EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 15, 1984

MEMORANDUM TO: Jack Svahn

FROM: Mike Horowitz MH

SUBJECT: Senator Hatch's Draft Amendments to S. 2568

You have sent out two Hatch options for amending S. 2568.

1. Under the first option, S. 2568 would be amended to affect only Title IX. There would be campus-wide coverage for educational institutions, and an "explicit rule of construction" divorcing the interpretation of the phrase "program and activity" in Title VI, Section 504, and the Age Discrimination Act from the interpretation of the same phrase in Title IX (effectively returning the meaning of "program and activity" in the former statutes to their pre-Grove City construction). This option would also exempt Grove City College and similar educational institutions which receive only indirect assistance from coverage -- unless (like, e.g., Bob Jones University) they had lost their tax-exempt status.

2. Under the second option, "recipient"-based coverage would be in effect for educational institutions and State and local governments, while the present "program and activity" language would be retained for private, non-educational institutions. For educational institutions, coverage would be campus wide; coverage of State and local governments would be agency or department wide, with a rebuttable presumption of recipient-wide coverage for block grants and similar Federal assistance provided to States and local governments rather than directly to their individual departments. This option also includes the above Grove City exemption.

3. The first is apparently Senator Hatch's preferred option, but it will be hard to sell. As to the second option, aside from an easily corrected drafting error (unlike the existing S. 2568, it would define a State's "subunits" to include its political subdivisions, not simply its departments, agencies, and instrumentalities), two comments are in order:

- o There is likely to be strong resistance to retaining the existing "program and activity" language for private, non-educational institutions. We should therefore be

prepared, if necessary, to offer substitute language on the order of the "rebuttable presumption" for State and local governments, i.e. to define non-educational private recipients into functional sub-units analoguous to campuses and State or local agencies.

- While providing relief for Grove City College and similar educational institutions, it would provide no similar exemption for other private "indirect recipients" of Federal assistance. This is key. The need to do so derives not only from the broad language of the bill itself. The reports of the House Education and Labor and Judiciary Committees on the Packwood bill clearly state, for example, that Guaranteed Student Loans and payments under Medicaid and Medicare would trigger coverage of the institutions at which those benefits are exercised. More importantly, they have artfully left the door open for coverage of grocery stores which accept food stamps. (The reports state that the respective committees "[believe] the Supreme Court adequately addressed this issue in the Grove city College ruling", and then quote a footnote in which the Supreme Court simply noted that food stamps by students does not trigger coverage of the colleges and universities they attend. The House report concludes that "H.R. 5490 would not alter this section of the opinion. The legislation reflects the reasoning of the Court in finding student assistance to be aid to the school. Under the bill, as has always been true, neither the landlord whose rent is paid with the proceeds of an AFDC or SSI check, nor the grocer who is paid for food from an SSI check, is covered as a result of that transaction". The Committees avoided a square answer to the food stamp question and clearly implied that grocery stores would be covered.

4. There is steadily widening interest group concern regarding the Packwood bill's current language. The National Governors' Association has written Senators Durenberger and Hatch expressing concern regarding ambiguities in the legislation. The Chamber of Commerce has expressed concerns based on an independent legal analysis it commissioned of the legislation. The American Farm Bureau Federation, the National Federation of Independent Business, the American Association of Presidents of Independent Colleges and Universities, and the Catholic Conference have written letters expressing similar concerns about the potential effects of the Packwood bill's current language.

5. Finally, I understand that the Solicitor of Labor will be forwarding a letter (similar to that prepared by the Department of Agriculture's General Counsel) raising questions regarding the potential scope of the Packwood bill's coverage under the JTPA and similar programs administered by the Department.

cc: Nancy Risque
Jim Cicconi
Ken Cribb

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO L. Hays	Take necessary action ☐
	Approval or signature ☐
	Comment ☐
	Prepare reply ☐
	Discuss with me . ☐
	For your information ☐
	See remarks below ☐
FROM Branden Blum	DATE 6/18/84

REMARKS

Proposed changes to Agency reports (Labor, Agriculture, Commerce) on S. 2568

Per your request, attached is a copy of the suggested changes. Please advise me of any comments by 4:30 TODAY.

cc: ✓J. Cicconi
F. Fielding
L. Verstandig
M. Uhlmann

SPECIAL

OMB FORM 4
Rev Aug 70

June 18, 1984

MEMORANDUM TO: Branden Blum

FROM: Mike Horowitz

SUBJECT: Proposed Changes to Agency Statements Regarding S. 2568

DEPARTMENT OF LABOR:

The second and third paragraphs should be changed to read:

> With regard to our responsibilities in administering the various federal grant programs, we are concerned that clarification of the bill's requirements is necessary if we are to avoid adversely affecting the willingness of private sector employers to get involved in programs under the Job Training Partnership Act (JTPA) as well as the Emergency Veterans' Job Training Act.
>
> In that regard, we are concerned that the broad language of S. 2568, together with the statements in the reports of the House Judiciary and Education and Labor Committees that, as a result of this legislation, "a recipient of federal financial assistance will understand that receipt of federal funds means it is covered throughout its operations" -- see page 26 of the Judiciary Committee's report), would be perceived by many employers as expanding the substantive scope Department of Labor regulations under these statutes to employer activities totally unrelated to the operation of the federally assisted training programs; resulting in increased reporting, exposure to compliance reviews, and other regulatory burdens. Faulty or not, such a perception, if prevalent among employers,could have significant adverse consequences for training and employment programs.

The following paragaph should be inserted between the final paragraph on page 1 and the first paragraph on page 2:

> S. 2568's broad language extending coverage not only to direct recipients, but to any "successor, assignee, or transferee of any [entity] to which Federal financial assistance is extended ... ", would, absent clarification, create further uncertainty among employers and the entities with which they do business.

Blum called to see if you have any comments

COMMERCE

The following paragraph should be inserted following the third paragraph on page 1:

> While the following discussion deals with the impact of covering all of the programs and activities of recipients, we should at this time note that the bill's current language might, absent clarification, expand the definition of who is a "recipient" for purposes of coverage of these statute in unforeseen ways. S. 2568 would extend coverage not only to all operations of a recipient, but to "any successor, assignee, or transferee of any ... entity ... to which Federal financial assistance is extended (directly or through another entity or a person)". It is not clear exactly what kind of relationship with a Department of Commerce-funded entity would subject another entity to coverage as a "recipient" as well. Our concern in this regard is heightened by the extremely broad language in the reports of the House Education and Labor and Judiciary Committees on this legislation. (they specify, e.g., ~~specify~~ that Guaranteed Student Loans and payments under Medicaid and Medicare would trigger coverage of the institutions at which those benefits are exercised and leave the clear implication that they intend that grocery stores which redeem food stamps would be considered as "recipients" as well).

The following language should be added at the conclusion of the final paragraph on page 1:

> (The reports of the House Judiciary and Education and Labor Committees on this legislation, however, by repeatedly referring to Guaranteed Student Loans as bases for coverage of colleges and universities even though the courts have held that they are excluded from coverage on the same basis as the loan guarantees administered by the Department of Justice, might in the absence of further clarification cast some doubt on their continued exclusion should S. 2568 be enacted in its present form.)

necessary?

AGRICULTURE

The following language should be inserted before the final paragraph on page 2:

Finally, we would note that the reports of the House Education and Labor and Judiciary Committees on this legislation appear to have ~~artfully~~ left the door open for coverage of grocery stores which accept food stamps. (The reports state that the respective committees "[believe] the Supreme Court adequately addressed this issue in the Grove city College ruling", and then quote a footnote in which the Supreme Court simply noted that food stamps by students does not trigger coverage of the colleges and universities they attend. The House report concludes that "H.R. 5490 would not alter this section of the opinion. The legislation reflects the reasoning of the Court in finding student assistance to be aid to the school. Under the bill, as has always been true, neither the landlord whose rent is paid with the proceeds of an AFDC or SSI check, nor the grocer who is paid for food from an SSI check, is covered as a result of that transaction". [Emphasis added]. The Committees thus clearly imply that grocery stores would be covered -- particularly since they explicitly state that reimbursements under medicare and medicaid, which operate in a similar manner, would suffice to trigger coverage. For the sake of the food stamp program, we would hope that your Committee would act to clarify this issue.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO			
	J. Svahn	L. Verstandig	
	M. Horowitz	N. Sweeney	
	N. Risque	K. Newman	
	J. Ciccone	P. Hanna	
	A. Meyer	R. Landis	
	F. Fielding		
	K. Wilson		
	K. Cribb		
	M. Uhlmann		
	B. White		

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☐

FROM Branden Blum DATE 6/18/84

REMARKS

Commerce, Agriculture and Labor draft reports on S. 2568, the Civil Rights Act of 1984

We have been asked to clear the attached reports as soon as possible. Please provide me with any comments by NOON TODAY. (Copies of the draft reports have been sent to Justice.)

Attachment

SPECIAL

ADC
Pl call Branden and tell him I have no objection to the attached letter.
JW 6/18

OMB FORM 4
Rev Aug 70

THE UNDER SECRETARY OF LABOR
WASHINGTON

DRAFT

Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Secretary Donovan has asked me to respond to your letter of May 29, 1984 concerning the Department of Labor's (DOL) perspective on the effects of S. 2568, the proposed "Civil Rights Act of 1984." Specifically, you asked that we comment on the effects this bill would have on our substantive responsibilities in administering various federal grant programs within the Department's jurisdiction. You have also asked that we comment on the enforcement aspects of the proposed bill.

With regard to our responsibilities in administering the various federal grant programs, we are concerned about the possible implications of the bill for our training and employment programs. Our concern stems not from any disagreement with the bill's putative purpose, but rather from the perspective of its effect on the willingness of private sector employers to get involved in programs under the Job Training Partnership Act (JTPA) as well as the Emergency Veterans' Job Training Act.

One view is that S. 2568 will expand the substantive scope of federal nondiscrimination requirements, increasing the reporting burdens, and the exposure to compliance reviews, among other things. Whether or not this is legally correct, employers may perceive this to be the case. Faulty or not, such a perception, if prevalent among employers, could have significant adverse consequences for training and employment programs.

Section 167 of JTPA makes clear that those entities operating training and selected programs are subject to federal nondiscrimination prohibitions. It does not extend those prohibitions to employing establishments that are in contact with JTPA programs. If S. 2568 were construed as broadly as reflected in the Justice Department's May 24 letter to you on this subject, it might be possible for employers to believe that association with JTPA or the emergency veterans' job training program may increase their exposure and liability under the various civil rights laws.

It is possible, therefore, that S. 2568 would cause employers to avoid federally supported training and employment services in a belief that they were prudently avoiding "new" burdens or compliance risks. Under such circumstances, employers:

-- Might not provide training slots for JTPA;

-- Might not provide training slots for the emergency veterans' job training program;

-- Might not list jobs with the employment service;

-- Might not take advantage of TJTC; and

-- Might not serve on Private Industry Councils (PICs) and State Job Training Coordinating Councils (SJTCCs).

In sum, unless S. 2568 makes clear the implications for employers who become associated with training and employment services, it may discourage employers' participation in such activities. This, in turn, will condemn such activities to futility.

It would also appear that under S. 2568, the entire workforce of States which receive assistance from several DOL component agencies (the Employment and Training Administration, the Mine Safety and Health Administration, the Occupational Safety and Health Administration) could be covered by the nondiscrimination provisions of section 504 of the Rehabilitation Act of 1973. The Department has, in the past, interpreted section 504 to cover only those employees directly employed with DOL funds or in connection with the specific DOL-funded programs. Potentially, under S. 2568, any employee, even one working in an area unrelated to a DOL-funded program, could file a complaint with the Department's Office of Civil Rights. That Office would be required to accept and process such a complaint. Moreover, the same complaint could just as likely be filed with several other agencies, thereby leading to "determination shopping."

We would like to make clear that we fully support the objective of equal employment opportunity for all Americans. However, imprecise legislation may have adverse consequences which should be avoided.

We appreciate the opportunity to comment on this significant undertaking.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Ford B. Ford

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

DRAFT

The Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

On May 29, 1984, you wrote to me requesting comments on the manner in which S. 2568, entitled the "Civil Rights Act of 1984," would affect the administration of this Department's programs, and on the enforcement aspects of the measure as well. S. 2568 has been introduced in response to the Supreme Court's decision in Grove City College v. Bell, 104 S. Ct. 1211 (1984).

As indicated by Daniel Oliver, General Counsel of this Department, in his letter of June 8, 1984, to the Honorable Jesse Helms and in his testimony before the Senate Committee on Agriculture, Nutrition, and Forestry on June 12, 1984, the Department of Agriculture is committed to vigorous enforcement of Federal civil rights laws. However, we are concerned that if S. 2568 is enacted in its present form, it could so broaden the reach of the Federal laws regarding discrimination that it would make them applicable to over 2,000,000 individual farmers who are recipients of Federal loans and grants under programs administered by this Department.

Currently the anti-discrimination statutes prohibit discrimination in a "program or activity" receiving Federal financial assistance. Also, our regulations exempt "ultimate beneficiaries" from the definition of recipient. S. 2568 would remove the "program or activity" concept from the statute, and would seem to remove the exemption for ultimate beneficiaries. S. 2568 also greatly broadens the definition of recipient. We believe that S. 2568 would very likely effect a major transformation in the Federal anti-discrimination laws by making them applicable to farmers and the people they do business with, and would impose an enomous enforcement burden on this Department.

There are three principal categories of Departmental programs under which we believe recipients would be most directly affected if S. 2568 were enacted: farm price supports loans, loans made by the Farmers Home Administration, and Federal crop insurance programs.

Because farmers who receive Federal price support loans on their commodities are not themselves involved in a "program or activity receiving Federal financial assistance" and because they are ultimate beneficiaries of the programs involved, those farmers are not now deemed to be subject to the Federal anti-discrimination laws. If S. 2568 were to be enacted in its present form, however, we believe that farmers who receive price support loans would come within the reach of those laws. More than 2,000,000 producers received price support loans last year.

Recipients of loans made by the Farmers Home Administration could likewise be covered by Federal anti-discrimination laws if S. 2568 were enacted in its present form. This would include recipients of farm operating loans, farm real estate loans, disaster loans, and loans made for other purposes such as rural housing and business and industry loans. While the anti-discrimination laws do not currently apply to farmers and others who receive loans directly from the Farmers Home Administration, we believe such recipients could be covered by those laws if S. 2568 became law. In fiscal year 1983, approximately 145,000 loans were made directly to such recipients by the Farmers Home Administration.

The situation would be the same for producers receiving assistance in the form of premium subsidies under the Federal crop insurance programs. Like recipients of Federal loans, producers who purchase subsidized crop insurance are not now covered by Federal anti-discrimination laws because they are not involved in a program or activity receiving Federal financial assistance and because they are ultimate beneficiaries as well. If S. 2568 were to become law, however, such producers could be deemed to be "recipients" of Federal financial assistance. We believe this would be true whether they purchased Federal crop insurance directly from the government or from private insurers participating in the government's reinsurance program. Approximately 225,000 producers purchased subsidized crop insurance under these programs in fiscal year 1983, and approximately 328,000 are expected to do so in fiscal year 1984.

The language of S. 2568 is broad, vague, and clearly ambiguous. How the proposal would affect the American farmer and the people he does business with -- the American farming industry as a whole -- is far from clear. Such a proposal should not be enacted without the fullest consideration. I therefore recommend that S. 2568 be

thoroughly considered for its potential effects on millions of beneficiaries of Federal assistance under programs administered by this Department -- as well as by dozens of other Federal agencies.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

Draft

Honorable Orrin G. Hatch
Chairman, Committee on Labor
and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of this Department concerning S. 2568,

"The Civil Rights Act of 1983,"

particularly, the effect of its provisions on the administration and enforcement of our loan and grant programs.

We believe that in its current form S. 2568 would create significant problems regarding the administration of our loan and grant programs.

S. 2568 would amend Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973 and Title IX of the Education Amendments of 1972, all of which prohibit certain types of discrimination in federally-assisted programs and set out sanctions for noncompliance. The bill proposes to eliminate all references to "program or activity" which characterize the existing prohibitions in these statutes and replace them with broad references to "recipients" of federal aid. The Economic Development Administration (EDA), National Bureau of Standards (NBS), National Oceanic and Atmospheric Administration (NOAA), and National Telecommunications and Information Administration (NTIA) administer the primary loan and grant programs that fall within the jurisdiction of the Department of Commerce. The following discussion sets forth what we perceive would be the impact of S. 2568 on these programs.

1. Economic Development Administration:

The Public Works and Economic Development Act of 1965, as amended, (42 U.S.C. §§ 3121-3246h) (PWEDA) authorizes EDA to provide financial assistance in the form of grants and loans to rural and urban areas. All grants and direct loans made under this authority are subject to the nondiscrimination provisions of the Acts amended by S. 2568. Loan guarantees, however, are specifically excluded from Title VI and the Age Discrimination Act, and Departmental regulations exclude them from the ambit of discrimination prohibited by the Rehabilitation Act.

 Draft

Extent of Covered Activities

The administration of EDA's grant program would be significantly altered by the amendments proposed by S. 2568. S. 2568 provides that these Acts would be amended to extend the range of prohibited discrimination from specific programs or activities to all operations of recipients of federal financial assistance or support. S. 2568 would define the term "recipients" to mean --

> any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, or any public or private agency, institution, or organization, or other entity (including any subunit of any State, subdivision, instrumentality, agency, institution, organization, or entity), and
>
> any successor, assignee, or transferee of any such State, subdivision, instrumentality, agency, institution, organization, or entity or of any such subunit,
>
> to which Federal financial assistance is extended (directly or through another entity or a person), or which receives support from the extension of Federal financial assistance to any of its subunits.

By redefining prohibited discrimination, S. 2568, in effect, would compel EDA to alter the administration of its grant programs -- in some cases by expanding the universe of compliance and in other cases by contracting that universe.

Titles I and IX of PWEDA authorizes EDA to make grants for the construction of public facilities, including roads, sewers, industrial parks and water lines, in order to save or create jobs. Before approving grants EDA requires a statement from the private sector beneficiary concerning the number of jobs which would be saved or created by the project and certifying that it will not discriminate in the operation of the subject facility. If S. 2568 were enacted, EDA might be required to expand this requirement to apply not only to the private sector beneficiaries at the location assisted by EDA but to all operations of the beneficiaries, wherever located, and to all its subsidiaries. Such a requirement would greatly increase the administrative burdens upon both EDA and the private sector beneficiaries of EDA assistance. Consider the case of a major national retailer which might be interested in building a warehouse in an industrial park improved with an EDA grant. The retailer would be required to certify that all its operations, wherever located nationally, as well as those of its subsidiaries, were nondiscriminatory under the laws covered by S. 2568, and EDA would have the responsibility for monitoring that nondiscrimination.

Draft

Similar problems would be created in the administration of revolving loan fund grants made by EDA under the authority provided in Title IX of PWEDA. EDA makes grants to states, local governments and non-profit corporations representative of EDA-designated redevelopment areas to be used for loans to local companies for the purpose of saving or creating jobs. S. 2568 would require that EDA monitor the compliance of grantees, loan recipients, all subunits of grantees and loan recipients, and all operations of these entities, wherever located.

In addition, Title III of PWEDA authorizes EDA to fund the planning activities of states and local governments as well as Indian tribes and quasi-public planning entities. Because of the breadth of the term "recipient" and the extent of its loan activity EDA could find itself responsible for monitoring the compliance of most of the governmental units of the United States.

Enforcement Burden

In the past, EDA has monitored compliance with non-discrimination requirements applicable to the specific programs and activities it directly administers. Under S. 2568, EDA would become involved in a new area of enforcement which would necessitate the development of extraordinary procedures for applicant disqualification and grant terminations based upon discrimination in any grantee/recipient operation. This would inject EDA into an area of law in which EDA has little expertise. This burden could only impair the ability of EDA to fulfill its primary responsibilities.

2. National Bureau of Standards:

The grant programs of NBS are primarily for research and development (such as its fire research grants) and are primarily awarded to state and local institutions. These programs would be affected by section 2(a)(2) of S. 2568, which would substantially expand the enforcement provisions for non-discrimination included in the Education Amendments Act of 1972. Any noncompliance with the provisions of this Act by any unit of a state or local government could result in the termination of all federal assistance to affiliated colleges and universities (regardless of compliance on the part of the college or university).

3. National Oceanic and Atmospheric Administration:

The grant programs of NOAA are primarily administered pursuant to authority contained in the National Sea Grant College Program Act (33 U.S.C. § 1121) and the Coastal Zone Management Improvement Act (16 U.S.C. § 1451). Through the Sea Grant College Program NOAA makes grants to public and private entities, including colleges, institutes and laboratories, to promote research,

Draft

education, training and advisory services related to the conservation of our nation's ocean and coastal resources. Through the Coastal Zone Management Act, NOAA makes grants to coastal states for the purposes of carrying out state coastal zone management programs. S. 2568 would affect NOAA's programs as it would EDA's and NBS's. For example, if it is determined that the Sea Grant program of a college is not in compliance with the non-discrimination provisions of these Acts, the state chartering the college and the state's other federally-funded activities could be affected.

4. National Telecommunications and Information Administration:

The Educational Broadcasting Facilities and Telecommunications Demonstration Act of 1976 (47 U.S.C. §§ 390-394) authorizes NTIA to make grants for certain purposes, including to increase ownership and operation of public telecommunications services and facilities by minorities and women. S. 2568 could curtail funding of a program designed to benefit a minority group if some distantly associated unit of the organization were involved in a discrimination proceeding. This would be contrary to the stated intent of S. 2568.

Conclusion:

We endorse the objective of eliminating all prohibited forms of discrimination by recipients of federal assistance. We believe, however, that a revision of longstanding policy as extensive as that proposed by S. 2568 requires careful consideration and structuring. S. 2568 in its current form would give federal agencies vast responsibility for monitoring state and local governments, as well as large numbers of small businesses and other elements of the private sector. In order to carry out this responsibility we would have to develop unprecedented monitoring capacities and reallocate our resources to meet the proposed new statutory mandate.

We have been advised by the Office of Management and Budget that there is no objection to our submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

Secretary of Commerce

DAN QUAYLE
INDIANA

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(202) 224-5623

INDIANAPOLIS OFFICE:
ROOM 447, 46 EAST OHIO STREET
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(317) 269-5555

United States Senate

WASHINGTON, D.C. 20510

COMMITTEES:
ARMED SERVICES
BUDGET
LABOR AND HUMAN RESOURCES

June 8, 1984

William Bradford Reynolds
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Brad:

It is my understanding that you and I agree on what the proposed Civil Rights Act ought to accomplish; first, any organization or institution that is not covered under current law will not be brought under the law by the proposal; second, for any institution that is currently covered, the non-discrimination provisions will apply institution-wide and not be limited to the discrete activity receiving federal aid.

This means that churches, private and Christian schools, private colleges, farmers, and any strictly private organizations that do not receive Federal financial assistance and are not subject to the Civil Rights acts under present law will not be brought under them by the proposal.

That was my intent when I cosponsored the bill and remains my intent today. I look forward to working with you to produce a bill that will carry out these two objectives.

Dr. Charles Rice of the Notre Dame Law School has kindly offered his services for the purpose of reviewing any proposal. Please feel free to contact him directly.

Sincerely,

Dan Quayle
U.S. Senator

Briefing Memo for JABIII

What we want to do:

- o put the responsibility for resolving this in their lap
- o assure the Senators that we support legislation overturning the Grove City decision in Title IX
- o assure them that we support an extension of the legislation to the other three Civil Rights statutes so that Grove City will not be a precedent in interpreting them

race age handicapped

- o get them to agree on a set of principles which they have basically agreed to on an individual basis
  - no expansion of coverage
  - no expansion of enforcement
  - legislation should reverse Grove City and return to pre Grove City status quo
  - perhaps use Quayle's letter as a basis for agreement

What we don't want to do:

- o accept responsibility for drafting language
- o get between H. Baker and O. Hatch - they're on completely different sides on this
- o get put in a position of appearing to kill this legislation
- o be co-opted into negotiating language with the parties
  - o they should develop language - we will provide technical assistance

o let them see this piece of paper

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR THE PRESIDENT

FROM: JOHN A. SVAHN
ASSISTANT TO THE PRESIDENT FOR POLICY DEVELOPMENT

SUBJECT: Grove City Legislation

In Grove City, the Supreme Court held that Title IX (anti-sex discrimination in educational institutions) applies only to the specific program of the college receiving federal assistance, rather than to the college as a whole. Although the Court did not consider the statutes which ban discrimination based on age, handicap or race, the same language that prompted the court to hold as it did for Title IX also appears in the other anti-discrimination laws.

In response to Grove City, bills have been introduced in the Congress to amend the laws prohibiting discrimination based on sex, age, handicap and race. The stated intent of the bills is to restore the coverage of these laws to entire institutions rather than to specific programs within them. However, as you know, the bill pending in the Senate (S. 2568, introduced by Senator Kennedy with 61 co-sponsors) goes far beyond restoring the status quo. For example, price support loans and subsidies to farmers could subject them to the requirements of the anti-discrimination laws, and USDA to their enforcement. Grocery stores receiving food stamps could, among other things, be required to re-model their shelves so they would all be accessible to people in wheel chairs.

In discussions with Senate staff and Senators Baker, Quayle Hatch and Helms, it has become obvious that many Republican Senators were unaware of the far-reaching effects of their bill. These discussions, coupled with opposition from groups such as the Farm Bureau and the Chamber of Commerce, have raised concern with several Senators. Jim Baker and I are meeting today with Senators Baker, Dole, Hatch and Packwood. Our goal is to reach agreement on the principles and instruct staff to draft technical amendments to S. 2568 that will carry out those principles.

We hope that, at least in the Senate, we will achieve legislation that will restore the scope and enforcement of civil rights legislation to its pre-Grove City status.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO		Take necessary action	☐
	J. Svahn L. Verstandig M. Horowitz	Approval or signature	☐
	N. Risque R. Landis J. Cicconi N. Sweeney	Comment	☐
	A. Meyer F. Fielding	Prepare reply	☐
	K. Wilson K. Cribb	Discuss with me	☐
	M. Uhlmann B. White	For your information	☐
		See remarks below	☐

FROM Branden Blum BB **DATE** 6/11/84

REMARKS

Draft Agriculture testimony on S. 2568, the Civil Rights Act of 1984

Attached is Agriculture's draft testimony for a hearing before the Senate Agriculture Committee scheduled for 10:00 A.M. tomorrow (6/12/84). A copy of the testimony has been forwarded to Justice.

Please review and provide me with any comments as soon as possible.

Attachment

SPECIAL

OMB FORM 4
Rev Aug 70

Agriculture - Dan Oliver - GC

Mr. Chairman, it's a pleasure to appear before your Committee again, and I welcome this opportunity to present my views on S. 2568 entitled the "Civil Rights Act of 1984."

This Administration, as you do know and all should know, is committed to the principles of non-discrimination and equal opportunity. Those principles and this Administration's commitment to them and efforts on behalf of them have been eloquently described by others, especially by the Honorable Wm. Bradford Reynolds, the distinguished Assistant Attorney General for the Civil Rights Division. That commitment is not in dispute here -- is not in dispute anywhere where serious people are gathered together -- and I will say no more about it, except that I am heartily in concurrence with it.

Mr. Chairman, S. 2568 was introduced following the Supreme Court's decision in the Grove City case (Grove City College v. Bell, 104 S. Ct. 1211 (1984)). The stated purpose of the bill is, as I understand it, to reverse only a single holding of that decision, specifically, the Court's holding that the law prohibiting discrimination on the basis of gender (Title IX of the Education Amendments of 1972) prohibits such discrimination only in programs or activities receiving Federal financial assistance.

Some have said that that reading of the law (which I will call the "program specific" reading) -- and I should add here that the laws prohibiting discrimination on the grounds of race, handicap, and age have the same provision -- some have said that that program specific reading represents a "new interpretation" of the anti-discrimination laws.

I believe that is not so. Every Federal court of appeals that has considered the issue has adopted the program specific reading -- every court, that is, except the Third Circuit, in the Grove City case. And, of course, the Third Circuit was overruled by the Supreme Court.

But more important for our purposes here this morning, Mr. Chairman, the statutes' focus on activities receiving Federal financial assistance rather than on recipients of that assistance is the basis of the Department's current and long-standing view that these anti-discrimination laws are concerned, not with the activities of the ultimate beneficiaries of Federal financial assistance, but with the activities of the groups and individuals through which the government works to provide assistance to those ultimate beneficaries.

This understanding of many years is reflected in the regulations of the Department of Agriculture and of other

agencies implementing the Federal anti-discrimination laws. Specifically, the regulation defining "recipient" excludes from that definition the ultimate beneficiaries of a program or activity (7 C.F.R. 15.2(e)).

It is important to note that this specific exclusion of ultimate beneficiaries is not grounded in any statutory definition of a recipient of Federal financial assistance or in any other specific statutory exclusion. It is grounded in the fact that the anti-discrimination statutes are directed at programs or activities receiving Federal financial assistance and therefore appear not to be directed at the ultimate beneficiaries of the assistance under those programs.

S. 2568 would amend Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and the Age Discrimination Act of 1975 to prohibit discrimination by "recipients of Federal financial assistance" rather than discrimination in programs and activities receiving Federal financial assistance. If this legislation is enacted, it appears doubtful that the current exclusion of ultimate beneficiaries from the definition of recipients of Federal financial assistance could be continued. Indeed, from the proposed bill's tracking of all the language of the present regulation defining a recipient,

except that portion relating to the ultimate beneficiary, it seems entirely fair to infer a legislative intent to preclude continuation of the exemption of the ultimate beneficiary, and I certainly would not be surprised if a court made that inference.

The definition in the proposed bill of a recipient is as follows:

> "(A) any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, or any public or private agency, institution, or organization, or other entity (including any subunit of any such State, subdivision, instrumentality, agency, institution, organization, or entity), and
>
> "(B) any successor, assignee, or transferee of any such State, subdivision, instrumentality, agency, institution, organization, or entity of any such subunit,
>
> to which Federal financial assistance is extended (directly or through another entity or a person), or which receives support from the extension of Federal financial assistance to any of its subunits."

I realize, Mr. Chairman, that some people may say that that definition of a recipient of Federal financial assistance does not, could not, and was not intended to, include a farmer. I suggest, nevertheless, that that language could indeed include a farmer.

In the first place, it is not clear what is meant by the word "entity" contained in section (A) of S. 2568's definition of a recipient.

Let us take the case of a Farmer Program loan, extended directly to a farmer by the Farmers Home Administration. Currently, the anti-discrimination laws do not apply to Farmer Program loans, because the farmer is considered to be the ultimate beneficiary. Under the proposed bill, however, there is no exclusion for ultimate beneficiaries, and it is at least plausible to say that the farmer is included within the bill's definition of a recipient of Federal financial assistance.

Cannot a farmer be an "entity?" And even if a farmer in his individual capacity is not an "entity," -- and I am not sure he is not -- what about his farming operation? What if that operation is a huge corporation, employing hundreds of people -- is that not an "entity" within the meaning of the statute? S. 2568 is sufficiently ambiguous to leave unresolved whether or not the farmer or his operation would be a recipient under the proposed definition.

Mr. Chairman, in addition to there being a real possibility of a farmer's being included within section (A) of the definition of recipient contained in the proposed

bill, there is also a real possibility that some farmers will be included within section (B) of that definition.

Let us consider, for example, a tobacco farmer. All tobacco price support loans are provided to farmers through producer associations. These associations are, even now, considered by the Department of Agriculture to be covered by the anti-discrimination laws. They are the recipients of the Federal financial assistance being provided, but they are not the ultimate beneficiaries of that assistance. Therefore, their price support activities are subject to the prohibitions of the Federal anti-discrimination laws. The individual tobacco farmer, himself, however, is not currently considered to be covered by those laws, because it is he who is considered to be the ultimate beneficiary of the Federal financial assistance.

Under the proposed bill, however, I believe such a tobacco farmer might be subject to the anti-discrimination laws. Under section (A) of the proposed bill's definition of a recipient, the producer association would almost certainly be a recipient. It is certainly a "private" ... "organization" ... "to which Federal financial assistance is extended." And under section (B), because the farmer would seem to be a transferee of the cooperative or association, he might also be a recipient. It certainly would not be an unreasonable interpretation to say he was a recipient.

Now, Mr. Chairman, let us consider some of the people and business organizations -- dare we call them "entities"? -- the farmer does business with.

Let us return to our farmer who received a Farmers Home Administration loan, and let us suppose he puts half of the money in a bank, and spends the other half on fertilizer and a tractor. It is not at all clear that the bank, the seller of the fertilizer, and the seller of the tractor are not covered by the definition of recipient contained in the proposed bill. I believe the bank and the farmer's input suppliers could be covered by this bill if Grove City College is meant to be covered by the bill's definition. The only Federal funds ~~or and I prefer to call them taxpayers' dollars, Mr. Chairman -- the only Federal taxpayers' dollars~~ Grove City College received, it received from students who had obtained grants from the Federal Government. If those funds retain the characteristic of being Federal assistance even after they leave the students' hands, why won't the funds lent to a farmer retain that same Federal assistance characteristic when the farmer pays them to the tractor salesman, or when he stores them in the bank? If those funds remain assistance, then those funds are "Federal financial assistance" that is being "extended" to a "private organization" (the banker or tractor seller) "through" "a person" (the farmer), and the banker and tractor seller become recipients.

Mr. Chairman, let me hasten to add that I assume the sponsors of this bill intend that the colleges to which the students pay over their grants will be covered by the laws that this bill would amend. But we have a paradox here. What I don't understand is how these laws, if they are amended by S. 2568, will cover colleges but not a farmer's bank or the stores where he buys his fertilizer or tractor.

Finally, Mr. Chairman, let me say that if the American farmer and the people he does business with -- his banker, his input suppliers, his implement dealers -- are meant to be covered by the Federal anti-discrimination laws by reason of this amendment to them, I believe the enforcement effort the Department of Agriculture would have to mount would be staggering. I have no idea how it would be performed, and I am not prepared to discuss it here this morning. I would say only that if the Department is to take on an obligation of that magnitude, policing every farmer and every person he does business with, Congress should ask it to do so in a more explicit manner than is contained in this proposed bill.

In concluding, Mr. Chairman, I should like to note that despite extensive debate on the floors of the House and Senate over the meaning of certain portions of Title IX, including specifically the program and activity language, there remains today -- even after the Supreme Court's

decision in Grove City -- disagreement on what it was that Congress intended by that language. Clearly some of the language in S. 2568 is also ambiguous. Under the circumstances, it would seem wise to take enough time fully to consider the language and implications of such a sweeping proposal, and to take the care to craft such a proposal with sufficient precision that another generation of lawyers and their clients will not have to guess at its meaning. ~~If the Grove City decision had revealed the existence of widespread and hitherto undetected discrimination, there might be some urgency to pass S. 2568. The facts are, however, that there was not the slightest hint of any failure on the part of Grove City College to comply with any anti-discrimination law. The Grove City case had nothing whatever to do with discrimination past or present. I believe, therefore, that in respect to this legislation, this deliberative body has, and should take, the time to deliberate carefully.~~

Mr. Chairman, I would be happy to try to answer any questions you may have.