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ABSTRACT

This paper presents a concise history of the concept of affirmative action, tracing its evolution through various presidential executive orders and federal legislation. Also included is a definition of affirmative action and a brief discussion of its implications for colleges and universities. (JG)

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AFFIRMATIVE ACTION

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A general definition of "Affirmative Action" is: "An active and positive effort to insure that no employee or prospective employee is discriminated against because of race, religion, or sex."

The positive effort attitude is the third phase in the evolution of attitude concerning discrimination. The first phase, represented by the executive orders of Presidents between 1940 and 1955, expressed a prohibition of discrimination by federal agencies against employees because of their race or religion. The second phase is represented by President Eisenhower's Executive Order 10950, in 1955, which proclaimed: "it is the policy of the United States Government that equal opportunity be afforded all qualified persons, consistent with law, for employment in the Federal Government," and President Kennedy's Executive Order 10925, in 1961, which directed: "positive measures for the elimination of any discrimination, direct or indirect, which now exists." President Johnson's Executive Order 11375, in 1967, added sex for the first time as a prohibited form of discrimination.

The third phase is characterized by orders and laws that require positive action toward avoiding discrimination. Executive

Order 11246, in 1965, which was amended by Executive Order 11375, in 1967, prohibited discrimination at all institutions with federal contracts over \$10,000 and demanded affirmative action of all contractors with contracts of \$50,000 or more and fifty or more employees. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, extended prohibition of discrimination to all institutions with fifteen or more employees except some religious institutions which are not required to employ individuals of a particular religion (other religion) to perform work for those institutions. This act did not mandate affirmative action but recognized that affirmative action might be included in a conciliation agreement.

The Equal Pay Act of 1963, as amended by the Education Amendments of 1972 (Higher Education Act), extended the prohibition of discrimination to all institutions, prohibiting discrimination in salary on the basis of sex. The only affirmative action required was that equal salaries be paid.¹

Under the Department of Labor's Revised Order No. 4 of Executive Order No. 11246, each private institution which gets a government contract must develop and maintain a written affirmative action program within 120 days of receipt of the contract. Institutions referred to in this paragraph are the approximately 2400 colleges and universities that have government contracts. Public institutions are not presently required to maintain a written plan, but the Department of Health, Education, and Welfare urges all institutions to put their plans in writing and the Association of

American Colleges and various women's organizations are trying to get the regulations amended to make written plans mandatory for all.²

The affirmative action concept does not require that a university employ or promote any person who is unqualified. It does require that standards or criteria which exclude women and minorities be eliminated unless it can be demonstrated that such criteria are conditions of successful performance in the particular position involved. The keys to affirmative action are goals and good faith; Goals resulting from an analysis of a deficiency and of what can reasonably be done to correct the deficiency, and a good faith honest effort to locate qualified persons to fill any vacancies without perpetuating the discriminatory practices.³

FOOTNOTES

¹Irving Kator, "Third Generation Equal Employment Opportunity," Civil Service Journal, July-September 1972 as compiled into Affirmative Action Planning for State and Local Governments. (Washington: Government Printing Office, 1973), as pages 34-38 of the latter publication.

²Velma A. Adams, "'Affirmative Action' You Must Take," College Management 8 (February 1973), p. 28.

³Ibid. p. 29.

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