in administering the 8(a) program. Further, a careful polling will reveal that the affected group, women business owners, are not only a minority (7% of all U.S. business owners as of 1977), but have no objection to being so labelled if that is what it takes to receive fair treatment in a program in part intended for them. Thus, the National Association of Women Federal Contractors--the only national organization of women business owners whose membership criteria is identical to the ownership and control criteria for 8(a) eligibility--formally endorses presumptive eligibility for women business owners. It is minority business owners, including many

minority women business owners, who often do not favor including women business owners as a named group and object to being labelled as "disadvantaged" for purposes of eligibility. These are specious objections, as such women, being minorities, are already so labelled and thereby have an advantage they would like to keep over equally qualified non-minority women business owners.

OPTION 7B: The Cabinet Council on Legal Policy should recommend that the President request the appropriate Congressional committee(s) to reassess the inclusion of women business owners as a named group under Public Law 95-507, given the unreasonably low level of their admission into the program since its inception despite Congressional intent that they be seriously considered.

Advantage

- This Option would relieve some of the political pressure from minority groups.

Disadvantages

- The political objection of minority groups to this Option could easily be as strong as to Option 8A, which provides more immediate equity and more political capital amongst a larger voting block--non-minority women.

- Since enacting P.L. 95-507, Congress has delegated authority to make the proposed determination to the Administrator of the SBA. Option 2 would therefore be administratively circuitous and unnecessarily costly.

12. Elimination of gender inequities in U.S. Code relating to the Immigration and Naturalization Service

Issue: Should the Cabinet Council on Legal Policy recommend that the President forward the identified U.S. Code provisions which discriminate on the basis of sex relating to immigration and naturalization to the Immigration and Naturalization Service, with the request that the INS draft the simplest and most comprehensive legislation which would correct these 12 remaining inequities consistent with Administration policy?

The twelve statutes which discriminate on the basis of sex relating to the Immigration and Naturalization Service are at APPENDIX D.

8. Enforcement of the Equal Credit Opportunity Act

Issue: Should the Cabinet Council on Legal Policy recommend that the Commerce Department representative to the Task Force on Legal Equity for Women coordinate with the Interstate Commerce Commission to ensure that it carries out its responsibilities under the Equal Credit Opportunity Act?

Background: The Equal Credit Opportunity Act (15 U.S.C. 1691, Section 704(a)(4)) establishes the Interstate Commerce Commission as an enforcement agency for common carriers. The Department of Justice's Task Force on Sex Discrimination has that the ICC is without regulations or an enforcement program to carry out its obligations under this Act.

Advantages:

- The development of regulations and an enforcement program is mandated by law. In an election year, the Administration can point out to advantage that the ICC is undertaking its statutory obligations under a Republican administration.

9. Elimination of gender discrimination in federal programs and activities due to the use of sex-based actuarial tables.

Issue: Should the Cabinet Council on Legal Policy recommend that the President request the IRS and the Pension Benefit Guaranty Corporation to replace currently-used sex-based actuarial tables with tables pooled over the sexes?

Background: The use of sex-based actuarial tables, because of their inevitable discriminatory effect, have been eliminated from nearly all federal programs. The Social Security system, civil service retirement, foreign service retirement and military retirement systems all do not differentiate on the basis of sex (or race, religion or national origin) in determining either the amount of contributions or benefits. The use of sex-based tables amounts to a preference for sexual quotas, which the Administration rejects, over the treatment of men and women as individuals independent of their gender through gender-pooled tables. Sex-segregated

tables divide premiums, benefits, and loss experience into two pools, one for men and one for women. By attempting to assure that men as a group and women as a group receive the same proportion of benefit payments as they pay in premiums, a quota system based on sex results, precisely analogous to attempting to ensure that men and women receive the same proportion of jobs in a firm as they are applicants for placement, despite individual qualifications. All women, even women with life-shortening illnesses, are paid smaller annuities because some women (about 15%) live longer than some men. And all men, even cautious ones with perfect driving records, are charged more for automobile insurance because some males are careless.

Though sex-based actuarial tables have been eliminated from most federal programs, they are still used by the Pension Benefit Guaranty Corporation to determine the valuation of assets of terminated pension plans for all those subject to ERISA, and by the Internal Revenue Service in determining the value of future gifts for purposes of income and estate taxation, where they result in unfair discrimination against individuals just because they happen to be a member of a gender group. The use of such tables consistently results in smaller periodic annuities and smaller allowable deductions for the same charitable future gift for women than for men, purely on the justification that some women live longer than some men.

The sex-segregated tables used by the PBGC and the IRS are incorporated in regulations for the two agencies. Specifically, these sections are:

For the IRS

26 Code of Federal Regulations (CFR), Section 1.642(c)-1 regarding deductions for charitable purposes, through Section 1.642(c)-6 regarding the valuation of remainder interest. Tables begin on pg. 32 of 26 CFR, Section 1.642(c)-6(d)(3), ending on pg. 43.

26 CFR, Section 1.664-1, dealing with present valuation of charitable remainder annuity trusts, with tables beginning at Section 1.664-4(b)(4).

26 CFR, Section 1.72, dealing with sex distinctions in determining the value of gift property in the future, with tables beginning at Section 1.72-9, to determine excludable ratios for annuity payments subject to income taxation.

26 CFR, Section 20.2031-10, with tables beginning at paragraph (f), establishing the value of annuities, life estates, terms for years and reversions for persons dying after 12/31/70 in connection with estate taxation.

11. Elimination of sex discrimination in Farmer's Home Administration State supplements consistent with effected reforms in FmHA rules and regulations.

Issue: Should the Cabinet Council on Legal Policy recommend that the President request the FmHA to update its State Supplements to reflect the elimination of sex bias already significantly eliminated in its major rules and regulations?

Background: The Department of Justice's Task Force on Sex Discrimination identified numerous substantial examples of sex bias in the FmHA's regulations and policies, many of which the Administration has rewritten.

To be effective in the field, however, these regulations and policies still need to be reflected in the Administration's State Supplements which are the operating procedures governing individual loan processing in each State. The Department of Justice has determined that most State Supplements still need rewriting, and that many still contain substantive sex discrimination in violation of the Equal Credit Opportunity Act and contrary to the Administration's own rewritten regulations.

Executive Order 12336 explicitly mandates the identification and correction of such gender-discriminatory practices, and the representative to the Task Force on Legal Equity for Women from the Department of Agriculture could be charged to coordinate the review and revision of the State Supplements.

OPTION 11: The Cabinet Council should recommend that the President request the FmHA rewrite its State Supplements to reflect the elimination of sex discrimination in its rules and regulations; and the Department of Agriculture representative to the Task Force on Legal Equity for Women should be designated to coordinate this revision process.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Bethesda, Maryland 20205

May 12, 1982

Mr. Will Gribbin
Deputy Director
Senate Republican Policy Committee
333 Russell Senate Office Building
Washington, DC 20510

Dear Mr. Gribbin:

Enclosed, as requested in a telephone conversation May 11, is a verbatim transcript from a small part of a press availability session with Dr. James B. Wyngaarden, NIH Director, held 10-11 a.m., May 11, at the NIH. The sections enclosed cover questions raised by reporters about abortion and in vitro fertilization. The first two questions on this transcript were separated by discussion on guidelines for research involving DNA recombinant technology.

Dr. Wyngaarden made only brief opening remarks, then the session was open for questions and answers. Wide-ranging subjects were covered during the press conference, including: the status of top staff openings at the NIH; stability of research grant support; the status of NIH Consensus Development Conferences; DNA recombinant guidelines; advances in vaccine development; peer review of grant applications at the NIH; normalization of priority scores in the peer review system; and prevention efforts at the NIH.

Dr. Wyngaarden's statements were made in the context that NIH is prohibited by law (Title X of the Public Health Service Act) from conducting or supporting research on abortion as a means of family planning. NIH does support some research relating to prenatal diagnosis. Basic and clinical studies on the early developmental stages hold the key to preventing and treating disorders that cause death and disability among infants. Such research is vital since more than 250,000 American infants are born each year with mental or physical defects.

All research supported by NIH relating to pregnant women, fetuses and fetal tissues is conducted under DHHS regulation: 45 CFR 46, Subpart B (..."Protections Pertaining to Research Development and Related Activities Involving Fetuses, Pregnant Women, and Human In Vitro Fertilization"). Currently NIH supports research on in vitro fertilization only in animals.

If you would like a full transcription of the briefing, please let me know and we will prepare it. As requested, I have sent a copy of the abbreviated transcript to Mr. Blackwell, Special Assistant to the President.

Sincerely yours,

R. Anne Ballard
Director
Division of Public Information

Enclosure

cc: ✓ Morton Blackwell

Transcript of a portion of a press availability with Dr. James B. Wyngaarden, NIH Director, 10 a.m., May 11, 1982, at NIH:

Could you tell us your views on abortion and whether or not you think that subject will come up as you look at possible grants or research?

A. The NIH has not been active in abortion procedures itself, as you know. A good deal of the research that is financed by the NIH is clearly directed toward prenatal diagnosis, which then forms a basis for a decision. I believe that the abortion decision should be an individual decision. I believe in the freedom of choice and that the NIH should provide the maximum scientific basis on which intelligent choices can be made.

Q. To take you back to this subject of abortion, I'm not sure what you meant by freedom of choice, and I can think of two areas where your opinion at NIH might be involved. One would be this whole attempt to bring science into the legislation on the Hill and the definition of when life begins, and the second would be the question of what you would be doing about in vitro fertilization, which is a question I would like you to comment on also. Again, I am not sure what your position is on abortion.

A. Well, as you know there have been many attempts recently to draw more stringent legislative restrictions on the use of Federal funds for abortion and even to outlaw its performance except in very, very restricted situations, and I was associating myself with a somewhat more lenient point of view--feeling that is a couple's decision to make, not a legislative decision.

Q. Well, what about in vitro fertilization? Now, NIH is really, I forget exactly how it was handled, on a hold on research in this area. Now it is going ahead around the country. We hear reports of this university or that university. What responsibility does NIH have to both monitor this as well or do some research that would be involved with the human aspects in both laboratory studies? There is no one. Whatever happened to Soupart? Can you answer that one? From Vanderbilt?

A. I don't know the answer to your last question. I believe this is a legitimate area for biomedical research, and the in vitro fertilization may solve the problem of infertility for certain couples and, as you know, we are active in that field at the animal level, and I would have no problem with carrying this forward into the human level for a situation such as that.

Q. I don't know exactly where you stand. It's not clear to me. I think there's requests pending. Will you act upon that, or how will that work?

A. I'm not fully acquainted with that request. It is a matter that is dealt with in the Child Health and Human Development Institute, and I know that this has been put on hold for the present. It's an area that we are planning to discuss more fully, and I've given you a personal point of view. It's not an NIH point of view at the moment.

Q. Well, do you think it's possible that NIH might lift this hold and go forward with some Federally funded research?

A. I would have to discuss that more fully. I can't really answer that question just yet.

file


**NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.**

**1425 H St., N.W., Suite 600, Washington, D.C. 20005 (202) 628-6800**




May 12, 1982

The Honourable Morton C. Blackwell
Special Assistant to the President
The White House
Washington, D.C. 20500

Dear Mr. Blackwell:

The National Association of Social Workers is deeply disturbed to learn that the Office of Management and Budget had directed HHS to restrict all new accessions to the Public Health Service Commissioned Corps, with the exception of physicians serving in the Indian Health Service and the Epidemic Intelligence Service of the Centers for Disease Control.

You are aware that public health service agencies rely heavily on the Corps, their wide range of professional needs and their professional disciplines. The ill-advised directive put forth by the OMB will jeopardize vital preventive and curative services for the deserving beneficiaries of public health services. In the long run, this is not a cost-effective measure for the public health services and the citizenry which depend on these services.

The National Association of Social Workers urges you to strenously oppose the OMB mandate recommendation to the Commissioned Corps and to reinstate the prior policy permitting new accessions to the Commissioned Corps for all qualified health disciplines.

Sincerely yours,

C. Annette Maxey, ACSW
Executive Director, NASW

CAM:JWB:des