THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Cabinet Council on Legal Policy: Status of the Administration's Immigration Reform Legislation

The status of the Administration's immigration reform legislation has been placed on the agenda of the Cabinet Council on Legal Policy meeting scheduled for 2:00 p.m. today. The Deputy Attorney General has prepared a memorandum for the members of the Cabinet Council, reviewing the background and current status of the Simpson-Mazzoli bill, and outlining the major unresolved differences between the Senate and House versions. The legislation has passed the Senate, and the House version has been favorably reported out of the House Judiciary Committee. Three other House committees have reviewed the bill and recommended substantive amendments. The House Rules Committee must now establish a procedure for floor consideration. Speaker O'Neill, in a volte-face, has promised to bring the bill to the floor in early 1984.

The two principal differences between the Senate and House versions are money and timing of legalization. The Senate bill would establish a block grant program to aid the States in meeting the welfare costs of legalized aliens. The Administration has committed to fund this program at $1.4 billion for five years. The House bill authorizes full Federal reimbursement to the States of the cost of legalization, at an OMB-estimated cost of $11.2 billion for five years.

With respect to the related issue of timing of legalization, the Senate bill provides permanent resident status for illegal aliens who continually resided in the United States since before 1977, and temporary resident status for aliens who arrived before 1980. Ineligibility for federal benefits would extend for three years after permanent resident status, six years after temporary resident status. The House bill would provide permanent resident status to any alien who arrived in the United States before 1982. Schmults's memorandum reviews the other, less significant differences between the Senate and House bills, primarily in the details of the temporary worker program and the administration of employer sanctions. The memorandum

concludes on an optimistic note, contending that the strength of the Senate vote on the Administration-favored version (76-18) augurs well for resolving many of the differences between the Senate and House bills in the Administration's favor in conference.

David Stockman has sumbitted a memorandum of his own, raising serious budgetary and policy concerns about both the Senate and House bills. His main concern is the multi-billion dollar cost of either version. Stockman argues that the conference outcome is likely to be an "unacceptable" $11.7 billion for 1984-89, and that unless the Administration acts forcefully before the bill is scheduled for House action, it will be "too expensive."

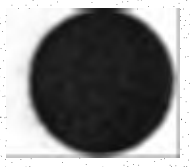
Stockman's language strikes me as irresponsibly loose, in light of the circumstances surrounding the fate of the Simpson-Mazzoli bill. Speaker O'Neill torpedoed the bill last year because of an alleged plan by the President to veto it, and only agreed to floor consideration this year after assurances that his fears were absurd. Now Stockman circulates a memorandum on the bill laced with words such as "unacceptable" and "too expensive." Perhaps it would be wise to admonish the Cabinet Council participants to be particularly circumspect concerning the confidentiality of the memorandum, if that will do any good. Obviously the Administration should work to eliminate the expensive House amendments, but the President is committed, as a practical matter, to signing anything that reaches his desk and looks remotely like Simpson-Mazzoli.

Attachment

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1



Name of Correspondent: Edward C. Schmults

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Cabinet Council on Legal Policy: Status of the Administration's Immigration Reform Legislation

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CWHOL		ORIGINATOR	84,01,13			/ /
		Referral Note:				
CWHOL		8	84/01/13			584/01/16 10:00 am
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ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
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5/81

THE WHITE HOUSE
WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 1/13/84 Number: 168885CA Due By: _____

Subject: Cabinet Council on Legal Policy - Monday, January 16, 1984
2:00 P.M. - Roosevelt Room

	Action	FYI
ALL CABINET MEMBERS	☐	☐
Vice President	☑	☐
State	☑	☐
Treasury	☑	☐
Defense	☐	☑
Attorney General	☑	☐
Interior	☑	☐
Agriculture	☐	☑
Commerce	☑	☐
Labor	☑	☐
HHS	☑	☐
HUD	☑	☐
Transportation	☑	☐
Energy	☐	☑
Education	☐	☑
Counsellor	☑	☐
OMB	☑	☐
CIA	☐	☑
UN	☐	☑
USTR	☐	☑
GSA	☐	☐
EPA	☐	☐
OPM	☐	☐
VA	☐	☐
SBA	☐	☐

	Action	FYI
CEA	☐	☑
CEQ	☐	☐
OSTP	☐	☐
ACUS	☑	☐
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Baker	☑	☐
Deaver	☐	☐
Darman *(For WH Staffing)*	☑	☐
Jenkins	☐	☑
Mc Farlane	☐	☑
Svahn	☑	☐
Fielding	☑	☐
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CCCT/Gunn	☐	☐
CCEA/Porter	☐	☐
CCFA/	☐	☐
CCHR/Simmons	☐	☐
CCLP/Uhlmann	☑	☐
CCMA/Bledsoe	☐	☐
CCNRE/	☐	☐

REMARKS: The Cabinet Council on Legal Policy will meet on Monday, January 16, 1984 at 2:00 p.m. in the Roosevelt Room.

The agenda will include the following items:

- Legal Equity for Women - BAB
- Immigration Policy - JGR
- Crime Legislation - "
- Bankruptcy Judges - SME

The briefing papers are attached.

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☐ Katherine Anderson
☑ Tom Gibson
Associate Director
Office of Cabinet Affairs

☐ Don Clarey
☐ Larry Herbolsheimer

THE WHITE HOUSE
WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 1/13/84 Number: 168885CA Due By: _____

Subject: Cabinet Council on Legal Policy - Monday, January 16, 1984

2:00 p.m. - Roosevelt Room

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State	☑	☐
Treasury	☑	☐
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Attorney General	☑	☐
Interior	☑	☐
Agriculture	☐	☑
Commerce	☑	☐
Labor	☑	☐
HHS	☑	☐
HUD	☑	☐
Transportation	☑	☐
Energy	☐	☑
Education	☐	☑
Counsellor	☑	☐
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OPM	☐	☐
VA	☐	☐
SBA	☐	☐

	Action	FYI
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Baker	☑	☐
Deaver	☐	☐
Clark	☐	☑
Darman *(For WH Staffing)*	☑	☐
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CCHR/Simmons	☐	☐
CCLP/Uhlmann	☑	☐
CCMA/Bledsoe	☐	☐
CCNRE/	☐	☐

REMARKS:

Attached is an additional paper for the CCLP meeting which is scheduled for Monday, January 16, 1984.

The agenda was sent to you earlier today with the background papers.

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs

☐ Katherine Anderson
☑ Tom Gibson
Associate Director

☐ Don Clarey
☐ Larry Herbolsheimer

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

JAN 13 1984

MEMORANDUM FOR: CABINET COUNCIL ON LEGAL POLICY

FROM: DAVID A. STOCKMAN

SUBJECT: OMB's Concerns with the Immigration Legislation

The purpose of this memorandum is to express OMB's budgetary and policy concerns with the immigration legislation and to urge the Administration to determine the budget magnitude and policy compromises it is willing to support in preparation for devising a legislative strategy to effect passage of a bill the Administration can accept.

Budget Concerns

- Both the House and Senate bills have serious budget implications for 1984-89: $13.3 billion in H.R. 1510 and $10.1 billion in S. 529.

- Despite repeated expressions of Administration concern, the budgetary impact of the legislation has not been addressed, especially in the House bill.

  -- The Senate ignored the Administration's request to limit the block grant to $1.4 billion over four years. The block grant remains uncapped.

  -- The House Judiciary Committee defeated amendments to control costs by limiting Federal reimbursements as well as the population of legalized aliens.

  -- Representative Lungren, intended block grant sponsor on the House Floor, has indicated the lack of support for a block grant. He is considering more expensive amendments.

  -- Given the costs of the current House and Senate bills, the conference outcome (if it splits the difference) is likely to be an unacceptable $11.7 billion for 1984-89 without forceful intervention by the Administration.

Policy Concerns

- Both bills create a large new entitlement group of legalized aliens contrary to Administration efforts to control entitlement spending.

- Reimbursement authority in the House bill has no cost control. States determine costs and the Federal Government pays. For example, the Federal Government would pay the full cost of educating legalized aliens.

- The uncapped block grant in the Senate still creates serious budget exposure. States will argue that immigration is a Federal problem and press for the Federal Government to pay all costs.

- The House bill also significantly weakens enforcement:

  -- Verification of employment eligibility is voluntary until the first violation, thereby giving employers an affirmative defense against sanctions.

  -- Employers of casual labor (i.e., agriculture and construction) are not required to check worker ID for 24 hours. This provision eliminates any fear of penalty and effectively exempts day labor from employer sanctions.

  -- There would be no penalty assessed for an employer's first violation.

  -- Employers of illegals would be exempted from employer sanctions for three years by participating in the transition worker program.

Unless the Administration reasserts its budget and policy concerns before the bill is scheduled for House action, the Administration will be faced with a conference bill that is too expensive and contains significant enforcement loopholes. Senator Simpson's offer to take the post-conference bill to the President for concurrence puts pressure on the President to take responsibility for the outcome of the bill. Given these factors, the Administration needs to determine the dollar magnitude and policy compromises it is willing to accept and to follow that determination with an appropriate legislative strategy.

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

January 13, 1984

MEMORANDUM FOR: Members of the Cabinet Council on Legal Policy

FROM: Edward C. Schmults
Deputy Attorney General

SUBJECT: Status of the Administration's Immigration Reform Legislation

This memorandum sets forth the current status of immigration reform legislation in the 98th Congress.

I. Historical Overview

Following receipt of the Final Report of the Select Commission on Immigration and Refugee Policy in March of 1981, the President established a Cabinet Task Force, chaired by the Attorney General, to study the Commission's recommendations for comprehensive immigration reform. Based on that review the Administration submitted a legislative package of immigration reform proposals to the Congress in October of 1981 which embodied the most important recommendations of the Select Commission.

The principal provisions of the Administration bill were (1) penalties on employers who knowingly hire illegal aliens, (2) legal status for illegal aliens who were in the U.S. before January 1, 1980, (3) an expanded temporary foreign worker program where domestic workers are unavailable, (4) reform of our procedures to return persons who enter the U.S. illegally, (5) expanded legal authorities to deal with mass arrivals of undocumented aliens, and (6) increased legal immigrant admissions for Canada and Mexico.

After extensive hearings on the Administration bill, Senator Simpson and Congressman Mazzoli, the Chairmen of the Senate and House Immigration Subcommittees, respectively, in March of 1982 introduced their own immigration reform legislation which incorporated most of the Administration's proposals. The most significant exception to that incorporation was the deletion of the Administration's mass immigration emergency plan. At the Cabinet Council meeting on April 16, 1982, it was decided that the Simpson-Mazzoli bill would become the Administration's vehicle for immigration reform.

Thereafter, on August 17, 1982, the U.S. Senate passed a substantially unchanged Simpson-Mazzoli bill on an overwhelming, bipartisan vote of 80-19. The following month the House Committee on the Judiciary reported its amended version of the legislation to the House floor where it became stalled during the post-election "lame duck" session.

II. Current Status

On February 17, 1983, Senator Simpson introduced the Immigration Reform and Control Act of 1983, S. 529, an identical bill to the legislation which passed the Senate in the 97th Congress. On the same date Congressman Mazzoli introduced H.R. 1510, identical in all major respects to the reform legislation previously reported by the House Committee on the Judiciary.

Expedited hearing and mark-up schedules were established by the relevant Senate and House Committees. During the week of April 4, 1983, both the Senate and House Immigration Subcommittees completed mark-up on their respective bills. The Senate bill was reported to full Committee unanimously, and House Subcommittee passage was by a 7-1 vote.

Thereafter, on April 19th, the Senate Committee on the Judiciary reported S. 529 to the full Senate on a 13-4 vote and on May 18th that body passed the legislation on a gratifying 76-18 vote.

Obtaining House action on its version of the legislation, H.R. 1510, has been significantly more complex. On May 5th the House Judiciary Committee favorably reported the bill on a 20-9 vote. However, four other House Committees then requested sequential referral to consider those portions of the legislation under their jurisdiction. The referral period expired June 27th, at which time three of the Committees -- Agriculture, Education and Labor, and Energy and Commerce -- reported out fairly substantive amendments. The Ways and Means Committee elected not to invoke its referral jurisdiction.

Currently we are awaiting House Rules Committee action on establishing a procedure for floor consideration of H.R. 1510. Although Rules Committee Chairman Pepper has yet to schedule the matter, an effort will be made to ensure that his Committee acts before the Lincoln/Washington Congressional recess from February 10th to February 21st. This would be consistent with Speaker O'Neill's recent press statements that the immigration reform bill would be brought to the floor of the House early in 1984.

III. Significant Remaining Issues

The immigration reform issues which remain problematic principally reflect the differences between the Senate and House

bills, and between the House Judiciary Committee bill (on which the Administration has focused) and the amendments proposed by the sequential referral committees. The committees' proposals are discussed below to the extent they are relevant.

1. One of the most significant of the issues separating the Senate and House bills is the appropriate mechanism for assisting state and local governments with the costs which arise as the newly legalized residents gain access to welfare programs. The Senate bill takes the strongly preferred approach of establishing a block grant/impact aid program which the Administration has committed to fund at $1.4 billion for five years. The House bill authorizes the Federal government to reimburse 100% of all state and local welfare programs for legalized aliens, including educational expenses. OMB has estimated that the five-year cost of this approach would be $8.2 billion for welfare expenditures and $3 billion for educational program support.

2. A corollary issue is whether to advance the legalization eligibility date to adjust the status of a larger portion of the illegal alien population and in light of the fact the immigration reform effort is one year older. The Senate bill maintains last year's Administration-supported "Grassley compromise," which provides permanent resident status for eligible aliens who continuously resided in the United States since before January 1, 1977, and temporary resident status for such aliens who arrived here before 1980 with adjustment to permanent status after three years. Ineligibility for federal benefits would extend for three years from the time permanent resident status was obtained. The House bill utilizes a "one tier" approach, providing permanent resident status to eligible aliens who have resided in the U.S. since before January 1, 1982.

To date we have consistently opposed advancing the eligibility date both on equity grounds and from the point of view of limiting federal outlays. Our argument has been that legalization is not intended to give legal status to all illegal aliens, but only to those who have demonstrated a commitment to this country by long-term, continuous residence as contributing, self-sufficient members of their communities. Any other standard would be unfair to our legal residents and to <u>legal</u> immigrants waiting patiently in line, often for years, to obtain immigrant visas. Every effort will be made to obtain ultimately the legalization program outlined in the Senate bill.

3. Another contentious issue is the appropriate mechanism for assisting agricultural employers who have become dependent on an illegal migratory workforce. Both the Senate and House bills provide for a statutory and streamlined "H-2" (non-immigrant, temporary worker) program for agricultural workers similar to a regulatory program already in existence. Both bills also contain a supplementary program permitting agricultural employers to hire "undocumented" workers, subject to numerical limitations established by the Attorney General, for a three-year "transition"

period. The Administration position has been to support the streamlined H-2 program pursuant to an April 16, 1982, Cabinet Council meeting and to support the transition worker program. This latter decision was ratified at a May 10, 1983, White House meeting on the status of the immigration reform effort.

4. More recently, agricultural interests have initiated a strong lobbying campaign to obtain Administration support for yet another program to mitigate the effects of employer sanctions. Specifically, they urge that we support the Panetta amendment proposed by the Agriculture Committee to establish a "guest worker" program for growers of perishable commodities. The premise is that a more flexible program than H-2 is necessary because of the uncertainty of harvest schedules for certain fragile crops. The question arises, however, whether such an additional program would "unbalance" the reform legislation in agriculture's favor.

5. The Education and Labor Committee has proposed a substantive amendment to H.R. 1510, also relating to the ongoing tension between Labor and Agricultural interests on the appropriate criteria for the admission of temporary workers to the U.S. The Miller amendment adopted by the Committee would, in general terms, eliminate some of the "streamlining" in the proposed statutory H-2 program while at the same time establishing a "commission" to resolve some of the most divisive issues separating Labor and Agriculture. The Committee also adopted a Hawkins amendment modifying employer sanctions by creating a special counsel within the U.S. Immigration Board to bring actions against employers who knowingly hire illegal aliens (instead of INS District Directors bringing those actions) and against employers who discriminate against legal residents under the guise of complying with employer sanctions. This last provision is in response to the assertion by some Hispanic groups that employer sanctions will be discriminatory because employers will avoid hiring those with certain linguistic or physical characteristics. The Administration has taken the position that increased discrimination is not anticipated (indeed there may be less discrimination when employers are no longer permitted to hire "malleable" illegal workers in preference to legal residents) and that the legislation contains extensive reporting requirements to ensure that increased discrimination does not result. It is also notable that the legislation mandates a uniform employment eligibility verification procedure for all new hires specifically designed to eliminate any incentive for an employer to discriminate. Finally, a legal remedy is already available for discriminatory employment practices under Title VII of the Civil Rights Act of 1964.

6. Two other important, though less problematic, differences between the Senate and House bills should be mentioned. The first is the changes in our current system for legal immigration contained in the Senate bill, principally the "overall cap" of 425,000 on legal immigration including immediate relatives. The

House bill, at the insistence of Chairman Rodino, specifically rejects changes in our current preference system. The Administration has likewise argued that changes in our legal immigration system should be deferred until after we have addressed the more urgent problem of uncontrolled illegal migration. Indications are that our view will prevail in conference and significant other portions of the Senate bill may well be obtained in exchange.

7. The second "second tier" issue concerns the Senate and House treatment of our current overburdened adjudication and asylum system. The Senate bill provides for more streamlined procedures which promise some finality in judgments while the House procedures are in several particulars even more cumbersome than current law. Attempts will be made to narrow the gap by amending the House bill and to have our preference for the Senate procedures prevail in conference..

IV. Prospects

Despite the apparent multitude of issues remaining to be resolved, prospects for final enactment of immigration reform legislation are good. As previously indicated, Speaker O'Neill has publicly stated his intention to bring the House bill to the floor and, significantly, he predicts it will pass. National editorial support for immigration reform continues to be overwhelming, and the public opinion polls, without exception, indicate strong support for each of the major elements of the legislation. As to the final Congressional product, the 76-18 vote on the Senate bill, which reflects the Administration's position, augurs well for our success in the conference committee which will resolve the differences between the House and Senate versions.

THE WHITE HOUSE

WASHINGTON

February 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Cabinet Council on Legal Policy With The President: (1) Task Force on Legal Equity for Women (2) Victims of Crime Legislation (3) Interim Report by the Task Force on Family Violence

We have received the briefing papers for tomorrow's meeting of the Cabinet Council on Legal Policy (CCLP). Three topics are on the agenda: (1) a report concerning the activities of the Task Force on Legal Equity for Women, (2) a decision on whether to support Justice's proposed victims of crime legislation, and (3) an interim report from the Attorney General's Task Force on Family Violence.

1. Task Force on Legal Equity for Women. The Attorney General has submitted a memorandum for the President on this topic, reviewing the formation of the Task Force in 1981 and the various reports it has submitted through the CCLP since that time. The memorandum notes that the Fourth Quarterly Report was submitted last December, containing reports from 26 agencies concerning reviews of sex bias in regulations, policies, and practices. The Fifth Quarterly Report, currently in utero, will contain such progress reports from 15 agencies.

The Attorney General recommends three steps be taken to expedite and promote the work of the Task Force. First, he urges that the Administration move actively to obtain passage of S. 501, the bill designed to correct the gender specific language in the U.S. Code identified in previous quarterly reports filed by the Task Force. Second, he recommends that the President direct agencies to complete their internal review of sex bias by April 1, to expedite preparation of the next quarterly report. Third, the Attorney General asks the President to direct the Task Force to take an active role in correcting sex bias identified by the agencies as soon as possible.

I have no objection to any of these recommendations. The Administration is already on record as supporting S. 501, and the other recommendations simply promote the work of the Task Force.

2. Victims of Crime Legislation. A memorandum from John Svahn to the members of the CCLP outlines the dispute between Justice and OMB on proposed legislation to aid victims of crime. Justice's bill, awaiting OMB clearance, would create a Crime Victim's Assistance Fund. Money would flow into the fund from: (1) new fees assessed against every federal convict ($25 for misdemeanant, $50 for felon), (2) all criminal fines from federal convicts, (3) a percentage of the salaries paid to federal inmates, (4) a percentage of any payments to parolees, (5) all proceeds from literary rights sold by a criminal arising from his criminal act, (6) public contributions, (7) funds from other Federal agencies. Of money available in the Fund, 50 percent would go to reimburse states that reimburse victims, 30 percent to states for nonfinancial assistance to victims, and 20 percent for federal nonfinancial assistance to victims.

Justice argues that the bill is consistent with the Administration commitment to help victims of crime. It is fiscally responsible, since no new appropriation is requested, and funds would only be disbursed to the extent available. Reimbursing the states avoids excessive federal intrusion into a matter primarily of state concern. Most states that have victim relief provisions do not distinguish between victims of state and federal crime, so some federal support for such programs is appropriate.

OMB objects to the bill largely on the ground that, in the hands of Congress, it will become an item of ever-increasing appropriations. The Justice scheme will fund compensation only for a minute percentage of victims, resulting in pressure for appropriated funds to supplement the Fund.

I do not have strong feelings either way. There is merit to the Justice contention that some federal reimbursement is appropriate, since current state victim relief systems benefit victims of federal as well as state crime. The approach of a "users' fee" on federal criminals also has a certain appeal, although the small, flat fee for felons is a little disconcerting (Murder? That'll be $50).

3. Interim Report of the Task Force on Family Violence. Lois Herrington will deliver an interim report on the work of this task force, established by the Attorney General on September 19, 1983. The Task Force, chaired by Detroit Chief of Police William Hart, has had several meetings. There are no briefing papers on this topic.

THE WHITE HOUSE
WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 2/13/84 Number: 168909CA Due By: _____

Subject: Cabinet Council on Legal Policy with the President

Tuesday, February 14, 1984 - 2:00 p.m.

	Action	FYI
ALL CABINET MEMBERS	☐	☐
Vice President	☑	☐
State	☑	☐
Treasury	☑	☐
Defense	☐	☑
Attorney General	☑	☐
Interior	☑	☐
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HUD	☑	☐
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Counsellor	☑	☐
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CCFA/	☐	☐
CCHR/Simmons	☐	☐
CCLP/Uhlmann	☑	☐
CCMA/Bledsoe	☐	☐
CCNRE/	☐	☐

REMARKS: The Cabinet Council on Legal Policy will meet with the President on Tuesday, February 14, 1984 at 2:00 p.m. in the Cabinet Room.

The agenda items are:
1) Task Force on Legal Equity for Women
2) Victims of Crime Legislation
3) Interim Report by the Task Force on Family Violence

Papers are attached for items 1 and 2. There will be no paper on Family Violence.

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☐ Katherine Anderson
☑ Tom Gibson
Associate Director

☐ Don Clarey
☐ Larry Herbolsheimer

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

February 10, 1984

DECISION MEMORANDUM FOR: The President

FROM: William French Smith
Attorney General

SUBJECT: CCLP Meeting -- Task Force on Legal Equity for Women

Executive Order 12336 put in place a mechanism for identifying and eliminating federal laws and practices discriminating against women. After reviewing the substantial progress that has been made to this end, the Cabinet Council on Legal Policy has concluded that the initiatives under this executive order should be further expedited, and makes three specific recommendations to accomplish this.

I. Executive Order 12336

Executive Order 12336 of December 21, 1981, established the Task Force on Legal Equity for Women "to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities." (See Tab 1.) Section One of the Order provides that the President shall appoint the Task Force members from among nominees of the heads of 21 specified executive agencies, each of which is to have one representative on the Task Force.

Section Two of the Order provides that each Task Force member is responsible for coordinating and facilitating in his or her respective agency, under the direction of the head of the agency, the implementation of changes ordered by the President in sex-discriminatory federal regulations, policies, and practices. The Task Force is charged with making "periodic reports" to the President on the progress made in implementing the President's directives.

In addition, Section Two of the Order directs the Attorney General to complete a review of federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or effectively discriminates, on the basis of sex. The Attorney General is directed to report his findings to

the President on a quarterly basis through the Cabinet Council on Human Resources (this function was subsequently transferred to the CCLP).

II. Attorney General Quarterly Reports

I assigned to the Department's Civil Rights Division the task of coordinating the review of sex-discriminatory laws and regulations mandated by Executive Order 12336 and preparing progress reports for transmittal to the White House via the CCLP. The review effort was designed to proceed essentially in two phases: first, the Justice Department was to conduct a review of sex bias in federal statutes, and, second, individual agencies were to undertake a review of sex bias in regulations, policies, and practices under their respective jurisdictions. The first phase is essentially completed and the results embodied in pending legislation; the second phase is proceeding as scheduled and due to be completed this spring.

The Justice Department transmitted the First Quarterly Report to the CCLP on June 28, 1982. This report contained: (1) a list of federal statutes reflecting sex bias (based upon a 1976 computer search performed by President Carter's Task Force on Sex Discrimination); (2) a discussion of selected women's issues; and (3) a summary of efforts made by federal agencies to correct discrimination in laws and regulations.

The Second Quarterly Report, transmitted on December 3, 1982, announced that the Department had authorized an updated computer-assisted search of the U.S. Code and Code of Federal Regulations and was in the process of coordinating new agency review efforts. These tasks were reported to be "well underway."

The Third Quarterly Report was transmitted to the CCLP in July 1983. This was the final report on federal statutes containing distinctions based on sex, and was the product of the most comprehensive computer-assisted review of the U.S. Code ever undertaken to identify gender-based distinctions. The report also summarized the initial progress made by several agencies in reviewing their regulations and policies for sex-based distinctions.

The Fourth Quarterly Report was transmitted to the White House in December 1983. This report was a lengthy compilation of reports from 26 agencies summarizing their surveys of regulations, policies, practices, field instruments, and publications under their respective jurisdictions. The introduction to the Fourth Quarterly Report, and brief summaries of the individual agency reports (prepared by the Justice Department), are attached at Tab 2. Several agencies reported that they had taken steps to implement their findings through elimination of sex-discriminatory language in agency documents, and several reported adoption of policy statements to ensure that documents drafted in the future will be sex-neutral.

The Justice Department is in the process of preparing the Fifth Quarterly Report, which will contain progress reports on 15 agencies. Of particular interest are the reports from the Internal Revenue Service and the Department of Health and Human Services, which identify sex bias in actuarial tables used by these agencies to compute tax liability and qualification for certain welfare programs, respectively. The reports also describe steps being taken to convert to gender-neutral tables.

As of the Fifth Quarterly Report, 27 of the 42 agencies involved in the review process will have completed their reviews. The Civil Rights Division has asked the remaining 15 agencies to complete their reviews by mid-April, and currently projects that the review procedure mandated by Section Two of Executive Order 12336 will be completed with the issuance of a final Quarterly Report by mid-May.

III. Recommendations

A. Legislative Initiative

Part of the work produced by the Department's review process has been embodied in Senator Dole's S. 501, a bill to amend the laws of the United States to eliminate gender-based distinctions. The initial version of S. 501 addressed many of the gender-based distinctions identified by the First Quarterly Report, and, in September 1983, the Administration proposed substantial amendments to S. 501 to amend several dozen additional sex-biased statutes identified by the Third Quarterly Report. The Senate Judiciary Committee voted unanimously on November 10, 1983, to report S. 501 to the Senate floor, and anticipates filing the Committee Report late this month. No action has taken place on any comparable bill before the House.

The Administration should move actively to obtain passage of S. 501 when Congress returns and to initiate action on parallel legislation in the House.

Approve _____ Disapprove _____

B. The Department's Review Process

As indicated above, the review of sex-discriminatory agency regulations and practices mandated by Executive Order 12336 is currently scheduled to be completed by mid-May. We believe, however, that this process can and should be completed more quickly. Thus, the CCLP recommends that the President instruct the agencies participating in the review process to complete their reviews by April 1, so that the Justice Department can issue its final Quarterly Report by mid-April.

Approve _____ Disapprove _____

C. Task Force Activity

When the Justice Department's review of the U.S. Code was completed (with the issuance of the Third Quarterly Report), the CCLP and the Justice Department appropriately took the lead in incorporating the results of the review into S. 501. Now the second part of the review effort -- the survey of agency regulations and practices -- is well on its way to completion. Thus, the CCLP recommends that you instruct the Task Force to take an active role to correct the sex-discriminatory provisions identified as soon as possible.

Approve _____ Disapprove _____

Attachments

Federal Register
Vol. 46, No. 240
Wednesday, December 23, 1981

Presidential Documents

Title 3—

The President

Executive Order 12336 of December 21, 1981

The Task Force on Legal Equity for Women

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force.

(1) Department of State.

(2) Department of The Treasury.

(3) Department of Defense.

(4) Department of Justice.

(5) Department of The Interior.

(6) Department of Agriculture.

(7) Department of Commerce.

(8) Department of Labor.

(9) Department of Health and Human Services.

(10) Department of Housing and Urban Development.

(11) Department of Transportation.

(12) Department of Energy.

(13) Department of Education.

(14) Agency for International Development.

(15) Veterans Administration.

(16) Office of Management and Budget.

(17) International Communication Agency.

(18) Office of Personnel Management.

(19) Environmental Protection Agency.

(20) ACTION.

(21) Small Business Administration.

(c) The President shall designate one of the members to chair the Task Force. Other agencies may be invited to participate in the functions of the Task Force.

Sec. 2. *Functions.* (a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President's directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Human Resources.

Sec. 3. *Administration.* (a) The head of each Executive agency shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

(b) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as is necessary and appropriate.

Sec. 4. *General Provisions.* (a) Section 1-101(h) of Executive Order No. 12250, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.

Ronald Reagan

THE WHITE HOUSE,
December 21, 1981.

Editorial Note: The President's remarks of Dec. 21, 1981, on signing Executive Order 12336, are printed in the Weekly Compilation of Presidential Documents (vol. 17, no. 52).

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The Fourth Quarterly Report of the Attorney General to the President and the Cabinet Council on Legal Policy as Required by Executive Order No. 12336

Prepared by the
Civil Rights Division
U.S. Department of Justice

INTRODUCTION AND HIGHLIGHTS

This is the Fourth Quarterly Report of the Attorney General to the President and the Cabinet Council on Legal Policy as required by Executive Order No. 12336. It contains reports from 26 agencies on their reviews of Federal laws, regulations, policies, practices, field instruments, and publications for sex discrimination. Eight of these reports are updates from reports contained in the Third Quarterly Report. Eighteen are the agency's first and in several instances the agency's final report. Preceeding each report is a status summary that concisely sets forth the sex discrimination issues, if any, that the agency is addressing and the degree of completion of the agency review.

Sex Discrimination Agency Reports and Summaries
Table of Contents

* Reports by these agencies are second and/or third submissions. Some agencies have submitted two reports.

*Small Business Administration

State, Department of

Tennessee Valley Authority

*Transportation, Department of

Treasury, Department of

United States Information Agency

*Veterans Administration

* Reports by these agencies are second and/or third submissions. Some agencies have submitted two reports.

Department of Agriculture

The Department of Agriculture (USDA) administers a wide variety of programs under the authority of numerous Acts of Congress. Programs relate to the growth and cultivation of crops, the raising and slaughtering of livestock and the grading and marketing of certain food products; loans of several kinds, insurance, housing, and assistance for the benefit of those engaged in agricultural activities or who reside in rural areas; energy and utility delivery and environmental protection; and research into these many areas.

USDA has submitted individual agency reports for inclusion in the Fourth Quarterly Report. The thoroughness of the reviews vary. Most of the agencies will be asked for additional information or to conduct more comprehensive reviews aimed at identifying substantive sex bias.

The Food and Nutrition Service (FNS) reports that it has reviewed its statutes and regulations and that none contain substantive or terminological references. FNS has been asked to reconsider its review because one statute listed as gender free contains substantive distinctions on the basis of sex. The statute, 42 U.S.C. §1773 is listed in the Third Quarterly Report: Section One.

The Rural Electrification Administration (REA) report only responds to references in the 1978 Interim Report to the President. REA reports that in 1981 one publication was revised to remove

discriminatory photographs. No mention is made of changes to other publications or efforts to remove sex discriminatory language from publications. REA has not reported that it has reviewed its statutes, regulations, policies, practices, and field instruments. The agency will be asked to do so.

The Farmers Home Administration (FmHA) submitted a two paragraph report that states that the agency completed the comprehensive rewrite of regulations and forms it had agreed to in 1979. Because of the extensive substantive sex bias in earlier FmHA regulations, internal issuances, and forms, it is important that FmHA take the time necessary to list each document, the reviewer, the review completion date, and the product of the review. This is necessary to ensure that all documents are free of sex bias. FmHA to our knowledge has never reviewed its state supplements which in earlier reports by Justice were noted to contain substantive sex bias. Because these supplements are the working guidelines used by FmHA to process loans it is particularly important that they be reviewed and corrected as necessary.

The National Agriculture Library (NAL) report lists two documents that are not gender free. It appears that NAL probably has reviewed the few documents it has but the report does not indicate what, if any, statutes, regulations, publications, or other agency issuances it has and if they were reviewed.

The Food Safety and Inspection Service (the Service) has had a policy since 1977 that prohibits the use of sex discriminatory language in publications. This policy presumably covers all Service directives. All directives have been reissued since 1977

and the Service reports they are gender free. The Service's report does not indicate if it has any regulations or publications and if they need to be reviewed.

The Forest Service (the Service) report sets forth corrective action taken by the agency to ensure that agency programs are conducted free of sex discrimination. The Service does not report on its review of statutes, regulations, issuances, and publications for sex discrimination.

The Federal Crop Insurance Corporation (FCIC) reports that all FCIC regulations have been reviewed in the last five years for the purpose of correcting sex biased language. FCIC does not state if it has reviewed statutes, internal issuances, and publications for sex discrimination.

The Animal and Plant Health Inspection Service (APHIS) reports that all regulations, internal operation guidelines, internal administrative directives have been reviewed and revised as necessary. APHIS has agreed to forward a copy of the index of administrative directives which is necessary to ensure that APHIS has completed its review.

The Office of Small and Disadvantaged Business Utilization submitted a one sentence report. This agency will be asked for specific additional information.

The Office of Personnel report indicates that no review has been conducted since 1978. This office will be asked to

conduct a review of its regulations, issuances, directives, and publications issued since 1978.

The Office of Finance and Management (OFM) reports that it has reviewed "various documents and issuances." The attached form does not list what documents the agency reviewed. The OFM will be asked to provide this information.

The Office of Administrative Law Judges reports that it "does not issue any regulations, guidelines, programs or policies internally or externally which result or could result in unequal treatment based on sex." It is unclear if this conclusion is based on an actual review or is simply speculation. The agency will be asked to conduct a review if it has not done so.

The Soil Conservation Service (SCS) report does not indicate if regulations, programs, policies, and field instruments were reviewed. In its report SCS only refers to issues raised in the 1978 Report, a general statement regarding efforts to improve stereotyping in publications, and the issuance of a Sexual Harassment Guideline.

The Economic Management Staff report is on behalf of six economic agencies in Agriculture. The report states that no review was conducted of statutes, regulations, or other field instruments. Coordination and Review staff will meet with the agencies to determine what documents, if any, should be reviewed. The report does indicate a heightened awareness of sex discrimination issues and specific actions taken by Agriculture including the revision of a writing guide called Author to Reader

that will include a section on how to write without gender based distinctions.

The Office of Transportation (OT) reports that it issues only publications and reports all of which are technical in nature. OT writers are instructed to draft documents in sex neutral terminology. A review of the index of publications and reports indicates that OT has completed its review.

The Agricultural Stabilization and Conservation Service (ASCS) states that its national directives, handbooks, forms, and regulations have been reviewed and corrected as necessary. The ASCS review appears to be completed although specific information on corrections will be requested.

The Foreign Agricultural Service reports in a chart format that all chapters of title three of the Code of Federal Regulations have been reviewed. However, there is no information on the review findings and the report does not indicate what other documents need to be reviewed.

The Packers and Stockyards Administration (PSA) reports in chart format that all regulations were reviewed and have been corrected as necessary. PSA will be asked to report in more detail on its regulatory review and to report on other documents that should be reviewed.

The Office of Budget and Program Analysis submitted a "negative" report. Coordination and Review staff will meet with this agency to discuss the review. Similarly the Office of Rural Development Policy states that it does not have any programs and

therefore nothing to review. This agency will be contacted by Coordination and Review staff.

The Office of Governmental and Public Affairs reports that it has reviewed its regulations and when it republishes this Fall all gender specific terminology will be corrected.

The Agriculture Cooperative Service (ACS) reports that it has reviewed 100 publications for gender specific words and when reprinted, publications will be revised. ACS will be asked if it has reviewed regulations, programs, and policies for substantive sex bias.

Agency for International Development

The Agency for International Development (AID) administers assistance programs designed to help people in developing countries to develop their human and economic resources, to increase productive capacities, and to improve the quality of human life as well as promote economic and political stability in friendly countries.

AID has completed its review of statutes, regulations, internal policies, guidelines, and procedures. The only sex bias identified relates to personnel and is contained in agency handbooks. AID is presently revising the handbooks and will correct the offending language.

Two Federal statutes administered by AID were listed in the Third Quarterly Report as statutes that contain substantive sex bias. AID has discussed these two statutes, 22 U.S.C. §§2151(k) and 2225, in its report. Both statutes were enacted by Congress to ensure that the concerns and needs of women in the countries served were recognized and factored into the respective programs. Based on AID's report and the legislative intent in enacting both statutes, neither appear to be the type of statute that the Executive Order contemplates for repeal. Both appear to "justifiably differentiate on the basis of sex."

AID has completed its review and no further reports have been requested.

The Civil Aeronautics Board

The Civil Aeronautics Board (CAB) promotes and regulates the civil air transport industry within the United States and between the United States and other nations. The Board grants licenses to provide air transporation services and opposes or disapproves proposed agreements and corporate relationships involving air carriers.

Although CAB reported in the Third Quarterly Report that the Rules and Legislation Division of the Office of General Counsel issued a notice to all Bureaus and Offices to draft gender neutral regulations, the notice was not issued because now the Office of General Counsel drafts all CAB regulations.

The CAB has completed its review.

Department of Commerce

The Department of Commerce (Commerce) encourages, serves and promotes the Nation's economic development and technological advancement. To accomplish this purpose and to promote the national interest by encouraging the competitive free enterprise system, the Department provides a wide variety of programs.

Commerce conducted a comprehensive review of its statutes, regulations, internal issuances, and publications in 1976. Commerce has submitted two reports for inclusion in this report. The first submission points out that two statutes listed as "Uncorrected" and attributed to Commerce in the First Quarterly Report are administered by the Departments of Treasury and Transportation (46 U.S.C. §§331, 601). We noted this correction and the change was made in the Third Quarterly Report. Commerce also reports that the Maritime Administration has been transferred to the Department of Transportation (DOT). Therefore, earlier concerns relating to the Merchant Marine Academy should be directed to DOT.

The second submission includes the results of Commerce's review of its statutes and regulations since 1976 for substantive sex bias. The submission does not list 15 U.S.C. §1052, a statute that contains substantive sex bias although Commerce lists this provision in a memo directing components to conduct the Task Force review. The report in chart form sets forth each category

reviewed, the title of the document, the name of the reviewer, the sex bias identified (to include substantive and terminological), and the recommended action for correcting the change. The report does not indicate if Commerce has conducted an updated review of policies, practices, and publications issued since 1976.

Commerce reported that it had "abolished" maternity leave. Its present policy is consistent with that of other government agencies which permit a combination of annual leave, sick leave, and leave without pay to be used for childbirth and child care.

Department of Education

The Department of Education (ED) has completed its review of statutes, regulations, and issuances for sex bias. ED identified one statute and its implementing regulation as containing substantive sex bias, a provision of the Military Selective Service Act (Pub. L. No. 97252) (1983) which makes male students who fail to register ineligible to receive title IV student financial assistance. Proposed regulations to implement that statute were published January 27, 1983 to be codified at 34 C.F.R. §§668.23-668.27. This statute is not listed in the Third Quarterly Report as a statute containing sex bias because it contains no facially discriminatory language. ED is correct, however, that because the Selective Service law requires only males to register, this amendment then applies only to men.

The regulations reviewed are published at 34 C.F.R. Parts 1-797 and 41 C.F.R. §34. The specific policies, sub-regulatory issuances and publications reviewed are not listed in the report because of space but are available in supporting memoranda.

The remainder of the report addresses specific agency programs and projects aimed to assist women.

Department of Energy

The Department of Energy (DOE) coordinates and administers the energy functions of the Federal government. The Department is responsible for long-term, high-risk research and development of energy technology; the marketing of Federal power; energy conservation; the nuclear weapons program; energy regulatory programs; and a central energy data collection and analysis program.

DOE has completed a thorough review of its statutes, rules, regulations, policies, publications, and acquisition letters. No substantive discrimination on the basis of sex was found although gender specific terminology was identified. The Office of the General Counsel plans to review all future bills, regulations and orders to eliminate gender specific terminology and assure that there is no disproportionate impact on gender.

Farm Credit Administration

The Farm Credit Administration (FCA) is an independent agency that charters, examines and supervises Federal land banks, Federal land bank associations, Federal intermediate credit banks, production credit associations and banks for cooperatives. The Administration has reviewed its enabling statute, regulations, policies, guidelines and practices. The agency identified several instances of gender specific terminology and some substantive sex bias in agency references to wives of board members and bank presidents. Most of the gender specific terminology was found in materials that have not been revised since the adoption of a 1978 policy statement encouraging the use of sex neutral language and balanced visual examples.

Federal Emergency Management Agency

The Federal Emergency Management Agency (FEMA) was created to provide a single point of accountability for all Federal emergency preparedness. The agency is chartered to enhance the multiple use of emergency preparedness and response resources at the Federal, State, and local levels of government in preparing for and responding to emergencies and to integrate into a comprehensive framework, activities concerned with hazard mitigation, preparedness planning relief operations, and recovery assistance.

The FEMA previously reported that it has examined the basic laws and regulations it administers and found no "significant substantial sex discriminatory provisions." Its final report directs that the word 'significant' be deleted because the only possible sex discriminatory provisions are in terminology. It further reports that in addition to section 311 of the Disaster Relief Act (42 U.S.C. 5151) there are four regulatory provisions prohibiting discrimination on the basis of sex. They are:

1. 44 C.F.R. 62.4(b) states that no person shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the National Flood Insurance Program on the basis of sex.
2. 44 C.F.R. 82.10 states that no person shall be excluded from participation in, denied the benefits of, or be

subjected to discrimination under the Federal Crime Insurance Program on the basis of sex.

3. 44 C.F.R. 205.16(b) states that all personnel, carrying out Federal major disaster or emergency assistance functions, shall perform their work in an equitable and impartial manner without discrimination on the grounds of sex.

4. 44 C.F.R. 309.12 states that with respect to federally-assisted construction under the civil defense program, each contractor shall be required to have an affirmative action plan which declares that it does not discriminate on the basis of sex and which specifies goals and target dates to assure implementation of that plan.

The FEMA report is so brief that we have provided a summary, in the proceeding paragraphs, in lieu of the report itself.

General Services Administration

The General Services Administration (GSA) establishes policy and provides for the Federal government an economical and efficient system for the management of its property and records, including construction and operation of buildings; procurement and distribution of supplies; utilization and disposal of property, transportation, traffic, and communication management; stockpiling of strategic materials; and the management of the government-wide automatic data processing resources program.

GSA has concluded its review of regulations, guidelines, policies, and procedures.

GSA reports that its review "included 1,950 regulations, guidelines, policies, and procedures, of these, 110 were found to require some type of revision due to unnecessary gender specific terminology. Of the 110 identified 40 have been revised, 25 are in final draft, the remaining 45 have target dates during the first and second quarter of FY 1984. National Personnel Records Center Publications are routinely reviewed every six months and, as these reviews take place, documents will be reviewed for sex biased language. In addition, compliance with the Executive Order will be kept in mind in the writing of correspondence and future regulations, guidelines, policies, and procedures."

Review reports from various components are attached.

Department of Health and Human Services

The Department of Health and Human Services (HHS) administers the Social Security System and other health and welfare services.

The HHS report is a complete and comprehensive review of its statutes. Many of the statutes listed in the First Quarterly Report, as containing sex bias, have been corrected by the Social Security Amendments of 1983, Pub. L. No. 98-21. The HHS report includes a chart that sets forth each statutory provision contained in the First Quarterly Report, comments explaining the sex bias, and the status of each provision (repealed or corrected by legislative action, invalidated by court action, no change, or prospective legislative action).

Future HHS reports will comment on the status of the agency's review of regulations, programs, policies, field instruments, and publications.

Department of Interior

The Department of Interior (DOI) has responsibility for most of the nationally owned public lands and natural resources and American Indian reservation communities and for people who live in Island Territories under United States administration.

The DOI has reviewed its statutes and provided comments and recommendations concerning those that make distinctions on the basis of sex. The Department has been requested to complete its review of regulations, policies, and procedures and report its findings for future Quarterly Reports.

National Aeronautics and Space Administration

The National Aeronautics and Space Administration (NASA) conducts research for solutions to problems of flight within and outside the Earth's atmosphere and develops, constructs, tests and operates aeronautical and space vehicles; conducts activities required for the exploration of space; arranges for the most effective utilization of the scientific and engineering resources of the United States with other nations engaged in aeronautical and space activities for peaceful purposes; and provides for the widest practicable and appropriate dissemination of information concerning NASA's activities and their results.

NASA has completed its review of approximately 200 directives and issuances and revised for sex bias as necessary. NASA identified no statute that contains substantive sex bias.

The NASA report is so brief that we have provided a summary, in the proceeding paragraphs, in lieu of one report itself.

National Endowment for the Arts

The National Endowment for the Arts (NEA) encourages and supports progress in the arts. NEA awards grants to individuals, state and regional arts agencies, and non-profit organizations representing the highest quality in the various fields of the arts.

NEA has reviewed its statutes, regulations, program guidelines, administrative directives, handbooks, and a few additional issuances. No substantive sex bias was identified. NEA has included in its report a list of sex based terminological provisions.

National Endowment for the Humanities

The National Endowment for the Humanities (NEH), created by an act of Congress in 1965, was established to carry out two fundamental objectives:

1. to aid in the investigation of the key questions in the humanities and in the dissemination of the results of this effort through more effective teaching and publication; and
2. to foster throughout the Nation an awareness of the importance and value of the humanities for contemporary American life.

NEH's report does not indicate that its statutes were reviewed. The report states that it has received the Justice computer printout of its regulations that contain sex specific language. The agency states it will correct laws, regulations, etc. as republished. It is unclear if NEH has reviewed the printout and what corrective action is recommended. The remainder of the report addresses NEH programs, including composition of NEH panels and civil rights enforcement efforts.

Nuclear Regulatory Commission

The Nuclear Regulatory Commission (NRC) licenses and regulates the possession and use of nuclear facilities and materials to protect the public health and safety and the environment. It does this by licensing persons and companies to build and operate nuclear reactors and to own and use nuclear materials. NRC makes rules and sets standards for these types of licenses. It also inspects the activities of the persons and companies licensed to ensure that they do not violate the safety rules of the Commission.

NRC completed in 1978 a comprehensive review of its statutes, regulations, programs, and policies for sex bias. A review of statutes enacted since 1978 will be included in NRC's report for the Fifth Quarterly Report. NRC's report references one regulation being revised, 10 C.F.R. Part 20. This regulation is being revised to reflect recommendations of the National Council on Radiation Protection and Measurements and the International Commission on Radiological Protection. The draft provisions are intended to provide a practical means of controlling radiation exposure to an embryo with minimal impact on the employability of women.

NRC has completed its review of statutes, regulations, programs, and policies for sex bias.

Overseas Private Investment Corporation

The Overseas Private Investment Corporation (OPIC) provides political risk insurance and financial services to encourage United States private investment in certain developing nations. OPIC insurance protects investors against the political risks of expropriation; inability to convert local currency into dollars; and damage from war, revolution, insurrection, and certain types of civil strife. All OPIC related projects must contribute to the economic and social development of the host country and must be consistent with the economic interests of the United States. OPIC financial services are designed to assist U.S. lenders and business enterprises in finding and supporting worthwhile projects through investment guaranties, direct loans, and preinvestment surveys.

OPIC has completed its review of statutes, regulations, program brochures, and procurement guides and identified no substantive sex discrimination. A few terminological problems were identified and will be addressed as documents are revised.

Railroad Retirement Board

The Railroad Retirement Board (the Board) provides a governmentally authorized and administered program of retirement and survivors and disability benefits payable to railroad employees and their families.

The Board has reviewed its statutes and regulations for sex based distinctions. One statute making a substantive distinction and several gender specific terminological provisions were identified. The Board has drafted proposed language to cure the substantive sex discrimination.

Small Business Administration

For the Third Quarterly Report the Small Business Administration (SBA) reported on its programs and initiatives for women. This report contains the SBA's analysis of the application of Sections 8a and 8d of the Small Business Act to women.

A systematic review of the SBA's laws, regulations, policies, and procedures has been requested for future quarterly reports.

Department of State

The Department of State (State) advises the President in the formulation and execution of foreign policy. As Chief Executive, the President has overall responsibility for the foreign policy of the United States. State's primary objective in the conduct of foreign relations is to promote the long-range security and well-being of the United States. The Department determines and analyzes the facts relating to American overseas interests, makes recommendations on policy and future action, and takes the necessary steps to carry out established policy. In so doing, the Department engages in continuous consultations with the American public, the Congress, other U.S. departments and agencies, and foreign governments; negotiates treaties and agreements with foreign nations; speaks for the United States in the United Nations and in more than 50 major international organizations in which the United States participates; and represents the United States at more than 800 international conferences annually.

State has submitted an update of its February 1983 submission. Additional reports are anticipated.

State has reviewed its statutes and is considering amending 22 U.S.C. §214 and 22 U.S.C. §1281 to remove the sex bias. However, it does not recommend corrective legislation for 8 U.S.C. §§1153, 1182, and 1253 because it takes the position that these statutes are primarily the concern of the Department of Justice. Further, State recommends against amending the definition of

"refugee" in 8 U.S.C. §1101(a)(42) because it would expand this country's international obligations under the Convention and Protocol Relating to the Status of Refugees. This statute was already omitted in the Third Quarterly Report.

State has listed the regulations it has reviewed and the results of its review. A summary of its to-date review of the Foreign Affairs Manual is also included.

Department of Transportation

The Department of Transportation (DOT) has completed its review of statutes and regulations. It has drafted legislation to eliminate sex based distinctions in several Coast Guard administered statutes that were identified in the First Quarterly Report.

Various policies, practices, and procedures have also been reviewed.

Department of the Treasury

The Department of the Treasury (Treasury) has completed its review of statutes, regulations, and various policies. Treasury identified several regulations that discriminate on the basis of sex as well as the statutes identified in the First Quarterly Report.

The Internal Revenue Service reported separately and identified various statutes and regulations that discriminate on the basis of sex.

United States Information Agency

The United States Information Agency (USIA) promotes awareness and knowledge of United States policies, culture, and values abroad.

USIA has reviewed its programming materials and taken steps to eliminate sex stereotyping and gender bias. It reports on the employment picture for women and describes increased opportunities for them. It is not clear from the report whether a systematic review of statutes and regulations was completed.

Veterans Administration

The Veterans Administration (VA) has submitted two reports for the Fourth Quarterly Report. VA's review has been thorough and systematic with the agency components reviewing the laws, rules, regulations, and policies as well as responding to specific issues.

THE WHITE HOUSE

WASHINGTON

February 13, 1984

MEMORANDUM FOR MEMBERS OF THE CABINET COUNCIL ON LEGAL POLICY

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

SUBJECT: Victims' Compensation Proposal

The Department of Justice (DOJ) presented a proposal to the CCLP in the Fall of 1983, for a new Crime Victims' Assistance Fund.

The President asked DOJ to refine the proposal and bring it up at a future meeting. In the meantime, DOJ has submitted a bill for clearance to the Office of Management and Budget (OMB) which would create such a program. OMB opposes the bill, and Tuesday's CCLP meeting has been scheduled to resolve the issue.

Background

The DOJ bill would create a Crime Victim's Assistance Fund to provide Federal financial assistance to State victim compensation programs and to improve the nonfinancial assistance offered to crime victims by every level of Government and the private sector.

The bill identifies seven sources of funding for the program:

1. A new penalty assessment fee to be collected from every convicted Federal defendant ($25 for misdemeanant, $50 for felon), (generating about $1.6 million annually);

2. All criminal fines collected from convicted Federal defendants, including criminal anti-trust fines, interest and penalty payments, and forfeited appearance bonds, (generating between $50-60 million annually);

3. Up to 25% of all money paid to working Federal inmates (less any restitution paid by the inmate), (generating about $3 million annually);

4. 10% of all money paid to Federal parolees and probationers (unless they are making restitution or have previously contributed to the Fund while working in prison), (no revenue estimate given by DOJ);

5. All proceeds of any contract entered into by any defendant for the sale of literary or other rights arising from his criminal act;

6. Contributions from the public; and

7. Funds transferred by other Federal agencies (no revenue estimates given for sources 5, 6, or 7.)

Our best projections estimate that the Fund will total approximately $5-75 million its first year. This amount of Federal assistance would have a significant impact on victims' compensation and assistance efforts across the nation. Total State victim compensation expenditures nationally are approximately $50 million. Victim assistance providers are chronically short of funds. The Federal contribution to these efforts would, therefore, be neither a token contribution nor an excessive one. There is a potential for Congress to add an appropriation to this bill. Justice does not believe the threat is great. Of the five bills already introduced on this subject by Republicans (Heinz/Grassley, Specter, Fish) and Democrats (Rodino, Russo) only one (Specter) seeks an appropriation. The two liberal Democrats' funding approaches have intentionally been designed to avoid appropriations.

Monies from the Fund would be disbursed in the following manner:

- Fifty percent of the Fund would go to States with victim compensation programs for the purpose of reimbursing them for their payouts under those programs. Certain minimal eligibility requirements would have to be met by each participating State.

- Thirty percent of the Fund would go to the States to help them improve the nonfinancial assistance provided to victims by State and local Governments, and by nonprofit organizations. Again, certain eligibility requirements would apply.

- Twenty percent of the Fund would go to Federal law enforcement agencies to improve the nonfinancial victim assistance offered by the Federal Government. The monies could be used for a variety of purposes.

The Department of Justice Position.

DOJ believes there are several self-imposed, tight limits on expenditure in the bill that will keep Federal financial exposure low. The government's expenditures can never exceed the amount that comes into the Fund. No State would have any entitlement to any money above its share of the amount actually in the Fund at the end of the fiscal year. The bill does not, therefore, create an open-ended matching fund. No more money can ever be disbursed from the Fund than is in it. Neither the Federal Government nor the States would have any obligation to any victim after available existing funds run out.

DOJ feels that this proposal is totally consistent with Administration policy. A goal of the legislation would be to provide limited Federal assistance to the States without unduly interjecting the Federal government into the working relationships now existing between the States, victims service organizations, and victims. State applications for funding are designed to be concise and there are virtually no Federal "strings" imposed on recipients. The States are free to set their own compensation policies and administer their own programs with minimal Federal intrusion.

Currently, States which have compensation programs make no distinction between victims of Federal and State crimes. However, if their compensation programs continue to experience budgetary shortfall, States soon may have no choice but to stop compensating victims of Federal crimes. Without Federal financial assistance to State compensation programs, therefore, Federal crime victims may receive no compensation in some States, or receive compensation in others only when the State elects to prosecute a crime over which there is joint Federal and State jurisdiction. Justice believes that this approach is the least intrusive Federal remedy to the problems now facing victims of crime.

The Act would terminate in 1988 without further Congressional action. No money could be deposited in the Fund or disbursed from it after September 30, 1988.

The Office of Management and Budget position.

OMB's objections to the bill are based largely on the premise that even if an Administration-sponsored bill could be designed to adequately address the concerns about potential budget exposure, once the bill were introduced on the Hill it would be subjected to so many modifications and "Christmas tree" additions that the bill which ultimately emerged from Congress would be totally unrecognizable and unacceptable to the Administration. Therefore, even though DOJ is requesting no appropriation for the Fund, OMB is convinced that Congress would provide money anyway.

Specific OMB objections fall into three categories: Policy, Funding, and Administrative.

Policy Objections

OMB does not believe the Federal Government has a responsibility to compensate the victims of State crime. If the Federal Government starts aiding State programs simply because they are running low on money, there will be no end to the growth of the Federal budget. This is an area where the States have taken the lead in program development. Federal intervention is not warranted.

Further, once the Federal Government begins compensating people who are victimized through a criminal act, the logic for denying compensation for other types of victimization disappears.

Funding Objections

OMB maintains that the cost to the Federal Government, rather than being negligible, could potentially be enormous. Based on the present size of State programs, the DOJ bill would create the need for a Federal Fund of $100 million. The problem is, however, that only a very small fraction of crime victims are presently being compensated.

OMB estimates that if all violent crime victims were compensated, the cost to the Federal Government in direct compensation payments would be almost $9.5 billion, based on current rates of compensation.

This program could easily mushroom into a huge new entitlement program. It would be very attractive politically for Congress to expand the program to cover other types of victimization, such as fraud and other non-violent crime.

Most of the criminal fines which DOJ would use for the Fund are already being deposited into the Treasury. Diverting them to the Fund will increase the deficit by $25 to $62 million.

Based on the States' experience, it is very unlikely that the system of fines and levies proposed by DOJ would generate enough revenue to offset the cost of the program.

OMB points out, finally, that many programs start out small, but once unleashed, grow into huge drains on the Treasury. For example, in 1966, when medicare was initiated, outlays for Health Insurance were projected to be $27 billion by 1990, but are now projected to be $117 billion; a 366 percent cost overrun.

Supplemental Medical Insurance outlays were initially projected to reach $6 billion by 1988, but are now projected to hit $37 billion, a 548 percent cost overrun.

Administrative Costs

No new Federal bureaucracy--replete with guidelines, investigations, and hearing board--is need to administer the program. The Department of Justice's realistic estimate is that only five additional positions are needed to administer the bill. With training, existing personnel could perform virtually all the new functions required by the bill. Any new burdens placed on the Administrative Office of the U.S. Courts would result from already pending legislation and a current GAO study aimed at improving fine collection.

OMB strongly disagrees with DOJ's position that no new bureaucracy would be required to administer the program. The Administrative Office of the U.S. Courts (AOUSC) has stated that just to collect the 10% levy on the income of probationers and parolees income would require a substantial increase in the workload of the Federal Probation System and could prove to be an administrative nightmare.

OPTIONS

(1) Transmit legislation as proposed. ____

(2) Do not transmit legislation. ____

(3) Transmit legislation as modified. ____

(4) No decision at this time. ____