

Exec. Order  
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□

ration of William J. Clinton, 1993  
the Casey Foundation, I'm a little help to do that. People in Washington need  
h what you're doing. One of the to think the American people want this. They  
ing things to me as a public off don't need to think it's Bill Clinton and Al  
I have been a Governor, now Gore's deal; they need to think it's your deal.  
aving oversight of programs that And if they think it's your deal, then we can  
supposed to fit their needs to. pass it.  
You've got a lot of poor people [At this point, the President signed the Execu-  
ity who are absolutely dying tive orders and the memorandum.]  
get some job training, go to work  
are, you name it. If they've g  
s or three or four different prob  
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mean, you feel sometimes lik  
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It is absurd.  
should have, if you're in trouble  
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secting people the way these pro  
is awful. And I really hope you  
get it done. Thank you.  
nt discussed the need for a pro  
ne victims. A second participan  
funding for education, and the  
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ation grant programs.]  
dent. Let me just say one other  
ed a couple of questions—he  
it? We're going to try to change  
of Chapter 1, and if what you're  
it, that you have an enormously  
age of eligible people, your dis  
r school would benefit. But the  
hat this is—that's one of those  
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istrict that has poor kids—when  
, then every Congressman gets  
money.  
a couple of you what the biggest  
mplementing your changes are  
ur support when we come up  
present these legislative pack  
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it as few bills as we can in Con  
really need your support to ask  
of Congress to do this in the  
rest, to make some of these  
at we can do this. I need your

help to do that. People in Washington need  
to think the American people want this. They  
don't need to think it's Bill Clinton and Al  
Gore's deal; they need to think it's your deal.  
And if they think it's your deal, then we can  
pass it.  
[At this point, the President signed the Execu-  
tive orders and the memorandum.]  
NOTE: The President spoke at 10:39 a.m. at the  
Texas Surplus Property Agency. In his remarks,  
he referred to Mayor Bob Lanier of Houston,  
Gary Marrow, Texas land commissioner; John  
Sharp, Texas State comptroller; Billy Hamilton,  
Texas deputy comptroller and Deputy Director,  
National Performance Review; and Representa-  
tive Gene Green.

**Executive Order 12861—Elimination  
of One-Half of Executive Branch  
Internal Regulations**  
September 11, 1993

By the authority vested in me as President  
by the Constitution and the laws of the Unit-  
ed States of America, including section 301  
of title 3, United States Code, and section  
1111 of title 31, United States Code, and to  
cut 50 percent of the executive branch's in-  
ternal regulations in order to streamline and  
improve customer service to the American  
people, it is hereby ordered as follows:  
**Section 1. Regulatory Reductions.** Each  
executive department and agency shall un-  
dertake to eliminate not less than 50 percent  
of its civilian internal management regula-  
tions that are not required by law within 3  
years of the effective date of this order. An  
agency internal management regulation, for  
the purposes of this order, means an agency  
directive or regulation that pertains to its or-  
ganization, management, or personnel mat-  
ters. Reductions in agency internal manage-  
ment regulations shall be concentrated in  
areas that will result in the greatest improve-  
ment in productivity, streamlining of oper-  
ations, and improvement in customer service.  
**Sec. 2. Coverage.** This order applies to all  
executive branch departments and agencies.  
**Sec. 3. Implementation.** The Director of  
the Office of Management and Budget shall

issue instructions regarding the implementa-  
tion of this order, including exemptions nec-  
essary for the delivery of essential services  
and compliance with applicable law.

**Sec. 4. Independent Agencies.** All inde-  
pendent regulatory commissions and agen-  
cies are requested to comply with the provi-  
sions of this order.

**William J. Clinton**

The White House,  
September 11, 1993.

[Filed with the Office of the Federal Register,  
11:35 a.m., September 13, 1993]

NOTE: This Executive order was published in the  
*Federal Register* on September 14.

**Executive Order 12862—Setting  
Customer Service Standards**  
September 11, 1993

Putting people first means ensuring that  
the Federal Government provides the high-  
est quality service possible to the American  
people. Public officials must embark upon a  
revolution within the Federal Government to  
change the way it does business. This will  
require continual reform of the executive  
branch's management practices and oper-  
ations to provide service to the public that  
matches or exceeds the best service available  
in the private sector.

**Now, Therefore,** to establish and imple-  
ment customer service standards to guide the  
operations of the executive branch, and by  
the authority vested in me as President by  
the Constitution and the laws of the United  
States, it is hereby ordered:

**Section 1. Customer Service Standards.**  
In order to carry out the principles of the  
National Performance Review, the Federal  
Government must be customer-driven. The  
standard of quality for services provided to  
the public shall be: Customer service equal  
to the best in business. For the purposes of  
this order, "customer" shall mean an individ-  
ual or entity who is directly served by a de-  
partment or agency. "Best in business" shall  
mean the highest quality of service delivered

to customers by private organizations providing a comparable or analogous service.

All executive departments and agencies (hereinafter referred to collectively as "agency" or "agencies") that provide significant services directly to the public shall provide those services in a manner that seeks to meet the customer service standard established herein and shall take the following actions:

(a) identify the customers who are, or should be, served by the agency;

(b) survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services;

(c) post service standards and measure results against them;

(d) benchmark customer service performance against the best in business;

(e) survey front-line employees on barriers to, and ideas for, matching the best in business;

(f) provide customers with choices in both the sources of service and the means of delivery;

(g) make information, services, and complaint systems easily accessible; and

(h) provide means to address customer complaints.

**Sec. 2. Report on Customer Service Surveys.** By March 8, 1994, each agency subject to this order shall report on its customer surveys to the President. As information about customer satisfaction becomes available, each agency shall use that information in judging the performance of agency management and in making resource allocations.

**Sec. 3. Customer Service Plans.** By September 8, 1994, each agency subject to this order shall publish a customer service plan that can be readily understood by its customers. The plan shall include customer service standards and describe future plans for customer surveys. It also shall identify the private and public sector standards that the agency used to benchmark its performance against the best in business. In connection with the plan, each agency is encouraged to provide training resources for programs needed by employees who directly serve customers and by managers making use of customer survey information to promote the principles and objectives contained herein.

**Sec. 4. Independent Agencies.** Independent agencies are requested to adhere to this order.

**Sec. 5. Judicial Review.** This order is the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

The White House,  
September 11, 1993.

[Filed with the Office of the Federal Register 11:39 a.m., September 13, 1993]

NOTE: This Executive order was published in the *Federal Register* on September 14.

### Memorandum on Streamlining the Bureaucracy September 11, 1993

*Memorandum for Heads of Departments and Agencies*

*Subject:* Streamlining the Bureaucracy

Consistent with the National Performance Review's recommendation to reduce the executive branch civilian work force by 252,000, or not less than 12 percent, by the close of fiscal year 1999, I hereby direct each head of an executive department or agency to prepare, as a first step, a streamlining plan to be submitted to the Director of the Office of Management and Budget not later than December 1, 1993.

The streamlining plans shall be prepared in accordance with the following:

1. Each executive department's and agency's plans should address, among other things, the means by which it will reduce the ratio of managers and supervisors to other personnel, with a goal of reducing the percentage who are supervisors or managers in halving the current ratio within 5 years.
2. The streamlining plans should be characterized by (a) delegation of authority, (b) decentralization, (c) empowerment

of employees to make decisions and mechanisms to hold employees accountable for actions.

3. Each plan shall address overcontrol and micromanagement and now generate "red tape" inefficiency in the Federal Government. Each streamlining plan shall propose specific measures to streamline internal organization and processes of the department.
4. The streamlining plan shall seek to realize cost savings and improve the quality of Government and raise the morale and productivity of the department or agency.
5. All independent regulatory commissions and agencies are required to comply with the provisions of this memorandum.

The Director of the Office of Management and Budget is authorized to publish this memorandum in the *Federal Register*.

Wil

[Filed with the Office of the Federal Register 11:40 a.m., September 15, 1993]

NOTE: This memorandum was published in the *Federal Register* on September 16, 1993.

### Appointments of Members to the White House Conference on Small Business September 12, 1993

The President today announced the members to the White House Conference on Small Business Commission. New York businessman Robert L. Goetz is the Commission's Chair. He is responsible for developing the Commission's agenda for Executive and legislative action to encourage the economic vitality of small business and for convening the White House Conference on Small Business.

"I am very proud to have announced an outstanding group of people to the Small Business Commission," said the President. He committed to expanding op

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# HRM09: IMPROVE ACCOUNTABILITY FOR EQUAL EMPLOYMENT OPPORTUNITY GOALS AND ACCOMPLISHMENTS



## BACKGROUND

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It is the policy of the U.S. Government to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, or handicap, and to promote the full realization of equal employment opportunity through a continuing affirmative employment program in each agency.<sup>1</sup>

However, several factors in federal agencies indicate a lack of adherence to this policy. Those factors include: entrance barriers, glass ceilings, negative attitudes and perceptions, and the lack of management accountability.

**Glass Ceilings for Women and Minorities.** "Despite a dramatically growing presence in the workplace . . . progression into the middle and senior levels of management has been elusive for minorities and women . . . There is a [glass] ceiling . . . The term glass ceiling refers to invisible, yet real or perceived, barriers which appear to stymie advancement opportunities for minorities and women."<sup>2</sup>

del.

Constance Berry Newman, former Director of the Office of Personnel Management (OPM), said that "... the per-

centages of women and minorities in the [senior executive service] SES and the pipeline to the SES are unacceptable."<sup>3</sup> Most of the SES positions are held by white men. Women hold only 12 percent of these positions, and minorities hold only 9 percent.<sup>4</sup>

A fundamental means of enabling qualified women and minorities to be appropriately represented in the pipeline to the SES is to ensure that they are appropriately present in agencies' key jobs—jobs that can lead to middle and upper management positions.<sup>5</sup> There is a great disparity in the promotion rates for women and minorities in administrative and professional occupations at the grades 9 and 11 levels. This disparity has a significant impact on the number of women and minorities in high graded jobs, as grades 9 to 11 are the gateways between entry level jobs and senior level jobs for most federal government employees.<sup>6</sup>

ambiguously

"At a September 1991 national conference . . . officials from [the Equal Employment Opportunity Commission (EEOC)], OPM, the Merit Systems Protection Board, and the Federal Labor Relations Authority said in public forums that shattering the glass ceiling in the federal government will depend on (1) getting women and minorities into the job tracks

## HOLD MANAGERS ACCOUNTABLE FOR ADHERENCE TO PRINCIPLES OF MERIT AND EQUAL OPPORTUNITY

that lead to top management and (2) providing them with the necessary training and development opportunities to progress within those job tracks.<sup>7</sup> Doing this will require leadership from the top and accountability for results.

*Good*

**Americans with Disabilities.** Females and ethnic minorities are not alone in their under representation in the federal workforce. [The largest underemployed minority group in America are Americans with disabilities.<sup>8</sup> Persons with disabilities are underrepresented at all levels. Passage of the Americans with Disabilities Act of 1990 heightened the awareness of federal managers, supervisors, and employees on the issues of employment, training, and advancing people with disabilities.<sup>9</sup> However, in 1990 only 6 percent of federal employees had disabilities and only 1 percent had severe disabilities.<sup>10</sup>

Federal agencies must, and have begun to, develop and implement effective strategies to ensure that persons with disabilities are given equitable employment opportunities in the federal government. Under "Project Able Beneficiaries Link to Employers," OPM, the Social Security Administration, and state vocational rehabilitation offices in Virginia, Maryland, and the District of Columbia are working in partnership to create a new referral system which will place employees in direct contact with qualified potential employees with disabilities. In addition, OPM in cooperation with the Department of Veterans Affairs announced in June 1993 the implementation of a nationwide Job Ready Disabled Veterans Connection, which enables federal agencies to have rapid access to referral lists of job ready disabled veterans.

*qualified*

The current initiatives are commendable, but the federal government must continue to implement effective systems to increase the representation of job ready Americans with disabilities. There is a very real opportunity today for OPM to facilitate employment, training, and advancement of people with disabilities through a major campaign

aimed at those managers and supervisors who make these key decisions.<sup>11</sup>

### **Lack of Management Accountability.**

This administration has clearly demonstrated its commitment to equal opportunity and valuing workforce diversity. However, the longstanding lack of management accountability is a critical flaw in and barrier to current efforts to accomplish equal opportunity in the federal workforce. Currently, there is neither a consequence system for agency heads and their managers who do not plan, develop, and implement creative ways in which to accomplish equal opportunity goals nor a reward system for those who do.<sup>12</sup>

While it is important to deregulate, decentralize, and provide a certain degree of management flexibility, increased flexibility in the absence of appropriate accountability could undermine equal opportunity and affirmative employment efforts. Numerous reports issued by the General Accounting Office<sup>13</sup> cite discrimination within the government. Accountability must be encouraged by the President's reaffirmation of top-down commitment.

Agencies must review, evaluate, and control managerial and supervisory performance in such a manner as to ensure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policies and programs.<sup>14</sup>

Equal opportunity and workforce diversity should be an integral part of the mission of each and every federal agency. Constance Berry Newman states that "real equal employment opportunity will come about only when each and every executive, manager, supervisor and employee is committed to and held accountable for equal opportunity . . . agency heads must hold their managers and supervisors responsible for [equal employment opportunity] EEO by building it into their performance agreements and standards."<sup>15</sup>

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### Negative Attitudes and Perceptions.

Negative attitudes and perceptions are very powerful barriers to equal employment opportunity and workforce diversity.

According to Linda Winikow, corporate policy expert, "... on the one hand, civil rights legislation has done an enormous amount to wipe out the legal impediments to inequality. But all too many of the attitudes that prevented the flowering of diversity still exist. Executives have an obligation to recognize that this isn't simply a side issue. It is a fundamental management issue. A manager's first job is to manage—to bring people to their full potential. The glass ceiling does exist, but senior management's job is to do everything possible to provide the training and the climate for success."<sup>16</sup>

EEOC recognizes that treating EEO functions as side issues fosters perceptions of a conflict of interest. EEOC reiterated this concern in an October 1992 Management Directive that states:

In order for the agency to implement a continuing affirmative employment program to promote equal employment opportunity and to identify and eliminate discriminatory practices and policies, the agency shall appoint a director of Equal Employment Opportunity, who shall be under the immediate supervision of the agency head. Agencies must avoid conflicts of position or conflicts of interest as well as the appearance of such conflicts... In order to maintain the integrity of the EEO investigative and decision making processes, those functions must be kept separate from the personnel function.<sup>17</sup>

In addition, the Code of Federal Regulations states that "... the EEO director shall be under the immediate supervision of the agency head..."<sup>18</sup> Yet, some federal agencies still treat EEO as a side issue rather than as a fundamental management issue with identifiable accountability.

Experts who have spent many years actively advocating equal opportunity in the federal workforce are also concerned about

the effect of negative attitudes and perceptions. Dr. Harriett Jenkins, Director, Office of Senate Fair Employment Practices, recognizes that "Employees must perceive that there are credible efforts to eradicate discriminatory barriers and resolve complaints... those efforts must be real and visible... Because personnel and EEO are inextricably related, it is sometimes incorrectly assumed that EEO should be a sub-part of personnel or human resource offices. This reflects a lack of understanding of the managerial functions of the director of EEO, whose authority flows directly from the head of the agency. The director serves as an advisor to the head of the agency and other levels of managers. She or he is a catalyst and implementer of sensitive organizational assessment, corrective management strategies, and ongoing oversight and monitoring of the agency's EEO progress. He or she has the responsibility of assisting the agency head and other levels of managers to comply with civil rights laws, remove barriers to full integration, eliminate subtle and overt discrimination, adjudicate allegations of discrimination, affirmatively reach out to all groups, and ensure that all personnel management decisions are made on merit... Whoever has responsibility for EEO functions has to have the agency head's imprimatur to help the line managers bring about constructive change and full integration of the organization. It is the managers and supervisors in every part of the agency who can determine the successful achievement of the agency's EEO objectives."<sup>19</sup>

Task

### NEED FOR CHANGE

Agency heads and their managers must be held accountable to the President, Congress and the American public for creating, developing, valuing, and maintaining a workforce that is reflective of our nation's citizenry.<sup>20</sup>

While improvements have occurred and the current administration has set the stage for equal opportunity and diversity, the cur-

## HOLD MANAGERS ACCOUNTABLE FOR ADHERENCE TO PRINCIPLES OF MERIT AND EQUAL OPPORTUNITY

rent federal civilian workforce does not reflect the nation's diverse working population. Overall, the federal government has not been successful at eradicating discriminatory barriers, and attracting, retaining, and advancing members of all segments of society at all grade levels. It has been even less successful at integrating members of underrepresented groups into middle and upper management. Much work is still needed to ensure that equal opportunity becomes an integral part of each federal agency's strategic business plan and that management is held accountable for achieving results.

Government is paying an enormous cost for the glass ceiling that keeps qualified women, minorities, and disabled persons underrepresented at all levels in the federal government. It is under using a major segment of its human resources and delaying attainment of an important goal of the Civil Service Reform Act of 1978 and other civil rights laws—full representation of all segments of society at all grade levels in government.

As noted by the Council for Excellence in Government, "The federal government needs a career executive leadership cadre reflecting the diversity of America's population . . . Today there is neither sufficient leadership nor adequate diversity among career executives . . . The government can develop a diverse group of leaders, but it must take dramatic action to mount an effective governmentwide program and to hold management responsible for achieving results."<sup>21</sup>

It is imperative that federal agencies parallel the diversity thrusts that this President has started with his political appointments. The government should reaffirm its commitment to equal employment opportunity. Whoever has the primary responsibility for EEO functions must be a full, active member on the agency's senior management team that has responsibility for the allocation of the agency's resources. Federal agencies must focus on action and results, and must institute a real system of accountability.

## ACTION

*Charge all federal agency heads with the responsibility for ensuring equal opportunity and increasing integration of qualified women, minorities and persons with disabilities into all levels and job categories, including middle and senior management positions. (2)*

The President should issue an Executive Order to all agency heads by November 1993 stating his commitment to attaining a diverse federal workforce and increasing the representation of qualified minorities, women, and disabled persons at all levels, including higher levels at which they are most underrepresented. The Executive Order should also establish the requirement that each agency head will:

- build EEO and affirmative employment elements into his/her strategic business plan and include effective measurements for impact and change;
- require his/her executives, managers and supervisors to develop, implement, monitor and evaluate the organization's affirmative employment plans;
- ensure that a critical element on EEO, affirmative employment, and diversity is built into the performance plans and evaluations of all of his/her managers and supervisors;
- ensure that the director of EEO reports directly to him/her, and is a full participant on the senior management team(s) responsible for all resource allocations;
- demonstrate his/her commitment to EEO and affirmative employment, and provide employees a visible sign of credible efforts through such actions as annual policy statements on equal employment opportunity and affirmative employment;
- identify qualified, as well as high potential, women, minority, and

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disabled candidates and implement developmental programs to provide opportunities to effectively prepare them to compete for and hold executive leadership positions;

- provide recognition of those managers and organizations that consistently perform well in the EEO and affirmative employment areas; and ensure appropriate disciplinary action in cases where there is a finding of discrimination

Presidential leadership and an Executive Order which mandates management accountability for equal employment opportunity goals and accomplishments will reassure employees, applicants, and the American public that there is governmentwide commitment to and accountability for creating a federal workforce that reflects America's diverse citizenry.

### Endnotes

1. Title 29, *Code of Federal Regulations*, sec. 1614.101.
2. Carl M. Dominquez, "The Challenge of Workforce 2000," *The Bureaucrat*, Vol. 20, no. 4 (Winter 1991-92), p. 16.
3. U.S. General Accounting Office, *Federal Workforce: Continuing Need for Federal Affirmative Employment*, report no. GAO/GGD-92-27BR (Washington, D.C., November 1991), p. 3.
4. Council for Excellence in Government, "Bringing Leadership and Diversity Into the Federal Career Executive Ranks," (Washington, D.C., June 14, 1993), p. 2.
5. *Ibid.*
6. U.S. Merit Systems Protection Board, *A Question of Equity: Women and the Glass Ceiling in the Federal Government* (Washington, D.C., October 1992), p. 37.
7. U.S. General Accounting Office, *Federal Affirmative Employment: Status of Women and Minority Representation in the Federal Workforce*, report no. GAO/T-GGD-92-2 (Washington, D.C., October 23, 1991), p. 11.
8. U.S. Office of Personnel Management, U.S. Equal Employment Opportunity Commission, President's Committee on Employment of People with Disabilities, and U.S. Department of Education, "A Call to Action: A Report on Increasing the Employment of People with Disabilities in the Federal Sector," (Washington, D.C., July 1992) Appendix, p. iii.
9. *Ibid.*, p. 1.
10. *Ibid.*, p. 5.
11. Personal Interview with Dick Whitford, Acting Assistant Director, Affirmative Recruiting and Employment, Office of Personnel Management (Washington, D.C., August 1993).
12. Personal Interview with Ocoola Hall, Director, Discrimination Complaints, National Aeronautics and Space Administration (Washington, D.C., July 1993).
13. For example, U.S. General Accounting Office, *Equal Employment: Minority Representation at USDA's National Agricultural Statistics Service*, report no. GAO/GGD-91-31BR (Washington, D.C., March 18, 1991); *Health and Human Services: Hispanic Representation and Equal Employment Practices in Region VIII*, report no. GAO/HRD-91-6 (Washington, D.C., November 20, 1990); *EDA: Treatment of Blacks at the Economic Development Administration in the 1980's*, report no. GAO/HRD-90-148 (Washington, D.C., September 26, 1990); and *Voice of America: Selected Personnel Practices Warrants Management Attention*, report no. GAO/NSIAD-89-160 (Washington, D.C., July 12, 1989).
14. Title 29, *Code of Federal Regulations*, sec. 1614.102.
15. Personal Interview with Constance Betty Newman, Under Secretary, Smithsonian Institution (Washington, D.C., August 1993).
16. Linda Winikow, Vice President for Corporate Policy and External Affairs, Orange and Rockland Utilities, Inc., quoted at the Women's Bureau Conference (Washington, D.C., October 23, 1990).
17. U.S. Equal Employment Opportunity Commission, EEO Management Directive 110 (EEO MD-110) for Title 29, *Code of Federal Regulations*, Part 1614 (Washington, D.C., October 29, 1992), p. 1.
18. Title 29, *Code of Federal Regulations*, sec. 1614.102.
19. Personal Interview with Dr. Harriett Jenkins, Director, Office of Senate Fair Employment Practices, U.S. Senate (Washington, D.C., July 1993).
20. Ocoola Hall, July 1993.
21. Council for Excellence in Government, p. 3.

The truth is, we all lose. Yet HHS continues to spend dollars training timekeepers.<sup>52</sup>

The Department of Labor, by contrast, listened to complaints from its employees about the needless paper-pushing and use of administrative time that repetitive timekeeping required. Under the leadership of Secretary Robert Reich, and with full backing of union presidents who represent department employees, Labor has begun to dump the standard time card. After realizing that nearly 14,000 of its 18,000 employees work a standard 40-hour week, department leaders decided to trust their workers to report only exceptions, such as overtime and sick and annual leave. Since only one third of Labor's workforce reports any exception in the average week, the department is already saving paper and time—and money. Standard time records are now submitted electronically, without bothering employees.<sup>56</sup>

The President should encourage all departments and agencies to follow the Department of Labor's lead. The new policy will allow for exceptions—for example, when labor contracts or matters of public safety require them. But if we truly seek the highest productivity from our workers, we must treat them like responsible adults. In today's work environment, time cards are a useless annoyance.

**Action:** *The President should issue a directive committing the administration to greater equal opportunity and diversity in the federal workforce.*<sup>54</sup>

President Clinton launched his administration by appointing cabinet and senior officials who, in his words, "look like America." In doing so, he sent a clear message: A government that strives for the

best must continue to break down stubborn barriers that too often keep us from employing, training, or promoting the best people.

While the President has set the stage, the current federal workforce does not reflect the nation's diverse working population. Overall, the federal government has yet to successfully eliminate some discriminatory barriers to attracting and retaining underrepresented groups at every civil service grade level, or advancing them into senior positions. A glass ceiling still hangs over the employment and career prospects for women, minorities and people with disabilities who work in the federal service. Women account for only 12 percent of the top tier of the federal employment ladder—the Senior Executive Service—and minorities, nine percent.<sup>55</sup> Serious disparity persists for both in promotion rates to professional and administrative levels that serve as the gateway to further advancement. The numbers for Americans with disabilities are even worse. *what are they?*

Much can be done to make equal opportunity an integral part of each agency's mission and strategic plan. The President should issue a directive in 1993, committing the administration to attaining a diverse federal workforce and increasing the representation of qualified minorities, women, and people with disabilities at all career levels. The order should instruct agency heads to build equal employment opportunity and affirmative employment elements into their agency strategic plans and performance agreements. In turn, agency leaders should require managers and teams throughout their agencies to build the same goals into their own performance plans—and should publicly recognize those who succeed. *concept*

To: Steve Warnath

From: Stan Herr

Re : Executive Order on Equal Employment Opportunity Goals

Date: December 22, 1993

The key concept in equal employment for persons with disabilities is "reasonable accommodation." As the EEOC put it in the context of the Americans with Disabilities Act:

"When an individual's disability creates a barrier to employment opportunities, the ADA requires employers to consider whether reasonable accommodation could remove the barrier."

EEOC, "Interpretive guidance on title I of the ADA, 56 Fed Reg. 35739 (July 26, 1991).

Although the federal government is not covered under the ADA, comparable requirements for nondiscrimination in employment by federal agencies is found under the Rehabilitation Act, 29 USC ss. 791-794 (1973).

Examples of reasonable accommodation include job restructuring, reassignment of nonessential job functions that would be detrimental or impossible for the qualified individual with a disability to perform, shift changes, reassignment to a vacant position that the individual can perform, etc.. Some accommodations may be physical ones such as the removal of architectural barriers or may require the provision of auxiliary aids such as readers, interpreters, or equipment.

Once a plaintiff establishes a prima facie case of illegal discrimination, the defendant has the burden of providing that an accommodation is unreasonable because it cause "undue hardship." For the factors that go into determining when accommodations causes "such significant difficulty or expense" as not to be reasonable, see 29 CFR s. 1630.2. Since this inquiry is multi-factored, and includes the overall financial resources of the employer," the federal government cannot always lightly meet this burden. There is considerable caselaw on point.

There are some studies that suggest that most reasonable accommodation requests can be met with relatively modest expense (i.e., less than \$500). if it will prove useful, I can try to track that study down.

On the other hand, the Federal government is also supposed to be a model employer for the workforce with disabilities. If we want the private sector to uphold its parallel duties under the ADA (which by July 1994 will extend to small employers with as few as 15 employees, down from the current 25 employee threshold),

we want must set a better exasmples than our current performance. The President also issued a proclamation on October 6th that admirably calls for "equal treatment in the workforce," not wasting the abilities of a single person with disabilities, and full implementation of the ADA and the Rehabilitation Act. Sometimes this Administration does very well in this regard, e.g., the appointment of Judy Heumann who uses a motorized wheelchair and need an on-the-job personal assistant as she performs her job as Assistant Secretary in the Department of Education for Special Education, or Robert Williams who uses a voice synthesizer and other aids since he has cerebral palsy and only limited speech. But we are also hearing from federal workers with disabilities that their job prospects and accommodations compare unfavorably with other workers.

The crux of this memo is that general language applicable to women and racial minorities will not go far enough to meet the legal or social context of ensuring that persons with disabilities are fairly employed and promoted. The very high rates of unemployment and underemployment by qualified persons with disabilities gives added urgency to this matter (an estimated two-thirds of adults with disabilities have no work).

If I can provide you with further details, or information, or consultation on this executive order, please advise. Any feedback is also appreciated.

*reasonable  
accommodate -*

Revised December 21, 1993

## EXECUTIVE ORDER

### ACCOUNTABILITY FOR EQUAL EMPLOYMENT OPPORTUNITY GOALS AND ACCOMPLISHMENTS

Today, Presidential leadership and a mandate for management accountability for equal employment opportunity goals and accomplishments are critically important to reassure employees, applicants, and the American public that there is governmentwide commitment to and accountability for creating a federal workforce that is reflective of our nation's diversity.

Holding managers and supervisors accountable for increasing the representation of women, minorities, and persons with disabilities in all occupational categories and at all levels of government is essential to achieving a federal workforce that is representative of our nation's diversity. Only by taking positive steps to ensure that women, minorities, and persons with disabilities are increasingly represented in all occupational categories and grade levels, including middle and senior management positions, will it be possible to realize the objectives of Title VII of the Civil Rights Act of 1964, as amended, and Section 501 of the Rehabilitation Act of 1973, as amended. **Equal education and training opportunities are enabling elements and are inextricably tied to and ensure equal employment opportunity and affirmative employment.**

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to improve the representation of women, minorities, and persons with disabilities in all occupational categories and at all levels of government, it is hereby ordered:

**Section 1. Responsibilities of Heads of Executive Branch Departments and Agencies.** To ensure full representation of women, minorities, and persons with disabilities in all occupational categories and at all levels of the government, heads of all executive departments and agencies (hereinafter referred to collectively as "agency") shall immediately undertake take a comprehensive set of actions to increase representation that include the following:

- (1) build equal employment opportunity and affirmative employment elements, including education and training opportunities, into the agency's strategic plan to include effective measurements for impact and change;
- (2) require agency executives, managers and supervisors to develop, implement, monitor, and evaluate the organization's affirmative employment plans;
- (3) ensure that a critical performance element on equal employment opportunity, affirmative employment, and workforce diversity is included in the performance plans of all agency managers and supervisors;

- (4) ensure that the director of equal employment opportunity reports directly to the head of the agency, in compliance with 29 C.F.R. Section 1614.102(b)(3), and is a full participant on the management team(s) responsible for all resource allocations;
- (5) demonstrate visible commitment to equal employment opportunity and affirmative employment through such means as providing specific career enhancement programs and annual policy statements on equal employment opportunity and affirmative employment;
- (6) provide opportunities for qualified, as well as high potential, women, minorities, and persons with disabilities to participate in developmental programs to compete for and hold leadership positions in all occupational categories and at all levels, including those at the executive level; and *expl*
- (7) recognize managers and organizations that consistently perform well in the area of equal employment opportunity, and ensure that there is appropriate disciplinary action in cases where there is a finding of discrimination.

(reference: NPR Recommendation HRM09, Improve Accountability for Equal Employment Opportunity Goals and Accomplishments)

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FROM

STEPHEN C. WARNATH

Stan,

Attached is the draft  
Equal Opportunity EO based  
upon the NPR's recommendation.

Let me know what could

make it better.

Thanks,

Steve

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DRAFT

EXECUTIVE ORDER

ACCOUNTABILITY FOR RESULTS IN EQUAL OPPORTUNITY AND  
NONDISCRIMINATION IN THE EXECUTIVE BRANCH

(S) Management accountability is critical to achieve the results that this Administration seeks in implementing equal opportunity policies and programs in the Executive branch and to create a federal workforce that is reflective of our nation's diversity. This Executive Order strengthens the internal accountability of Executive department and agency executives, supervisors, and managers to ensure that women, minorities, persons with disabilities and individuals from other underrepresented groups are provided equal opportunity for employment-related education and training and a full and equal opportunity to be employed in all occupational categories and grade levels, including middle and senior management positions, in the Executive branch.

(S) Accordingly, by the authority vested in me as President by the Constitution and laws of the United States, and in order to improve the opportunities for all qualified persons to be employed in all occupational categories and grade levels of federal government employment and to realize the objectives of Title VII of the Civil Rights Act of 1964, as amended, and Section 501 of the Rehabilitation Act of 1973, as amended, it is hereby ordered as follows:

**Section 1. Implementation of Equal Opportunity Initiatives.** The head of each Executive branch department and agency (hereafter collectively "agency" or "agencies") shall immediately take the necessary steps permitted by law to ensure that all applicable equal opportunity and nondiscrimination law<sup>s</sup> and policy<sup>s</sup> of the United States <sup>are</sup> is made an integral part of every aspect of personnel policy and practice and employment, training and development, advancement, and treatment of employees of the Federal government and applicants for Federal employment. These steps shall include, but not be limited to, the following:

(a) ensure that qualified applicants from underrepresented groups such as women, minorities and persons with disabilities receive an equal opportunity to be employed in all occupational categories and grade levels of federal government employment;

(b) build specific equal opportunity elements, including employment education and training opportunities, capable of effective measurement to gauge impact and change into each agency's mission and strategic or operating plan;

(c) involve agency executives, managers and supervisors in the development, implementation and evaluation of the agency's equal opportunity and affirmative employment planning and activities;

(d) include equal opportunity and affirmative employment as one of the critical performance elements for evaluation of agency

executives, managers and supervisors;

(e) improve opportunities for participation by underrepresented groups, including women, minorities, and persons with disabilities, in developmental and training programs to prepare them to compete for and hold leadership positions in all occupational categories and at all levels, including those at the executive level;

(f) ensure that each agency's Director of Equal Employment Opportunity reports directly to the head of the agency in compliance with 29 C.F.R. Section 1614.102(b)(3) and is a full participant on the agency's management team(s) responsible for all resource allocations;

(g) recognize agency executives, managers, and supervisors that consistently perform well in the area of equal employment opportunity, and ensure that appropriate disciplinary action is taken in cases where there is a finding of discrimination;

(h) demonstrate visible commitment to equal opportunity, affirmative employment opportunity and nondiscrimination within the agency (e.g. by prompt issuance of agency policy or procedure statements necessary to implement this Order, providing specific career enhancement programs and annual promulgation of equal opportunity policy and implementation statements).

**Sec. 2. Management Accountability and Performance Agreements.**

Performance agreements between the President and agency heads shall be utilized to ensure agency compliance with this Order and applicable equal opportunity and civil rights law. Agency heads shall promote the internal management accountability objectives of this Order within each agency by including equal employment elements in performance agreements with agency executives, managers, and supervisors.

**Sec. 3. Progress Reporting Requirement.**

Agencies shall cooperate with requests from the President's Management Council, the Office of Management and Budget, and the Equal Employment Opportunity Commission ("EEOC") for information pertaining to an agency's implementation of this Order. The EEOC shall report annually to the President, via the Vice President, on each agency's progress in implementing this Order and achieving equal opportunity within the agencies.

**Sec. 4. No Private Right of Action.**

This Order is for the internal management of the Executive Branch and is not intended to and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON