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CABINET AFFAIRS STAFFING MEMORANDUM

Date: September 6, 1983 Number: 073607CA Due By: -
Subject: Review of Administration Efforts on Behalf of Women

	Action	FYI		Action	FYI
ALL CABINET MEMBERS	☐	☐	CEA	☐	☐
Vice President	☐	☐	CEQ	☐	☐
State	☐	☐	OSTP	☐	☐
Treasury	☐	☐		☐	☐
Defense	☐	☐		☐	☐
Attorney General	☐	☐		☐	☐
Interior	☐	☐		☐	☐
Agriculture	☐	☐	Baker	☐	☒
Commerce	☐	☐	→ Deaver	☐	☒
Labor	☐	☐	Clark	☐	☐
HHS	☐	☐	Darman (For WH Staffing)	☒	☐
HUD	☐	☐	Jenkins	☐	☐
Transportation	☐	☐	Svahn	☐	☐
Energy	☐	☐		☐	☐
Education	☐	☐		☐	☐
Counsellor	☐	☒		☐	☐
OMB	☐	☐	<i>Porter</i>	☐	☒
CIA	☐	☐		☐	☐
UN	☐	☐	CCCT/Gunn	☐	☐
USTR	☐	☐	CCEA/Porter	☐	☐
GSA	☐	☐	CCFA/	☐	☐
EFA	☐	☐	CCHR/Carleson	☐	☐
OPM	☐	☐	CCLP/Uhlmann	☐	☐
VA	☐	☐	CCMA/Bledsoe	☐	☐
SBA	☐	☐	CCNRE/	☐	☐

REMARKS:

The attachments contained in this package should be staffed for interagency review and White House staff today in advance of Thursday's CCLP meeting.

It is being forwarded to the President and you for information.

-Thanks.

RETURN TO:

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

☐ Katherine Anderson ☐ Don Clarey
☐ Tom Gibson ☐ Larry Herbolsheimer
Associate Director
Office of Cabinet Affairs

THE WHITE HOUSE
WASHINGTON

September 6, 1983

MEMORANDUM FOR THE PRESIDENT

FROM: CRAIG L. FULLER

SUBJECT: Review of Administration Efforts on
Behalf of Women

During the past several days, the Cabinet departments have been reviewing actions that benefit women. The attached material is a summary of the material submitted as part of this review. The complete documentation from the agencies is, in several cases, being put in final form and will be submitted shortly.

This report provides a comprehensive look at what your Administration is doing on behalf of women. Virtually every department reported some actions taken on behalf of women and in many cases we have documented rather extensive Federal action that specifically assists women.

The first tab listed below contains a full review of the Third Quarterly Report from the Attorney General in accordance with Executive Order 12336. Both the Justice Department and the Office of Management and Budget submitted a written review of the report forwarded in July.

A summary page has been prepared by my office for each of the sections listed below. Following review of the documents, you may wish to select specific items for discussion during your meeting with the Cabinet Council on Legal Policy this Thursday. We are currently planning on having the Attorney General review the material presented in Tab 1.

The following tabs are attached:

Tab A: Legal Equity for Women

Tab B: Pension Reform

Tab C: Social Security and Child Support Enforcement

Tab D: Reforms and Benefits to Women

Tab E: Fifty States Project

Tab F: Benefits to Women: Health Care and Income Security

Tab G: The Administration and Women in the Workforce

Tab H: Women in the Federal Workforce

Tab I: Other Initiatives From Departments and Agencies

I should note that this report has been compiled from material submitted by departments and agencies. It has not yet had White House or interagency review and is therefore subject to some changes. The items that will be discussed during the Cabinet Council meeting will be circulated for comment to agencies and the White House staff today.

LEGAL EQUITY FOR WOMEN

From the outset, it has been this Administration's policy that there are more prudent means of guaranteeing legal equity for women other than passage of the Equal Rights Amendment. This section reviews the efforts of this Administration to pursue legal equity for women by rigorously enforcing existing anti-discrimination statutes, and by weeding language from the U.S. Code that discriminates against women.

Enforcement by the Civil Rights Division

The Department of Justice has filed 18 cases alleging sex discrimination in employment since January 1983 - more than were filed during the Carter administration.

- o Justice has also settled or litigated 6 cases initiated during the previous administration.

- o Consent decrees have resulted in settlement of 7 cases involving hiring and promotion of women in municipal police and fire departments.

- o Two filings under the Equal Credit Opportunity Act, have attacked discrimination in the extension of credit based on sex or marital status. Two other cases are under investigation.

- o Four suits have been filed alleging sex discrimination in the providing of educational opportunities.

- o The Department has on numerous occasions filed amicus briefs in cases before the Supreme Court to affirm :

- Employer liability for back pay for violation of sex discrimination statutes;

- that Title IX reaches and prohibits sex discrimination in employment;

- and that an employer can not deny pregnancy benefits to the spouse of a male worker when other types of disability benefits are extended to spouses.

Executive Order 12336 - To eliminate sex-discriminatory language from the U.S. Code

The Attorney General's Third Quarterly Report on Women's Equity was submitted to the Office of Cabinet Affairs on July 14, 1983, and subsequently referred to The Cabinet Council on Legal Policy and the Office of Management and Budget for review. These are their primary findings:

- o That the federal code had already been substantially cleansed of any significant sex

bias. The Social Security Amendments Act of 1983 and the Economic Recovery Tax Act of 1981 addressed the last of what could be considered substantive sex discriminatory language in the federal code.

- o Contrary to Honeggar's allegation that "no laws have been changed," her own report lists 25 statutes that have been changed to correct sex discrimination. Example: the Administration sponsored Social Security amendments that equalized treatment of widows and widowers; enabled women to receive benefits upon remarriage; and assured fair treatment of divorced spouses.
- o Of the 115 statutes cited in the Third Quarterly Report at least 76 contain distinctions that favor women at the expense of men.
- o The 115 fall into roughly five categories:
 - 1) Special benefits to wives, widows, mothers, etc. Approximately 76 entries. Example: The INS pays only the travel expenses of wives (not spouses) of employees.
 - 2) Special benefits to men - 9 entries. Example: Provision that Southern Utes can be moved to a new reservation only with the consent of a majority of adult male tribal members.
 - 3) Provisions dealing with offenses related to seduction and prostitution - 6 entries.
 - 4) Provisions dealing separately with female military personnel - 12 entries.
 - 5) Provisions that could be changed only with a major shift in this Administration's policy. Examples:
 - o Exclusion of women from combat.
 - o Male-only draft registration.
 - o Affirmative action to promote work opportunities for women.
- o All 42 Federal departments and agencies are conducting a review of their own regulations and policies. The results will be forthcoming in the Fourth report of the Attorney General.

**

MEMORANDUM TO THE MEMBERS OF THE CABINET COUNCIL ON LEGAL POLICY

FROM: William French Smith
Attorney General

In recent months, the Administration has come under attack for an alleged insensitivity to the interests and rights of women. Our critics have charged us with lax enforcement and narrow readings of laws prohibiting sex discrimination; unwillingness to appoint women to significant judicial and executive positions; and failure to follow through on our promises to identify and eliminate gender-based discrimination in federal law.

Although almost any aspect of governmental activity can stand improvement, most of this criticism is unjustified. In terms of the enforcement of the laws against sex discrimination, the Department of Justice's record surpasses that of the prior Administration. Moreover, in several cases before the Supreme Court, we have urged a broad reading of the antidiscrimination laws. President Reagan's record on the appointment of women to important Administration posts compares favorably with that of past Administrations. And this Administration has supported a broad range of initiatives -- legislative, regulatory, and administrative -- to eliminate discrimination against women. It is indeed ironic that so many of our achievements have gone unnoticed, while certain unfortunate press exchanges have been magnified into perceived substantive hostility to women's rights.

Some of our critics have attempted to frame public debate on the issue of sex discrimination solely in terms of the Equal Rights Amendment. By claiming that the ERA is the benchmark against which all other antidiscrimination measures must be tested, the Administration's opponents have charged that our opposition to the ERA represents a fundamental antipathy towards all efforts to eliminate sex discrimination. Unfortunately, many now begin their analysis of the Administration's record with the assumption that we oppose women's rights.

The correction of this misperception will not occur overnight. Nevertheless, giving a full account of what the Administration has accomplished in the area of eliminating discrimination against women is an important first step. I am confident that, once our record becomes known, most Americans

will recognize the sincerity of our efforts and the scope of our achievements.

I. THE ADMINISTRATION RECORD

A. Enforcement Record of the Civil Rights Division

The Department of Justice has achieved an exemplary record of enforcement of federal laws prohibiting sex discrimination. The Department has filed 18 cases alleging sex discrimination in employment since January 21, 1981, exceeding the enforcement record compiled by the last Administration during a comparable period. 1/ The Department has also brought suit to prevent denial of credit based on sex or marital status and discrimination against women in educational opportunities. Finally, the Justice Department has vigorously advocated positions on behalf of women's rights in a number of important cases before the Supreme Court.

1. Employment Discrimination

In the employment area, the Department has moved forcefully against public employers who have discriminated on the basis of sex. The Department has filed 18 new lawsuits, and has settled or litigated to a conclusion six employment cases filed during the last Administration. See Tab ____.

The Department filed suit alleging that state police departments in Rhode Island, New Hampshire, Vermont, Massachusetts, Maine, North Little Rock, and New York City discriminated in employment on the basis of sex. In each case, the Department negotiated a consent decree requiring the state to use nondiscriminatory selection criteria and to engage in active efforts to recruit women. The Department obtained similar consent decrees in discrimination suits against the Maryland Transportation Authority, the Clayton County (Ga.) Board of Education, Burlington County (N.J.) College, the Virginia Department of Highways, the Lancaster County (Va.) Sheriff's Office, and the Little Rock (Ark.) police and fire departments. In several of these suits, the Department also obtained back pay awards for the victims of discrimination.

The Department is currently litigating suits against a bank that has a "men only" lunchroom; against the Buffalo Board of Education for violations of the Pregnancy Disability Act; and

1/ Under this Administration, 21 employment cases have been filed, 18 of which contained allegations of sex discrimination. During a comparable period of time in the Carter Administration, 17 cases were filed, 16 of which contained allegations of sex discrimination.

against law enforcement authorities in Suffolk County, New York, and Patrick County, Virginia, for sex-discriminatory hiring practices. The Department continues to bring new sex discrimination suits, most recently in a complaint filed August 30, 1983, against the City of Gallup, New Mexico.

In addition, the Department has settled or litigated to a conclusion six cases filed during the last Administration involving sex discrimination. Last year, the Department achieved the largest Title VII recovery against a public employer in the Department's history, obtaining \$2.75 million on behalf of 685 women and blacks who were victims of discrimination.

The Department has intervened in Williams v. City of New Orleans, in support of classes of female, hispanic and white police officers who opposed entry of a consent decree containing a one-to-one promotion quota favoring black officers. The case is under submission to the Fifth Circuit Court of Appeals, sitting en banc. Finally, in the wake of the Supreme Court's holding in Newport News v. EEOC, discussed below, Assistant Attorney General Reynolds has authorized the filing of seven cases alleging discrimination under the Pregnancy Disability Act.

2. Discrimination in the Extension of Credit

The Department has also moved decisively to enforce the protections of the Equal Credit Opportunity Act, attacking discrimination in the extension of credit based on sex or marital status. In this area we have filed two major cases, United States v. AVCO Financial Services, Inc. and United States v. Central State Hospital Credit Union. Two other cases against major credit companies are currently under investigation.

3. Discrimination in Educational Opportunities

The Department has participated in four suits alleging discrimination in provision of educational opportunities.

Two suits have been brought under Title IX of the Education Amendments Act of 1972, which prohibits sex discrimination in any educational program receiving federal financial assistance. In Zentgraf and United States v. Texas A&M, a case brought during the Carter Administration but under negotiation in this Administration, we challenged the university's maintenance of a "Corps of Cadets" in which women's activities are severely curtailed on account of sex. Another suit, Pavey and United States v. University of Alaska, was settled by consent decree in October 1981. There we alleged that Title IX precluded the university from discriminating on the basis of sex in athletic programs. The University agreed to maintain equal facilities and to provide for equal financial aid, recruitment and publicity in its male and female athletic programs.

In an ongoing suit, United States v. Massachusetts Maritime Academy, brought in 1976 during the Ford Administration, we challenged the academy's maintenance of a males-only admissions policy under Title IV of the Civil Rights Act of 1964. As a result of the suit, the academy has opened its admissions to women, but litigation has proceeded regarding the nature of its admissions criteria and recruitment practices. We are awaiting a decision in that case. The Department also intervened in Canterino v. Wilson, a case against the Kentucky Prison System. The court held that prison authorities had unconstitutionally discriminated against women in educational and training programs.

4. Litigation in the Supreme Court

The Department has repeatedly advocated positions in support of women's rights in cases before the Supreme Court. In the 1981 Term, the Administration argued, albeit unsuccessfully, in Ford Motor Co. v. EEOC that an employer's liability for back pay under the sex discrimination provisions of Title VII was not extinguished by an offer of employment which did not compensate for seniority. Last Term in North Haven Board of Education v. Bell, the Department argued successfully that Title IX reaches and prohibits discriminatory employment practices. And in Newport News v. EEOC, another case argued and decided last Term, the Department successfully contended that an employer could not deny pregnancy disability benefits to the spouse of a male worker when other types of disability benefits are extended to spouses. This is a particularly favorable decision for wives of working husbands who do not have disability benefits through their own employment.

The Department has also taken important positions in furtherance of women's rights in amicus curiae briefs in two major cases before the Supreme Court: TIAA-CREF v. Spirt and Hishon v. King & Spaulding. Last Term the Department argued in Spirt that Title VII of the 1964 Civil Rights Act prohibits an employer from providing unequal pension benefits for men and women employees. The Supreme Court adopted our position in a similar case before it, Norris v. Arizona. In an employment discrimination case that will be heard next Term, Hishon v. King & Spaulding, the Department is arguing that Title VII prohibits law firms from refusing to consider women associates for partnership on an equal basis with their male counterparts.

Finally, in Grove City College v. Bell, another case pending in the Supreme Court, the Justice Department has argued that when the federal government provides grants and loans to students attending a college, the college's financial aid program receives "Federal financial assistance" and is subject to the nondiscrimination requirements of Title IX. This is an aggressive argument in a case of first impression before the Supreme Court. Although the Department has been criticized by women's groups for failing to argue that Title IX applies to

the entire institution under such circumstances, the language and legislative history of the statute and the Supreme Court's opinion in the North Haven case all indicate that Congress intended Title IX to be "program-specific."

B. Administration Initiatives

1. Child Support Enforcement

In 1975, the Congress established the Child Support Enforcement Program (CSEP) to foster family responsibility and reduce dependence by families with absent parents on the welfare system. This program was modeled after the highly successful initiative launched in California when President Reagan was governor. The CSEP requires each state to have an approved program of child support enforcement, including measures to establish paternity, locate missing fathers, establish or modify child support orders, and collect court-ordered support payments. The federal government pays much of the cost and provides support services, policy direction, and technical assistance.

The Administration has improved the CSEP in several ways. For instance, the Administration obtained legislation permitting states to make collections for past due child support to AFDC families by having the IRS make offsets to federal tax refunds. \$168 million was collected in 1982 through this initiative. The Administration created an interagency working group under the Cabinet Council on Legal Policy which has taken several steps to strengthen federal enforcement assistance, such as providing access to federal records not previously available to locate absent parents. In addition, the Department of Health and Human Services has undertaken several initiatives to strengthen state and local enforcement programs, including providing technical assistance for collections in major urban areas, assisting states in establishing necessary automated systems, and strengthening auditing and informational programs.

The President pledged in his State of the Union Address this year to take further action to promote enforcement of child support laws. In fulfillment of that promise, the Administration recently proposed the "Child Support Enforcement Amendments of 1983." This bill (S. 1691) would require that states adopt several practices that have proven effective in increasing support collections. States would be required to: (1) impose mandatory wage withholding on absent parents more than two months behind in court-ordered child support payments; (2) intercept tax refunds to absent parents who are behind in court-ordered child support; (3) develop procedures to expedite civil hearings on court-ordered child support; and (4) impose fees on nonwelfare parents who use this court-ordered child support collection program.

In addition, the bill would provide financial incentives for states to broaden and improve their child support enforcement efforts. The federal government currently pays 70% of state administrative costs, and then pays states bonuses based upon their AFDC collections. The Administration's bill would provide for incentives based upon both AFDC and non-AFDC performance. Although the percentage of state administrative costs reimbursed by the federal government would be reduced from 70 to 60 percent, total incentive payments would be increased by about \$83 million over what would be available under the present incentive structure. This system will reward states that establish superior performance records in collecting on behalf of both AFDC and non-AFDC families.

Finally, the President sought to focus public attention on the important problem of child support enforcement by declaring August 1983 as "National Child Support Enforcement Month".

2. Child Care

The Economic Recovery Tax Act of 1981 contained several provisions to ease the financial burden of child care. First, the Act substantially increased child care tax credits to working parents. For parents who earn less than \$10,000 per year, the credit was increased from \$400 to \$720 per child. The Act also created an incentive for employers to include prepaid day care in their employee benefit packages, by making employer contributions for child care nontaxable to employees.

Consistent with a promise made by the President in his State of the Union Address, the Administration is also proceeding with several initiatives to encourage better private child care. First, the Women's Bureau of the Department of Labor, in conjunction with the Rockefeller Foundation, is funding four demonstration projects to induce employers to provide day care services for working women. The President's Office on Private Sector Initiatives has sought to create a more informed environment in the business community regarding day care alternatives. The White House-based "50 States Project" seeks to identify unnecessary state and local restrictions that inhibit private child care and to encourage local governments to relax those restrictions. Finally, the Administration has encouraged states to use workfare and work-study programs to provide child care.

3. Tax Reform and Other Economic Initiatives

The Administration has implemented a broad array of tax and economic reforms in an effort to eliminate economic discrimination against women. For instance, the Economic Recovery Tax Act greatly reduced the "marriage tax penalty" applicable to two-earner couples by allowing a partial deduction from married couples' combined salaries. The Act also permitted one-earner couples to contribute more to IRAs than individuals. The

reduction of estate tax burdens is also of particular benefit to women, since they outlive men by an average of eight years.

Other reforms have included institution of a sex-neutral definition of poverty to ensure that women are evaluated by the same assistance criteria as are men; enactment of a law permitting state courts to divide military retirement benefits in divorce settlements; and enactment of a law authorizing federal agencies to adopt "flexitime" schedules for their employees on a permanent basis.

4. Social Security Reform

On April 20, 1983, President Reagan signed into law legislation (P.L. 98-21) to improve the long and short-term financial condition of the Social Security system. This reform legislation also contained a host of provisions, summarized below, aimed at eliminating economic discrimination against women.

First, Social Security benefits for widows and divorced women were increased. A major change in eligibility provisions will allow divorced spouses who apply for benefits based on a former spouse's earnings (usually women) to be independently eligible for Social Security benefits at age 62. Under previous law, a dependent divorced spouse could not apply for benefits until her former spouse applied, regardless of age. In addition, benefits previously continued only for surviving spouses who remarried after age 60 were extended to younger disabled widow(er)s and disabled, surviving divorced spouses.

Second, certain sex-based distinctions were eliminated. (In practice, many of these distinctions had been voided by court decisions.) Illegitimate children are eligible for benefits based on their mother's earnings -- under previous law, they were eligible for benefits only on their father's earnings. Two provisions will make benefits based on a wife's earning record equal to those based on a husband's earning record: fathers who have in their care an entitled child under age 16 and aged divorced husbands (as well as aged or disabled divorced surviving husbands) may receive benefits on the same basis as similarly situated wives or ex-wives. Childhood disability benefits will be continued for women who marry as well as for men, and Social Security benefits will be continued to an individual, regardless of sex, who is receiving dependents' or survivors' benefits, whether or not his or her spouse is eligible for such benefits.

5. Welfare and Job Placement Reform

This Administration has acted to eliminate sex-based discrimination in the provision of welfare benefits and in federally-supported work incentive programs. The Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35), signed into law by President Reagan on August 13, 1981, provided that federal Aid

for Families with Dependent Children funds would be available to families whose "principal earner" was unemployed. Previously, such aid had only been available to families when the father was unemployed. On October 13, 1982, the President signed into law amendments to the Job Training Partnership Act (P.L. 97-300), giving job placement preference to "unemployed parents who are the principal earners" of a family. As previously formulated, the Act had given job placement preference to "unemployed fathers." In short, welfare benefit and job placement statutes that discriminated against single-parent families (often headed by women) have been reformed under the Reagan Administration.

6. Appointment of Women

a. Appointments to High-Level Administration Positions

During his first two years in office, President Reagan demonstrated his commitment to women's equality and his respect for their ability by appointing more women to full-time top policy making positions than any of his predecessors during a similar period. By the end of January 1983, he had selected 99 women, compared to only 91 appointed by the previous Administration in its first two years. There are three women in the Reagan cabinet, more than at any other time in U.S. history.

In all, President Reagan has appointed women to more than 1200 important positions in the White House and throughout the executive branch, including 181 to the Senior Executive Service, 584 to Schedule C positions at a level of GS-13 or higher, and over 325 to part-time advisory boards.

The President's most significant female appointments include United Nations Ambassador Jeane Kirkpatrick, Department of Transportation Secretary Elizabeth Dole and Health and Human Services Secretary Margaret Heckler. Women also head the Peace Corps (Loret Ruppe), the Consumer Product Safety Commission (Nancy Steorts), the U.S. Postal Rate Commission (Janet Steiger), and the Federal Labor Relations Authority (Barbara Mahone).

b. Judicial Appointments

This Administration is the first in history to appoint a woman to the United States Supreme Court. President Reagan's nomination of Sandra Day O'Connor, in fulfillment of a promise made in his inaugural address, began a new era of equal opportunity in consideration of qualified persons for this nation's highest court.

During the first two years of this Administration, the President also appointed five women as federal district court judges and one woman to the new United States Claims Court, for a total of seven appointments of women to the federal bench. Four

additional women are currently in the process of being nominated to positions on district courts.

C. Task Force on Legal Equity for Women 2/

1. 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." The Task Force is composed of representatives of 21 executive agencies, with each member responsible for coordinating and facilitating in his or her respective 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.

Executive Order 12336 also directed the Attorney General to conduct 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 was to report his findings to the President on a quarterly basis through the Cabinet Council on Human Resources.

2. Progress Report

The recent public criticism of the Task Force derives primarily from a misperception of the Task Force's mandate as set forth in Executive Order 12336. In fact, the Task Force was intended not to formulate substantive policy initiatives, but to perform the important but limited task of cataloguing sex-biased language in federal laws and regulations so that such sex bias could be eliminated. The work of the Task Force is proceeding on schedule, with a final report due to be issued in April 1984.

The Attorney General transmitted the First Quarterly Report to the White House on June 28, 1982. The 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

2/ The Task Force is to be distinguished from the "50 States Project" established by the President in 1981. This Project, based within the White House, seeks to encourage governors to identify and correct state laws and regulations that discriminate against women.

selected women's issues; and (3) a summary of the progress made by federal departments and agencies in correcting discrimination in laws and regulations under their respective jurisdictions.

The Second Quarterly Report, transmitted on December 3, 1982, announced that the Department of Justice 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 has been transmitted to but has not yet been released by the White House. This is the final report on federal statutes containing distinctions based on sex. The listing is the product of the most comprehensive and thorough computer-assisted review of the U.S. Code ever undertaken to identify gender-based distinctions. The report also summarizes the progress made by agencies in reviewing their laws, regulations, policies, and practices for sex-based distinctions. See Tab .

Part of the work performed by the Task Force to date has been embodied in legislation. On October 1, 1982, Senator Dole introduced a bill to amend the U.S. Code to eliminate some 100 gender-based distinctions identified by the June 1982 Task Force Report. President Reagan wrote a letter on September 27, 1982, endorsing Senator Dole's proposal. This bill has been re-introduced in the 98th Congress as S. 501. We understand that the Senate Judiciary Committee's Subcommittee on the Constitution plans to report out S. 501 on September 16.

II. POSSIBLE ADMINISTRATION INITIATIVES

A. Amendment of Federal Statutes that Contain Sex-Based Distinctions

The Administration is already on record in support of Senator Dole's bill (S. 501) to eliminate sex-based distinctions in several dozen sections of the United States Code. Senator Dole's bill is based upon the findings of the First Quarterly Report of the Task Force on Legal Equity for Women and was drafted with the assistance of the Justice Department. The Dole bill is scheduled to be marked up by the Senate Judiciary Committee's Subcommittee on the Constitution later this month.

Since the Dole bill was introduced, however, the Task Force on Legal Equity for Women has issued its Third Quarterly Report. This Report is based upon a much broader, updated computer search of federal law and represents the definitive compilation of federal statutes that contain sex-based distinctions. The Report identifies 51 additional federal statutes (or related groups of statutes) that contain sex-based distinctions not covered by the Dole bill. See Tab . I would propose that the Administration draft an amendment to the Dole bill to

amend most -- although not all -- of the additional provisions identified in the Third Quarterly Report. 3/

A substantial number of these 51 statutes are older laws that define the persons they affect by terms reflecting gender (such as "widows" and "mothers") rather than by sex-neutral terms (such as "surviving spouses" and "parents"). Although many of these laws are obscure and somewhat inconsequential, their continued existence in the United States Code is demeaning to women. I would recommend that we seek to have all of these laws amended to eliminate references to gender.

The remaining statutes make more substantive distinctions between men and women. With two exceptions discussed below, I recommend elimination of these distinctions. It should be noted, however, that at least four provisions contain sex-based distinctions intended to give special preferences to women. Examples of such statutes are 29 U.S.C. § 12, which requires that the Director of the Women's Bureau of the Department of Labor be a woman, and 22 U.S.C. § 2151(k), which contains requirements to promote the integration of women into the national economies of developing countries.

Finally, there are two statutes that I would recommend against amending at this time. These are statutes that reflect very fundamental and reasoned decisions to distinguish between women and men. One set of provisions establishes prohibitions on the use of women soldiers in combat. A second set of provisions excludes women from the requirement of draft registration. It is possible that Congress, upon further consideration, will decide to reverse itself on these statutes and to change these long-established policies. However, we should not recommend amendment of these laws without a thorough, nationwide debate over the extent to which we want to obliterate all distinctions between the sexes.

B. Legislative Proposals

There are several areas relating to women's rights with respect to which legislative proposals are pending or the Administration has considered introducing legislation. The Administra-

3/ The Third Quarterly Report of the Task Force identifies a total of 140 statutes (or related groups of statutes) reflecting sex-based distinctions. 25 of these statutes have already been amended to eliminate the distinctions. Nineteen of these changes occurred under this Administration, and most resulted from legislation we sponsored. Of the 115 remaining statutes containing sex-based distinctions, 64 would be corrected by the current version of the Dole bill.

tion should review its position on these proposals and consider the desirability of formulating initiatives or supporting existing bills. The following list is intended to be illustrative, but not exhaustive.

1. Sex Bias in Pensions and Insurance

a. Proposals to Prohibit Use of Sex-Based Actuarial Tables in Calculating Pensions

The Administration is committed to the elimination of discrimination against women in pension programs. In his State of the Union Address this year, President Reagan stated that the Administration would take action to remedy inequities in pensions. A press release accompanying the address stated that the Administration would "submit legislation to remedy inequities based on sex in employer pension systems."

We have taken a number of steps to implement these goals. Last Term, the Department filed a brief with the Supreme Court in TIAA-CREF v. Spirt arguing that Title VII prohibits the use of sex-segregated actuarial tables to calculate employee retirement benefits. Our position was endorsed by the Supreme Court in June in a second, similar case, Arizona v. Norris.

During the past several months, various working groups within the government also have been meeting to discuss possible legislation in the pension area. To some degree, the Supreme Court's decision in Norris has preempted the need for remedial legislation. However, many important questions concerning the use of sex-based distinctions in the pension area remain in the aftermath of Norris and should be addressed by the Administration.

b. Proposals To Prohibit All Sex-Based Insurance Classifications

Several bills have already been introduced in Congress which would prohibit use of sex-based distinctions not only with respect to pensions, but all other forms of insurance as well. These bills would have dramatic practical, legal, and economic ramifications which have not yet been fully studied.

c. Other Pension Equity Issues

Title I of the Economic Equity Act (S. 888) would amend a number of provisions in ERISA and the Internal Revenue Code governing private pension plans and civil retirement plans. Certain provisions for private pension reform would aid "women as workers" -- for example, by lowering the age of participation in pension plans from 25 to 21 and modifying the "break-in-service"

rules to give credit for employer-approved maternity or paternity leave. Other provisions would aid "women as spouses" -- for instance, by promoting election and payment of survivor's benefits and by establishing pensions as a legitimate property right. S. 888 would also entitle persons married to civil service employees for at least 10 years the right to a pro rata share of the benefits earned during marriage, and mandate survivor's benefits in the absence of a waiver by the spouse and former spouse. The Retirement Equity Act (S. 19) contains provisions similar to, although not identical to, provisions in Title I of S. 888.

In testimony last month before the Senate Finance Committee, John Chapoton, Assistant Secretary of the Treasury for Tax Policy, stated that the Administration supported "most" of the pension provisions of both bills, but suggested that certain specific changes were necessary to "assure that we aid the maximum number of women and that the administrative burden on pension plans is minimized".

2. Dependent Care

As noted above, the Administration has taken some significant steps to encourage availability of dependent care. Title II of S. 888 contains several further proposals in this area. First, the bill would treat a greater percentage of child care expenditures as necessary business expenses. Second, the bill would make the dependent care tax credit refundable for those whose income is so low that they lack sufficient tax liability to make use of the credit. Third, the bill would clarify that child care facilities fulfilling certain specified criteria qualify for tax-exempt status under §501(c)(3) of the Internal Revenue Code. Finally, the bill would establish a "seed money" assistance program to establish child care information and referral services. The Cabinet Council on Economic Affairs has opposed supporting Title II on the grounds that it would increase the deficit by \$.7 billion a year.

3. Social Security Amendments

Several legislative proposals have been introduced in the 98th Congress aimed at further eliminating sex-based discrimination under the Social Security system. These proposals would: (1) establish a working spouse benefit payable in addition to the dependent spouse benefit to recognize the Social Security tax contributions of second earners (H.R. 203); (2) increase from five to ten the number of years of low earnings dropped in computing the covered earnings history for a worker caring for small children at least six months out of the year (H.R. 2741); (3) reduce from ten to five the number of years of marriage that are necessary before a dependent divorced spouse is eligible for benefits on an ex-spouse's earnings record in the case of late-life divorces (H.R. 338); (4) allow disabled widows to receive benefits at any age (H.R. 2743); (5) provide

transitional benefits for widowed persons at the age of 50 (a majority are women) to allow them to adjust to the loss of the deceased spouse's income (H.R. 2745); and (6) allow a husband and wife to combine their earnings during marriage for Social Security benefit purposes upon retirement or divorce, and to equalize the benefits payable on retirement, if they have not so elected (H.R. 337, H.R. 2742, and S. 3).



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

September 2, 1983

MEMORANDUM FOR: Mike Horowitz
Mike Uhlmann

FROM: Jim Brown

SUBJECT: Third Quarterly Report

1. Background:

* In 1976, President Ford established a "Task Force on Sex Discrimination" to identify sex discrimination in the U.S. Code.

* This Task Force continued in the Carter Administration (and its scope was expanded to include agency regulations and policies).

* The Carter Administration Task Force produced only one "Interim Report" (October, 1978). This report primarily dealt with agency policies and regulations. Regarding the U.S. Code, the report concluded that "the majority of the 3,000" statutes identified in its computer search were "terminological rather than substantive". The report included a general discussion of statutory issues affecting women in the areas of marital property; taxation; pension and social security; and the criminal code. Otherwise, there was no detailed listing of statutes, and no comprehensive corrective legislation resulted from the Carter effort.

* Executive Order 12336 (December 23, 1981) directed the Attorney General to "complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates" on the basis of sex. Justice's "First Quarterly Report" (June 28, 1982) contained a detailed listing of the most substantive statutes previously identified, but concluded that "... the dimension of the statutory problem identified by the Justice Department, while not inconsequential, is plainly not overwhelming".

* In 1982 Senator Dole introduced legislation (endorsed by the President) to correct all statutes identified by the Justice Department except those involving:

(1) Exclusion of women from the draft and combat.

(2) Social Security, immigration, and criminal code issues dealt with in separate legislation (see below).

2. Third Quarterly Report.

Contrary to Honegger's allegation that "no laws have been changed", her own report lists 25 statutes (22 of which were listed in the First Quarterly Report) that have been changed to correct sex discrimination. 19 of these changes (including 16 substantive changes in the Social Security System and other "safety net" provisions) have occurred during this Administration. For example, the Administration sponsored Social Security Amendments of 1983 equalized treatment of widows and widowers; enabled women to continue receiving benefits upon remarriage; and assure fair treatment of divorced spouses).

a. Statutes.

The Third Quarterly Report is based on a computer search of the U.S. Code as of 1981, and lists 115 allegedly discriminatory statutes. At the onset it must be noted that, contrary to the impression created by Ms. Honegger and the media, at least 76 of these statutes contain distinctions that favor women at the expense of men.

Of the 115 statutes:

- 68 were listed in the First Quarterly Report.
- 64 are already addressed in Dole's S. 501 (supported by the Administration).

Of the remaining 51 statutes which are not currently addressed in the Dole bill:

- 11 statutes (attachment A) were purposely omitted by Dole for various reasons.
- Changes in 8 statutes (attachment B) are questionable on policy grounds or require cost analysis.
- Changes in 4 statutes (attachment C), which provide for separate promotion procedures for men and women in the Navy (as an "affirmative action" device) were included in the original Dole bill but not S. 501. As a matter of principle, the Administration may wish to propose that they be reincluded.
- Changes in an additional 28 statutes (attachment D) would simply correct apparent anachronisms, and seem to have been excluded from S. 501 only because they were not included in the previous report (it must be emphasized that the "discrimination" involved in these 28 statutes is marginal indeed).

b. Regulations.

The bulk of the report consists of voluminous submissions from 17 agencies on their regulations and policies (the next report is to include submissions from other agencies as well as "updates" from some of the agencies listed in this report).

The Carter Administration required that all agencies conduct an extensive self-analysis in 1978 to identify any sex discrimination in their regulations, programs, policies, and so forth. As a result, the agencies find little new of consequence to report. Action's submission is typical (e.g., "On November 29, 1982, the Director of Action issued an Equal Opportunity Policy Statement to all employees...One result of this statement is that the agency will be sponsoring a women's week in the near future").

The most substantial current "sex discrimination" issue raised by any of the reports involves the Pension Benefit Guaranty Corporation's use of sex-based actuarial tables for some calculations.

Attachment A

Statutes excluded by Senator Dole from S. 501:

Page Statute	Reference:	reason:
10 U.S.C. §311 (a)	p.2	Exclusion of women from draft or combat
10 U.S.C. §8549	p.6	"
10 U.S.C. §6015	p.8	"
50 U.S.C. App. 453	p. 25	"
50 U.S.C. App. 455	p. 25	"
50 U.S.C. App. 456	p. 25	"
50 U.S.C. App. 466	p. 25	"
42 U.S.C. §411	p.10	Statute relates to treatment of income from owner-operated business for Social Security purposes. Senator Dole excluded this statute from his bill because "simple deletion of the sex-based distinction...may not be the most equitable solution (see Congressional Record, October 1, 1982, p. S. 13314).
8 U.S.C. §1432	p.17	Statute raises issue of naturalization of Amerasian children, excluded by Dole because issue is being addressed in other legislation.
18 U.S.C. §2421	p.27	Dole excluded these provisions of the Mann Act because they are addressed in comprehensive legislation to reform the Federal code.
18 U.S.C. §2422	p.28	

Attachment B

Questionable on statutory or other grounds

Statute	Page Reference:	Reason:
10 U.S.C. §1451	p.2	Should be reviewed for fiscal implications.
10 U.S.C. §2109	p.3	Would remove option women enrolled in military colleges now have to choose whether to participate in military training
10 U.S.C. §6915	p.9	Does this raise combat exclusion issue?
42 U.S.C. §413 (a)	p.10	Should be reviewed for fiscal implications.
42 U.S.C. §415 (f) (5)	p.10	" " "
26 U.S.C. §1402 (a) (5) (a)	p. 27	Proposed change in tax code, requires technical analysis.
22 U.S.C. §2151 (k)	p.29	Would remove language encouraging integration of women in economies of nations receiving American assistance-- a curious addition to this list
22 U.S.C. §2225	p.30	Raises same issue as above.

Attachment C

Statutes providing for separate promotion procedures for women in the Navy included in the original Dole bill but deleted from S. 501.

<u>Statute</u>	<u>Page Reference:</u>
10 U.S.C. §5896	p. 8
10 U.S.C. §5897	p. 8
10 U.S.C. §5898	p. 8
10 U.S.C. 5899	p. 8

ATTACHMENT D

Statutes not currently included in S. 501; change would be consistent with thrust of existing legislation

Statute	Page	Reference: Explanation:
33 U.S.C. §857-4	p.1	Equalizes treatment of widowers and widows; nominal fiscal impact, if any.
10 U.S.C. §520	p.2	Gender specification not necessary to, and probably inconsistent with, objective of better educated military.
10 U.S.C. §772(c)	p.2	Existing distinction serves no apparent purpose
37 U.S.C. § 551	p.3	Equalizes treatment of spouses
50 U.S.C. App. §530	p.3	" "
70 Stat. 124	p.3	" "
10 U.S.C. §8848	p.6	Existing distinction serves no apparent purpose
10 U.S.C. §6964	p.9	Statute apparently enacted when there were no female midshipmen
42 U.S.C. §602 (a)	p.11	Same principle should apply to both sexes
42 U.S.C. §1307	p.11	" "
25 U.S.C. §933(c)	p.19	Consistent with other changes proposed in statutes affecting Indians
25 U.S.C. §973(c)	p.19	" "
49 U.S.C. §10722	p.21	Simple equalization of treatment of widows and widowers
29 U.S.C. §12	p.21	Consistent with Administration opposition to reverse discrimination

33 U.S.C. §909(b)	p. 22	Budget Examiner advises no problem with these changes.
33 U.S.C. §909(c)	p.23	" "
33 U.S.C. §909(g)	p. 23	" "
33 U.S.C. §914(j)	p.23	" "
46 U.S.C. §152	p. 26	No apparent reason for distinction
46 U.S.C. §153	p.26	" "
46 U.S.C. §154	p.26	Infant traveling with father unlikely to be less hungry
46 U.S.C. §627	p.26	Simple equalization of treatment of spouses of deceased
5 U.S.C. §5561	p.28	" "
12 U.S.C. §1751	p.29	" "
15 U.S.C. §1502(c)	p.29	" "
Pub. L. No. 85-745	p.29	No fiscal impact
24 U.S.C. §52	p.30	Simple equalization
28 U.S.C. §604	p.30	" "
36 U.S.C. §671	p.31	Eliminates quota
48 U.S.C. 1461	p.31	Rectifies serious injustice involving widowers of discoverers of Guano Islands

PENSION REFORM

In your 1983 State of the Union Address, you pledged to seek greater fairness for women in pension plans. To fulfill that promise, the following steps have been taken:

o Judicial Precedent

The Department of Justice filed a brief in the Supreme Court in TIAA-CREFF v. SPIRIT, arguing that the Civil Rights Act of 1964 requires employers to provide equal pension benefits for male and female employees. The Supreme Court subsequently took that position in a similar case, NORRIS v. ARIZONA. The decisive opinion in the Norris case was, appropriately enough, written by Justice O'Connor. She highlighted the need for legislation to amend ERISA to accommodate the court's decision. The Administration had begun preparation of such a proposal prior to Norris and has generally supported similar legislation already under consideration.

o Major provisions embraced by the Administration:

1) Change pension participation and vesting rules for the particular benefit of young women in the work force.

2) Require pension plans to provide a full year maternity/paternity leave without having such leave be considered a "break in service."

3) Establish that joint and survivor options be the presumed form of benefit whenever a pension plan provides for annuities.

4) Require that spousal consent is necessary before joint and survivor option can be waived.

5) Permit pension benefits to be assigned by judges in cases of domestic dispute.

o Consultations

An interagency working group comprised of members of the White House staff, OMB, the Departments of Labor and Treasury have worked in concert with a group of Republican Congresswomen to arrive at acceptable language to codify the Supreme Court's Norris decision. John Chapoton testified for the Administration and Treasury on August 2, in general support of S. 19, Senator Dole's bill. He was well received.

o Included here is a comparison of a draft Administration bill with two other Senate alternatives.

IMPROVED SOCIAL SECURITY BENEFITS FOR WOMEN
&
CHILD SUPPORT ENFORCEMENT

Changes in Social Security

As part of the Social Security Amendments of 1983, the Administration proposed nine provisions that would have removed gender-based distinctions from Title II of the Social Security Act. Five were enacted as proposed, three others were enacted after being modified by Congress.

Examples of corrections are as follows:

- o Broadened the distribution of benefits earned by a working women, in matters involving divorce and illegitimate children.
- o Provides equal treatment of widows and widowers who remarry before the age of 60 with respect to their eligibility for benefits.
- o A young husband, widowed father or divorced father with a child under 16 would receive the same benefits provided to a woman in the same situation.

Child Support Enforcement

1981 - The Administration proposed, and Congress passed three major reforms to strengthen the collection process.

- o The IRS is allowed to become involved.
- o Bankruptcy is reduced as a shield for delinquent payments.
- o State agencies are allowed to collect for a spouse who is an AFDC recipient.

1982 - The Administration proposes four reforms, one is enacted.

1983 & for 1984 several additional strengthening provisions have been proposed.

TAX REFORMS AND BENEFITS TO WOMEN

The Administration targeted many aspects of the Economic Recovery Tax Act of 1981 toward enhancing the economic status of women. Examples are as follow:

- o Near elimination of the the "marriage penalty."
This was the added tax that a married couple with two incomes, filing jointly would pay relative to the two persons filing separately.
- o Estate tax reductions greatly benefitted widows.
- o One earner couples were allowed larger contributions to IRA accounts.
- o Child care credits were provided. This particularly benefitted the heads of single parent households.

FIFTY STATES PROJECT

- o 42 of the 50 States have undertaken searches of State laws to identify gender-discriminatory language. Of the 8 that have not participated, 2 have State-passed ERAs.
- o 26 States have revised their codes or are in the process of doing so.
- o The Project Director of the Fifty States project will visit 17 States before Christmas to provide counsel and administrative assistance.

DIRECT BENEFITS TO WOMEN,
HEALTH CARE AND INCOME SECURITY

HHS provides a number of health care and income security programs that primarily benefit women. This is often due to demographics (because women live longer, they receive 70% of supplemental security income payed out) and targeted health problems of women, particularly in the areas of child and prenatal care.

Examples (FY '83 funding):

- o Maternal and Child Health Block Grant - \$318 million; 100% to women.
- o Family planning - \$124 million; 95% to women.
- o Health professions Education, Nursing - \$49 million; 98% to women.
- o Aid to Families with Dependent Children (AFDC) - \$6.791 billion; 90% to women.

There are scores of programs in the areas of health research, family support services, and human (career) development that HHS administers ostensibly or exclusively on behalf of women. They are listed under such headings under this tab.

THE ADMINISTRATION AND WOMEN IN THE WORKFORCE

The Department of Labor has aggressively moved to promote the quality and numbers of women in the American workforce. Two such examples:

Job Training Partnership Act

Targets AFDC family heads (90% of whom are women) by requiring that they be served in proportion to their ratio to the disadvantaged population. Additionally there are special provisions for service to displaced homemakers.

Women's Bureau

Exists within the DOL for the purpose of formulating policies and standards that promote the welfare of working women (working conditions etc.). Examples of their activity:

- o funding demonstration projects for employers to provide child-care
- o sponsor job fairs that focus on the changing status of women in the job market
- o promote programs for the training and retraining of women in new technological fields.

The following statistics are representative of the growth of women in the American labor force over the course of your Administration.

- o Aggregate employment has grown by 1.3 percent since January 1981. Employment growth for women during that same time period has occurred at a rate of 3.7 percent.
- o Median weekly earnings for full-time salaried workers have increased by 15.5% since you took office. Salaries for women, using the same criteria, have increased by 19.9 percent.
- o In January of 1981 the unemployment rate for women was a half point higher than the rate for overall unemployment. In July of 1983, it was a half a point below the rate of overall unemployment.
- o The number of women working in professional and technical fields paying \$20,000-plus has double in the last two years.

WOMEN IN THE FEDERAL WORKFORCE

The Reagan Administration has a record unmatched by any former President in appointing women to major policy making positions.

- o Three women in Cabinet posts
- o First woman on the Supreme Court
- o Four Women as directors of major agencies
 - Peace Corps
 - Consumer Product Safety Commission
 - Postal Rate Commission
 - Federal Labor Relations Board
- o Over 1,000 in policy making posts
- o Over 100 (more than half) Presidential Management Interns

The Office of Personnel Management has moved to attract and hold a greater number of women in the Federal workforce. These are examples of initiatives currently being implemented:

- o Recruitment of more executives from the private sector;
- o Engage in a long term shift to general knowledge examinations;
- o Limit over-credentialing in job standards;
- o Require Executive Resource Boards to consider upward mobility for women;
- o Base RIFs on performance rather than seniority;
- o Facilitate the establishment of more part-time employment, job-sharing, and flexitime for Federal contractors.

OTHER INITIATIVES FROM CABINET DEPARTMENTS

The listing provided here is intended only as a representative sample of the work being done on behalf of women on the Department/Agency level.

State

- o Through aggressive recruiting efforts, the Department of State has raised the proportion of women to total officer-level entrants from 23.6% in 1979 to 34.4 percent in 1982.

Defense

- o Since 1980, the DOD civilian workforce has grown from 31 percent women to 34 percent women. The uniform services have increased from 8.4 to 9.1 percent.
- o DOD has Developed and implemented a policy to counter sexual harassment.

Commerce

- o 25 percent of all small business are owned by women. 45 percent of these are in the service sector.
- o Development of a Commerce Women's Forum, to provide information on Administration programs in women's areas.
- o 23 percent of the women at Commerce are in grades 13-15.
- o 40 percent of non-career SES employees are women, that compares with 14.7 percent government-wide.

Agriculture

- o Implements a variety of supplemental food programs. Of the 8 million households that participate in the Food Stamp program, 70 percent are headed by women.
- o Holds monthly Rural Women's Luncheons to coordinate activities of USDA agencies and organizations representing rural women.

Transportation

- o Women's Business Enterprise Program. Monitors and establishes specific goals for contract awards to small businesses owned and controlled by women.

- o Development of a comprehensive 9-objective plan to increase opportunities for women to enter professional and technical occupations.

Interior

- o Currently proposing new regulations under the Outer Continental Shelf Lands Act Amendments of 1978, that would encourage outreach to women for inclusion in contract opportunities with the Minerals Management Service.

Housing and Urban Development

- o Developed pilot public housing projects specifically designed for one-parent families. (Warren Village) Provided day care and job training assistance. Very successful.
- o Three working groups established by Dr. June Koch, Deputy Under Secretary for Intergovernmental Relations, to look into the concerns and perceptions of women.

Education

- o The Office of Educational Research and Improvement administers the National Institute of Education and Library Career Training Program. In 1982, 74 Percent of the fellowships were awarded to women.

Energy

- o Contracts to women-owned firms. In FY '82 the DOE goal was \$25 million in Federal contract awards. The actual total was \$78.5 million.
- o Women constituted 51 percent of the total DOE hires in 1982 and 20 percent of the total hires in the technical and administrative grades.