

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20201

November 3, 1971

PRESIDENT'S OFFICE
COLUMBIA UNIVERSITY

Dr. William J. McGill
President
Columbia University
New York, New York 10027

Dear Dr. McGill:

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Executive Order 11246 (September 28, 1965) as amended by Executive Order 11375 (October 13, 1967) enunciates a national policy of equal employment opportunity without discrimination because of race, color, religion, sex or national origin and sets forth a program of equal opportunity for all persons employed or seeking employment with Government contractors and subcontractors.

On May 28, 1968, the Secretary of Labor, under authority of Section 201 of Executive Order 11246, issued a revision of 41 CFR Chapter 60 which prescribed the obligations of contractors and subcontractors who perform under Government contracts subject to the Executive Order. These regulations became effective July 1, 1968, and contained a requirement that any organization which employs 50 or more persons and is awarded a Government contract of \$50,000 or more after this effective date must develop a written affirmative action compliance program within 120 days of such an award. This requirement, which is contained in Section 60-1.40 of the regulations, specifically provides that "a necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel". Section 60-1.40 specifies the content of the evaluation of utilization of minority group personnel and requires the development of "specific goals and timetables" when the utilization evaluation reveals deficiencies. More specific standards and guidelines for implementing Section 60-1.40 were issued as "Order No. 4" on November 20, 1969, and January 30, 1970 (41 CFR 60-2).

In addition to requiring a written affirmative action program based on a utilization analysis and containing goals and time-tables, 41 CFR 60 at Section 60-1.7(a)(3) requires a contractor to "keep employment and other records and to furnish, in the form requested, within reasonable limits, such information as the Director, agency or the applicant deems necessary for the administration of the order". The equal opportunity clause contained in each Government contract also commits the contractor to furnish information "for purposes of investigation to ascertain compliance" with rules, regulations and orders of the Secretary of Labor.

The following is a chronology of the efforts of this Department and the Office of Federal Contract Compliance, Department of Labor, to secure Columbia's compliance with its obligation to develop a satisfactory written affirmative action program and to secure information adequate to determine whether or not Columbia is otherwise complying with the rules, regulations and orders issued pursuant to Executive Order 11246, as amended:

January 31, 1969

Mr. Joseph F. Leahy, Chief, Contract Compliance Branch, DHEW, Office for Civil Rights in New York, notified Dr. H. Houston Merritt, Dean of Columbia University's College of Physicians and Surgeons, of his intent to conduct a compliance review beginning March 4, 1969. The letter included a list of information which he wished the University to have available when the review began. Included in this list was "a copy of your written affirmative action compliance program . . .". Arrangements for the review were confirmed by letter of February 19, 1969, from Dr. Merritt to Mr. Leahy. Dr. Merritt's letter indicated that "we have discussed with the University Personnel Office the information which you requested and will have as much of this available as possible".

March 4, 1969

Mr. Leahy arrived on the campus to conduct the compliance review and found that only three of the twelve items which he had requested in his January 31 letter were available. These three items (copies of purchase order, previously filed SF-100, and union contract) were only minor data and would not facilitate the conduct of the scheduled review. Significantly missing was the written affirmative action program, statistical data and statements and lists which would permit examination of employment policies and practices such as recruitment, selection, assignment, upgrading and promotions, pay, testing and training.

Not only was the information not available in written form, but no University official present at the meetings with Mr. Leahy, including the Director of Personnel was able to verbally provide statistical data or describe the procedures and practices of the University in such areas as recruitment and selection. Without any of this information it was impossible for Mr. Leahy to proceed with conducting the review or to make any substantive judgment regarding the compliance status of Columbia.

March 5-26, 1969

Mr. Leahy made numerous telephone contacts with Dr. Ralph Helford, Vice President for Special Projects, in an attempt to set up a meeting with University officials, including the Acting President, Dr. Andrew W. Cordier, to discuss the University's equal employment opportunity program. All these efforts were unsuccessful.

March 27, 1969

Mr. Leahy sent a special delivery letter to Acting President Cordier indicating that he and representatives of the Washington staff, Office for Civil Rights, would appear at Dr. Cordier's office at 10:00 am on April 2 to discuss the University's equal employment opportunity program.

April 2, 1969

Mr. Owen P. Kiely, Director, Contract Compliance Division, Office for Civil Rights, and Mr. Leahy met with Dr. Cordier, Dr. Helford, Dr. Warren F. Goodell, Vice President for Administration, Mr. T. A. McGoey, Vice President for Business Affairs, Dr. Polykarp Kusch, Vice President and Dean of Faculties and Mr. John W. Wheeler, Attorney. This meeting concluded with a commitment by Columbia officials to proceed with the development of an affirmative action program and to establish a record-keeping system which would provide the bases for establishment of the program and evaluating compliance.

July 9, 1969

Mr. Wheeler, of the firm Thacher, Proffitt, Prizer, Crawley & Wood wrote to Mr. Kiely on behalf of Columbia outlining the record-keeping plan developed by Dr. Cordier and Dr. Goodell as a result of their April 2 commitment and requested Mr. Kiely's approval. Mr. Wheeler also requested that Mr. Kiely secure

concurring legal opinions from the Office of Federal Contract Compliance and the Equal Employment Opportunity Commission.

July 24, 1969

Mr. Leahy met with University officials, including Dr. Goodell, Mr. Robert Adams, Director of Personnel and Mr. Wheeler for the purpose of discussing the University's progress in implementing the April 2 commitments. Mr. Leahy was advised that the full implementation of the plan was being delayed pending receipt of Mr. Kiely's reply to Mr. Wheeler's July 9 letter. The written affirmative action plan had not yet been developed.

October 20, 1969

Mr. Kiely responded to Mr. Wheeler's July 9 letter approving the University's record-keeping plan and forwarding to Thacher, Proffitt, Prizer, Crawley & Wood, as well as Dr. Cordier, supporting opinions from the Office of the Solicitor, Department of Labor, and the Office of General Counsel, Equal Employment Opportunity Commission.

November 12, 1969

Mr. Leahy contacted the University by telephone to ascertain the status of the University's affirmative action program and was advised that it had not been developed.

December 1, 1969

Mr. Kiely wrote to Dr. Cordier summarizing the history of the Department's efforts during the period of January 31 through November 12 and advised Dr. Cordier that Columbia was required to submit a written affirmative action program which conformed to 41 CFR 60-1.40 or show cause why enforcement proceedings should not be initiated. Attached to Mr. Kiely's letter was a copy of Order # 4 dated November 20, 1969, which amplified the provisions of 41 CFR 60-1.40 and provided more specific standards and guidelines for developing an affirmative action program.

December 4, 1969

Dr. Cordier responded to Mr. Kiely's letter stating that "I am today setting up a special task force of University officers and staff to prepare for me recommendations for action which will enable the University to respond to your letter to your satisfaction".

December 31, 1969

Dr. Cordier submitted to Mr. Kiely the University's affirmative action program.

January 27, 1970

Mr. Leahy wrote to Dr. Goodell informing him of the deficiencies in the December 31 program and recommending specific actions which would make the program acceptable. Mr. Leahy indicated that the program was "being accepted conditionally upon its being strengthened in the manner described in this letter". These requested amendments were never received.

January 28, 1970 through February 1, 1971

Having accepted the University's plan, subject to the requested modifications, the Office for Civil Rights assumed the position that the commitments made by the University were being faithfully implemented. The Office received no indication from the University that it desired changes in its plan, that it was unable to keep its commitments, or that the plan was not functioning as designed. In the absence of the modifications requested, however, a second review was scheduled.

February 2, 1971

Mr. Joseph W. Wiley, Director, Contract Compliance Field Coordination, DHEW, Office for Civil Rights, notified you that representatives of the Office of Program Review, Office of Federal Contract Compliance, would be conducting a review at Columbia during the period of February 22-26, 1971. Mr. Wiley's letter identified specific data which was to be available at the commencement of the review, including "a copy of the University's equal employment opportunity program" and listings of all employees and certain new hires with such information as race, sex, position title, pay, etc.

February 22-26-1971

Ms. Dolores Symons and Mr. Bernard Michaels of the Office of Federal Contract Compliance along with Ms. Cecelia Rock of Mr. Leahy's staff arrived on campus to conduct the compliance review. In a meeting with Dr. Goodell and Ms. Beverly Clark, Columbia's Equal Employment Opportunity Coordinator, Ms. Symons, Mr. Michaels and Ms. Rock were presented with a computer printout listing all employees, but failing to classify employees by organizational unit or designate their race and sex as had been requested in Mr. Wiley's letter of February 2. The University was advised that the data was not adequate to

facilitate the review and requested to reassemble the data in the form specified in Mr. Wiley's letter. The remainder of the February 22-26 period was spent conducting interviews with employees and University officials. When Ms. Symons, Mr. Michaels and Ms. Rock left the campus on February 26, the reassembled data had not been presented to them and they were assured that it would be forwarded to them within a few weeks.

March 15 - April 30, 1971

Ms. Symons and Mr. Michaels made several telephone contacts with Dr. Goodell and Ms. Clark regarding submission of the data on employees by organization unit, race and sex which produced no result. On April 30 Mr. Michaels advised Dr. Goodell that a "show cause" notice had been withheld for an unreasonable period of time and would now be forthcoming.

June 10, 1971

Mr. John L. Wilks, Director, Office of Federal Contract Compliance notified Mr. Kiely of his determination that the review by his staff had led him to conclude that Columbia was "lacking in an acceptable affirmative action plan" basically because "Columbia had failed to identify their minority group employees so that deficiencies could be recognized and appropriate goals and timetables applied for corrective action".

June 30, 1971

Ms. Rose E. Brock, Senior Contract Compliance Specialist, DHEW Office for Civil Rights, notified you that in view of the February 1971 finding by the Office of Federal Contract Compliance that you "were lacking in an acceptable affirmative action plan", you had 30 days in which to submit a plan or show cause why enforcement proceedings should not be initiated. Ms. Brock's letter indicated that to insure that you fully understood the requirements of her letter, she had arranged a meeting for you with representatives of the New York Regional Office for Civil Rights and the Office of Federal Contract Compliance.

July 9, 1971

Mr. Leahy and Ms. Rock met with you, Dr. Goodell, Ms. Clark and two of your attorneys. Mr. Leahy and Ms. Rock discussed in detail the inadequacies of the affirmative action program submitted by Columbia on December 31, 1969, and reviewed with you and your staff the specifics which must be incorporated into any program which you were to submit in response to Ms. Brock's request, if it were to be found acceptable.

July 30, 1971

you submitted to Mr. Kiely your reply to Ms. Brock's June 30 letter and attached an affirmative action program dated July 31, 1971. The program has been carefully reviewed by the Regional Office for Civil Rights, the Headquarters Contract Compliance Division and me. Unfortunately, the program does not conform to 41 CFR 60-1.40 as amplified by 41 CFR 60-2 "Order No. 4" and is therefore unacceptable.

In summary, despite our efforts to achieve voluntary compliance the University has failed to provide the fundamental information about its employment practices necessary to permit assessment of both its successes and deficiencies in ensuring equal employment opportunity to all its employees.

First, the University's plan does not contain basic information on existing employment patterns ("utilization analyses") required by 41 CFR 60-1.40 and 41 CFR 60-2.11(a), nor the in-depth analyses suggested by 41 CFR 60-2.23. For instance, the plan does not include a "table of job classifications" which describes the job titles, principal duties (and auxiliary duties if any), rates of pay, and related information as required by 41 CFR 60-1.40a. This information, of course, must be obtained by the University as a first step toward its analysis of employment practices affecting minorities. The plan does indicate under paragraph IV. A. that you "anticipate completion of this study for all areas of the University by July 1, 1973." Yet, in your December 1969 plan under paragraph IV. C., the University indicated that "we expect that position descriptions will be written for all jobs by January 1, 1972", one and a half years earlier than you are now proposing to complete this information. Thus, not only is this information not contained in your present program, but the time period allocated by the University for its completion is much longer than reasonably necessary, even by the University's own prior assessment.

In addition to the University's failure to provide basic information on existing job categories, your present plan fails to set forth or analyze minority group representation in the job categories as required by 41 CFR 60-1.40 (b)(1). Nor does your plan include a salary analysis of minority and non-minority employees as required under 41 CFR 60-1.40(a). With regard to

minority group representation in University jobs, your program states that "by December 31, 1972, we expect to have completed this analysis . . ." Here again, however, in your December 1969 program under paragraph IV. A. the University stated that "by January 1, 1971, an extensive examination will have been completed in each subdivision and job category", two years earlier than you are now proposing to complete the analysis, and seven months prior to submission of your present plan. With regard to a comparative analysis of salaries, under paragraph IV. A. of your present plan you indicate that "salary analysis should be completed by December 31, 1973." This date is more than two years from the present, and is clearly unacceptable in view of the fact that information on pay is among the most basic required to analyze the University's posture, and is essential to a determination as to whether deficiencies exist.

The plan you have presently proposed also fails to contain an analysis of hiring practices for the past year as required by 41 CFR 60-140(b) (2). Paragraph IV. B. of your plan indicates that "with respect to supporting staff, we have examined the applicant/referral/hire data for a 12-month period. Although no immediate major problem areas appear, it is clear that more detailed data must be developed." Your plan goes on to say that "the system for gathering and summarizing data on the flow of applicants and new hires will be refined and developed by January 1, 1972. It will be expanded to include faculty by July 1, 1972." (paragraph IV.A.)

The University's December 1969 program, however, indicated under paragraph IV.B. that "interim methods will be devised by January 1, 1971 to gather more complete statistical information on applicant racial distribution" and made no distinction between such information for faculty and non-faculty. The University's new proposed plan, while recognizing several deficiencies in the "interim method", does not provide any useful information or analysis on applicant flow in non-faculty positions (as was to be obtained under the interim method) and proposed an additional year and a half delay in implementing a system to begin collecting data on faculty applicants and new hires. This is clearly unacceptable since problems in applicant flow cannot be identified or remedied by the University without this basic data.

In the area of hiring practices, we also note that the plan contains no analysis of the University's method of recruitment or recruitment sources, nor does the plan indicate that the University has itself examined these practices for purposes of

determining whether deficiencies may exist. The plan also contains no indication that the University has reviewed or analyzed its methods for screening applicants, evaluating their skills, or rating their qualifications, although the University's 1969 program stated that "test procedures will be formalized and analyzed to ensure that they are nondiscriminatory" by January 1, 1972 (paragraph IV.C.). In this connection, the plan also contains no indication that the University has reviewed or analyzed its interview procedures although the 1969 program stated specifically that "all interviews . . . will be formalized and analyzed to ensure that they are nondiscriminatory" by January 1, 1972 (paragraph IV.C.).

Finally, the plan contains no indication that the University has reviewed or analyzed other aspects of "hiring practices" such as how university officials refer job applicants to appropriate university employers; how related referral procedures operate; how a final selection of job applicants is made; and generally what criteria are used by the University in the areas of academic qualifications, experience factors, skills requirements, and related matters in determining who should and should not be employed.

In a similar area, the plan does not contain "an analysis of upgrading, transfer and promotion for the past year" as required by 41 CFR 60-140(b)(3). With respect to promotions, the plan indicates under paragraph IV.A. that "the analyses of frequency of promotion will depend upon the completion of the new personnel records system" which will be installed by July 1, 1973. Wholly aside from the fact that this proposed records system is unexplained, the University's 1969 plan had indicated under paragraph IV.E. that the system would be installed by January 1, 1972. The reasons for an additional one and a half year delay are nowhere articulated.

With regard to transfers between different jobs, nowhere does the plan indicate how minorities and non-minorities are affected by the University's procedures so as to preclude a pattern of "dead-end jobs" for minorities while non-minorities are more readily transferred into jobs with promotional promise. Indeed, nowhere in the plan is there any indication that the University has procedures to guard against discriminatory results of this kind, nor what the procedures are if they exist, nor whether the University has reviewed and analyzed the procedures to determine that they are working properly. Similarly, the same information is lacking with regard to procedures for upgrading employees within existing job classifications (although we note that the word "upgrading" is used in the paragraph heading numbered VII.).

In each of the foregoing cases, the University's plan is unacceptable in that it fails to identify and analyze for this Office basic employment patterns necessary for the identification of problems and the development of appropriate remedies. More importantly, the plan fails to commit the University to gather and analyze this information so that it can itself take the steps necessary to identify and eliminate any problems which may exist. Instead, despite a considerable passage of time to date, the University proposes to make analyses of fundamental employment information only after additional, unexplained, exorbitant delays.

In the absence of the basic employment data discussed above, it is, of course, virtually impossible for either the University or this Office to make any carefully considered determination as to "whether minorities are being underutilized in any job category" as required by 41 CFR 60-2.11(a); whether further support data is necessary as required by 41 CFR 60-2.11(c); what, if any, affirmative action is necessary as required by 41 CFR 60-2.11(b); and what kinds of internal audits or reporting systems would be helpful to the University and this Office in measuring the effectiveness of the University's total program to ensure equal employment opportunity.

The University commits itself to a number of apparently worthwhile efforts, but in the absence of basic supporting data it is impossible for us to judge the commitments even by the most generous standard, just as it is impossible for University officials themselves to understand the meaning of the commitments or enforce them. For instance, the plan states at page 1 that the University commits itself "to intensify efforts to recruit females and minority individuals . . . with special efforts being made to recruit persons from communities contiguous to the campus." In the absence of an analysis of existing hiring practices, including recruitment sources, it is impossible to evaluate the intended or practical effect of this statement.

What existing "efforts" are to be "intensified"? What "special efforts" would be used to recruit in communities contiguous to the campus? How does the University propose to oversee the efforts, and on what basis has the University concluded that special efforts should be made in the contiguous areas? Will special efforts in contiguous areas expand or restrict opportunities for minority employment? The point to be made here is that most of the questions left unanswered by the University's proposed plan cannot be answered in the absence of fundamental employment data of the kind discussed above.

similarly, we note that the University has committed itself "to make the racial and sexual distribution among the newly hired employees in all positions . . . match as closely as possible the comparable distribution among qualified applicants." Here again, the absence of data on applicant flow and any articulation of the standards or processes by which qualifications are measured make the effect of this statement virtually impossible to evaluate. Nor is there any indication as to how University officials themselves intend to evaluate this commitment or implement it in the absence of basic employment information and stated hiring criteria.

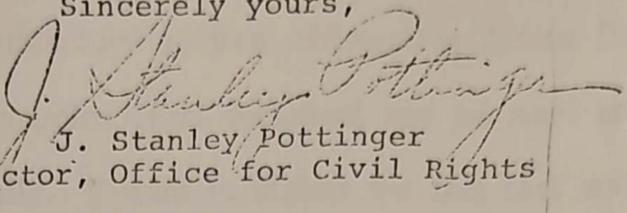
In this regard, I should emphasize that our interest is not in specifying or determining what constitutes appropriate hiring criteria in either academic or non-academic employment positions. That is a matter appropriately left to University officials. Our sole interest is to ensure that hiring and other employment criteria are not invidiously discriminatory on their face, and that whatever nondiscriminatory standards are chosen by the University are implemented in a nondiscriminatory manner through the use of procedures designed by the University to ensure the integrity of its equal employment opportunity objectives.

The chronology of events and the evaluation presented in this letter illustrate that every effort has been made over a period of 30 months to secure the University's compliance through informal means. Since none of these efforts have resulted in compliance, I am today referring your case to our Office of General Counsel with a recommendation that enforcement action be initiated against Columbia University to terminate all existing Federal contracts with Columbia University and all of its divisions, and to debar the University and all of its divisions from future participation in Federal contracts.

In addition, I am notifying all Department of Health, Education, and Welfare contracting officers that Columbia University does not have an acceptable affirmative action program and is therefore not a responsible contractor-bidder for purposes of Federal contract awards. I am also notifying the same officers that any new contract awards to Columbia must be cleared with this Office until such time as I can certify that Columbia appears to be able to comply with the equal opportunity clause of the Executive Order, or until such time as formal enforcement proceedings are concluded. I am also requesting the Director, Office of Federal Contract Compliance, Department of Labor, to issue a notice requiring all other Federal agencies to impose a similar clearance procedure.

If you wish to discuss any of the questions we have about your present plan, including those set forth in this letter, please contact Mr. Owen P. Kiely, Director, Contract Compliance Division, Office for Civil Rights, Room 3236, HEW North Building, 330 Independence Avenue, S. W. Washington, D. C. 20201. Mr. Kiely may be reached by telephone at Area Code 202-962-0368.

Sincerely yours,


J. Stanley Pottinger
Director, Office for Civil Rights