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ABSTRACT

A primary social dilemma today is that current strategies have led to the perception that affirmative action favors some population groups at the expense of others, that in a sense it uses one form of discrimination to combat another. It is essential to reconsider affirmative action strategies to implement those that are most appropriate for today and most likely to lessen racial tensions while ensuring equality. Research provides no findings to support the claim that affirmative action has contributed to growing income gaps in the black community. Public support for equal opportunity has remained constant, but opposition has increased for policies that some perceive as preferential treatment. However, polls indicate that public support is increasing for measures such as education and training programs to help women and minorities compete more successfully. Among this Task Force's recommendations are some aimed at strengthening legal enforcement against discrimination. In the area of education and training, an important recommendation is that support be increased for all socially and economically disadvantaged individuals. Another suggestion is that colleges and universities should be encouraged to pursue their own voluntary efforts for student diversity, with race and gender considered among other criteria. Additional suggestions are made for government contracting and policy decisions. (Contains 60 references.) (SLD)

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Affirmative Action: A Course for the Future

Affirmative Action Task Force for the Study

New Directions: African Americans in a Diversifying Nation

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Affirmative Action: A Course for the Future

**Affirmative Action Task Force for the Study
*New Directions: African Americans in a Diversifying Nation***

**Joint Center for Political and Economic Studies
National Planning Association**

August 1996

Affirmative Action: A Course for the Future

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EXECUTIVE SUMMARY

This report is the product of a unique effort to build a consensus around one of the most controversial and divisive issues of our day, affirmative action. The Joint Center for Political and Economic Studies has joined with the National Planning Association to assemble a broad-based Task Force to confront the conflicting array of facts and arguments offered in the ongoing debate. The members were asked to develop recommendations which would provide a clearer definition of the problems facing us as well as to suggest courses of action behind which a majority of Americans might unite. The report primarily addresses affirmative action in regard to African Americans as it is part of a larger Joint Center/NPA study, *New Directions: African Americans in a Diversifying Nation*.

In any democracy, public policies can be effective only if they have the broad support of the people. While specific government strategies may lack this support, it is essential that the goals of these policies are widely shared. Dissatisfaction with particular strategies does not necessarily signal dissatisfaction with goals.

The primary dilemma today is that current strategies have led to the perception that affirmative action favors some population groups at the expense of others--that in some sense it uses one form of discrimination to combat another. This appearance of inconsistency, even if unwarranted, weighs heavily on our body politic. The question we now face is this: What are the most appropriate affirmative action strategies for today's circumstances, and how can they be implemented in a manner likely to lessen racial tensions and move us toward our common goals?

Before laying out any proposals for changed or new strategies, it is essential to identify and reaffirm the goals that underlie our recommendations. They are these:

- *To achieve equal opportunity for all Americans to compete in all spheres of life.*

This goal, shared by most Americans, has been the central premise of the civil rights revolution. It emerges from our vision of an integrated yet diverse society in which

race and ethnicity will cease to be relevant determinants of opportunity or status, or predictors of achievement. It also reflects our shared confidence that it is possible for each person to be free to achieve as much as individual will and capacity permit.

- *To eliminate all remaining forms of discrimination based on race, ethnicity, gender, disability, religion, or national origin in every sphere of national life.*

As a society, we understand that the legacies of prejudice and discrimination have not yet been overcome. We know it is not enough to forbid discrimination without tangible sanctions, and we therefore accept the role of government in imposing penalties for illegal acts of discrimination.

- *To expect that our government will continually open up avenues of education and training for those in need in order to ensure real equality of opportunity for all citizens.*

There is widespread agreement that government should continue education and training strategies to help disadvantaged people prepare for employment in a workplace that requires ever-changing, more sophisticated skills.

These principles are widely shared throughout most of the population and reflect the fundamental values of our society. At issue are the methods used to pursue these principles. While government cannot decree changed attitudes, we know from our history that government *can* successfully exert leadership in achieving our egalitarian goals. Government leadership has contributed considerably to the achievements of the past three decades and can play a constructive role in the future.

FINDINGS:

Affirmative action measures have contributed to gains made by blacks, other minorities, and women in employment, education and government contracting. While affirmative action cannot by itself nullify other economic forces nor eliminate all racial disparities, it has been an effective policy tool for increasing opportunity .

There have been allegations that affirmative action has deepened social-class divisions within the black population, but there is no evidence to support this claim. While affirmative action has helped professional and white-collar blacks, it has not hurt low-skilled and blue-collar blacks and, therefore, has not directly led to the growing economic gaps within the black community.

As affirmative action policies have evolved, public response to them has also changed. While public support for equal opportunity has remained constant, opposition has increased to policies that some have come to perceive as preferential treatment, especially those that use goals and timetables. In contrast, polling data indicates increased support for such measures as education and training programs to help minorities and women compete more successfully.

RECOMMENDATIONS:

Recommendations for the Workplace

Discrimination in the workplace is still a factor in American economic life. The following recommendations speak to specific means of dealing with this problem through improved strategies to achieve our goals. These recommendations are aimed at strengthening legal enforcement against discrimination and introducing new concepts to aid us in constructing a society where there is equal opportunity for all.

- *Antidiscrimination enforcement under Title VII of the Civil Rights Act of 1964 should be strengthened with more financial resources and greater coordination between enforcement agencies.*

Because there is clear evidence that discrimination continues to be a problem in the workplace, there cannot and should not be any substitute for vigorous enforcement of antidiscrimination laws. At a minimum, we should not tolerate massive backlogs in processing and resolving discrimination complaints. We should seek to modify administrative processes and allocate resources so as to ensure a credible and responsive enforcement system. The

enforcement effort might be further strengthened through proactive steps, such as occasional employment audits using paired job applicants to uncover discriminatory hiring practices.

- ***Executive Order 11246 should be amended to allow for the graduation of companies that have achieved their affirmative action goals established in compliance with the Office of Federal Contract Compliance Program's (OFCCP's) nondiscrimination requirements.***

Designate companies that reach their affirmative action goals as "certified Equal Opportunity Employers" and relieve them of filing annual reports and undergoing audits by OFCCP. They would be required to publish the demographic composition of their workforce at regular intervals, such as every three years.

- ***Add arbitration as another option to resolve allegations of discrimination.***

Provide training and guidelines for arbitration procedures which would ensure that the aggrieved would not lose their judicial rights. Standards should be in place to guarantee noncoercive, impartial, and fair procedures.

Recommendations for Education and Training

African Americans are overrepresented among our disadvantaged citizens. Many are obliged to prepare for life in unstable families and in schools that cannot provide an education adequate to permit successful competition in today's demanding, constantly changing technological society. To assure the continuing competitiveness of the United States in the global marketplace, it is imperative that all of our citizens are capable of productivity at their maximum level. As important as affirmative action has been and remains, it will not of itself suffice to provide the equality of opportunity which we in America have defined as a right of all citizens. Therefore, in addition to our support for affirmative action in higher education, we strongly urge that improving learning opportunities for all our disadvantaged citizens be made a number one priority for the next decade.

- ***Increase support for education and training for all socially and economically disadvantaged individuals to improve their ability to compete successfully for higher education and job opportunities.***

Investment in educational opportunity and job training is one of the most reliable means for facilitating inclusion and for enabling each person to be free to achieve as much as individual will and capacity permit.

- ***Encourage colleges and universities to pursue their own voluntary efforts for student diversity, employing race and gender among their other criteria.***

We believe the decision of the Fifth Circuit Court of Appeals in *Hopwood v. Texas*, rejecting the use of affirmative action even to correct racial imbalance in the student population in that circuit, could eventually move the country in the wrong direction. We endorse the concept that the use of affirmative action to promote diversity should be a decision left to each individual college and university.

Recommendations for Government Contracting

We believe that the federal government's efforts to encourage and facilitate the development of minority- and female-owned businesses have been effective and remain vital. We recognize that a number of federal set-aside programs have been challenged in court and have been among the more controversial affirmative action programs. However, in recognizing that discrimination limits access to markets and capital for many minority and female-owned businesses, we support a continued but refocused role for the federal government in assisting such businesses, justified by evidence of discrimination. Additionally, we see a special need for start-up assistance to minority and female-owned companies to help them overcome obstacles while preparing them for open and full competition. The intent of these recommendations is to accelerate the movement of businesses from sheltered status to viable participation in the larger competitive market.

- ***Establish goals for procurement from minority- and female- owned companies by federal agencies based on evidence of discrimination; graduate agencies with effective compliance records.***

Based on evidence of discrimination in their contracting practices, federal agencies should develop goals, timetables, and strategies for contracting with minority and female-owned firms, institutions and organizations. When goals have been achieved, agencies would rely on open competitive procurement practices.

- ***Modify the Small Business Administration's 8a program for minority and women-owned businesses to ensure faster graduation and to prevent abuses by ineligible businesses.***

This program should provide an initial boost rather than a permanent shelter. Each 8a certified company would be graduated out of the program after seven (rather than nine) years under sheltered competition. Enhance oversight of the program to eliminate ineligible applicants.

- ***Strengthen programs that assist small and disadvantaged businesses in obtaining needed capital and technical assistance to enable them to develop and compete effectively.***

Continue to provide needed assistance to start-up minority- and female-owned businesses through such programs as the Commerce Department's Minority Business Development Centers and the Small Business Administration's Office of Minority Enterprise Development.

- ***Emphasize affirmative action strategies aimed at assisting firms that provide job opportunities in economically distressed geographic areas where unemployment levels are persistently high.***

Pursue programs designed to encourage the creation of private sector employment opportunities in areas of high concentrations of unemployed people. This country has a long history of such "place-based" economic policies, including the Area Redevelopment Act of the 1960s, and more recently, "empowerment" and "enterprise" zones.

CONCLUSION

It is important to assess the impact that 30 years of affirmative action have had on our nation and to chart a course for the future that will help achieve equal opportunity for all citizens. Unfortunately, the fervor and fear engendered by the current, rhetorically charged debate on the subject have too often complicated an objective review of our progress and substituted emotional appeal for cooperative, reasoned, and well-informed dialogue. We hope this statement will provide the chance for such a dialogue so that we can explore new models and strategies for expanding opportunities. We must reduce the deep racial divisions that threaten our society as we intensify our efforts to make equal opportunity a reality.

Introduction

In recent years, affirmative action programs have increasingly engaged the attention of the courts, policymakers, and concerned citizens. Clearly, affirmative action will be a prominent issue in the fall 1996 elections, and we expect that the controversies will continue well into the future. The report that follows is a response to the affirmative action debate, articulating an approach with two prime objectives: sustaining the battle against discrimination and encouraging those measures that help ensure equality of opportunity for all Americans. It was prepared by the Affirmative Action Task Force (members listed below) a group brought together by the National Planning Association and the Joint Center for Political and Economic Studies.

In July 1995, President Clinton responded to mounting criticism of affirmative action programs (including the decision in *Peña v. Adarand Constructors*, in which the U.S. Supreme Court invalidated federal minority set-asides that fail to meet strict new standards) with a call for mending—not ending—affirmative action. But even in the short time since that message there have been shifts in the debate, with new developments on several fronts. After an extensive review of affirmative action programs in light of *Adarand*, the federal government has issued proposed reforms to affirmative action in federal contracting, while the Department of Defense has already issued orders suspending one element of its minority procurement program (the “rule of two”).

For its part, Congress is currently considering legislation that would eliminate most federal affirmative action programs altogether. Some state-level officials have proposed to limit the scope of state-sponsored affirmative action as well. Finally, the Fifth Circuit Court of Appeals in Texas recently invalidated affirmative action admissions practices at the University of Texas Law School (*Hopwood v. Texas*), further narrowing the scope of affirmative action that some courts regard as permissible in higher education. The Supreme Court declined to hear the case on appeal.

In the face of these developments, further changes in policies and priorities appear all but certain, although it is not clear how much will change or how the change will occur. If what transpires is haphazard and undirected, the nation's quest for genuine equal opportunity may be thwarted. The best outcome would be for coherent and carefully measured reforms to take place around a new national consensus.

In pursuit of the second course, the Task Force issues this report in an effort to build a consensus for policies that focus on the goals of nondiscrimination and equal opportunity to compete. We offer recommendations for the constructive modification of affirmative action strategies to accelerate our attainment of these basic goals. We fully recognize that we are dealing with fast-moving policy targets, and therefore we do not pretend to offer recommendations that will be either comprehensive or universally acceptable. This report primarily addresses affirmative action in regard to African Americans as it is part of a larger Joint Center/NPA study, *New Directions: African Americans in a Diversifying Nation*.

Not all Task Force members will fully endorse every point made in the report, nor will members cease their individual efforts to pursue solutions in other forums. Nevertheless, all members of the Task Force do believe that this report provides an excellent opportunity for reasoned discussion on this issue, and they commend it to the public for thoughtful consideration.

Support for this study has been provided by the Ford Foundation, U.S. Department of Labor/Employment and Training Administration, McDonald's Corporation, MCI Communications Corporation, The Andrew W. Mellon Foundation, The Shelley and Donald Rubin Foundation, and the Richard J. and Priscilla M. Schmeelk Foundation.

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Chapter 1. The Meaning and Goals of Affirmative Action

For nearly three and one-half centuries, blacks were excluded from the political, social, and economic mainstream of American life. This exclusion was continuous, pervasive, and legally enforced. For the past three decades, the nation has attempted to end discrimination and provide equal opportunity to all Americans. Progress has been substantial in this short time, but the goal of a society entirely free from racial discrimination and its effects remains unrealized.

Affirmative action is one of the principal instruments American society has used to begin to heal the manifold injuries caused by past discrimination. As defined by the U.S. Commission on Civil Rights, affirmative action is “any measure that considers race, national origin, sex, or disability to provide opportunities to people who either historically or actually have been denied opportunities.” In practice, affirmative action has involved a variety of government and private sector strategies to break down institutional barriers of discrimination in the economic and educational sectors. By removing these obstacles, affirmative action has increased opportunities for those individuals who, though qualified, were being denied opportunities by discriminatory practices.

Affirmative action rests on the premise that simply banning discrimination would not yield genuine equal opportunity when many Americans, notably African Americans, have been severely handicapped by prior and continuing unequal treatment. Affirmative action measures were designed as a practical means for helping to level the economic and social playing fields in pursuit of the nation's broader goal of equal opportunity for all.

Over the last three decades, through legislation, court rulings, and executive orders, we have developed and revised various affirmative action measures. This is entirely consistent with the need to evaluate continually the effectiveness of particular strategies for implementing public policies. Adjusting strategies from time to time to meet these goals more effectively is vital to preserving the vigor of our efforts, and that is the purpose of the recommendations of this Task Force. As Thomas

Jefferson wrote in 1816: "I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times."

America's commitment to equal opportunity is firmly based on moral as well as practical considerations. One practical consideration is the continuing loss to the nation's economy caused by underutilization of a large portion of the population. Another is the threat to civil stability posed by a large permanent underclass that is shut off from access to the principal ladders for achievement and has no stake in society. Demographic projections suggest that by the year 2020, 45 percent of all children in this country under the age of 18 will be black, Hispanic, or Asian. If the United States is to maintain the cohesiveness that is essential to a great nation, we must continue to pursue inclusion as a fundamental goal of society.

From the beginning, affirmative action has been controversial. That controversy, persisting throughout affirmative action's 30-year history, recently reached a new peak. Involved in the controversy are divergent views about what affirmative action is, what it is supposed to accomplish, what it has actually achieved, and whether it is fair. On one side of the debate are those who view affirmative action as a vital tool for bringing African Americans, other minority groups, and women into the mainstream of society; on the other are those who view it as a program of race-based quotas that unfairly favors blacks at the expense of whites.

Between these two views, there appears to be widespread support for the ideals of equal opportunity and fairness in education and the workplace but much less support for the affirmative action strategies for achieving those goals. Some argue that the programs should be eliminated altogether. Others, including President Bill Clinton, argue for reform rather than termination.

The primary dilemma is that current strategies have led to the perception that affirmative action favors some population groups at the expense of others—that in some sense it uses one form of discrimination to combat another. This appearance of inconsistency, even if unwarranted, weighs heavily on our body politic. The question we now face is this: What are the most appropriate affirmative action strategies for today's circumstances, and how can they be implemented in a manner likely to lessen racial tensions and move us toward our common goals?

Our Common Goals

In any democracy, public policies can be effective only if they have the broad support of the people. While specific government strategies may lack this support, it is essential that the goals of these policies are widely shared, a common vision of the society as we want it to be. Our nation's goals should clarify a view of what is just and fair for today, tomorrow, and all time. Dissatisfaction with particular strategies does not necessarily signal dissatisfaction with goals.

In the case of affirmative action, we believe the controversy is over strategies rather than goals, means not ends. Before laying out any proposals for changed or new strategies, it is essential to identify and reaffirm the goals that underlie our recommendations. They are these:

- *To achieve equal opportunity for all Americans to compete in all spheres of life.*

This goal, shared by most Americans, has been the central premise of the civil rights revolution. It emerges from our shared vision of a single, integrated yet diverse society, in which race and ethnicity will cease to be relevant determinants of opportunity or status, or predictors of achievement. It also reflects our shared confidence that it is possible for each person to be free to achieve as much as individual will and capacity permit.

- *To eliminate all remaining forms of discrimination based on race, ethnicity, gender, disability, religion, or national origin in every sphere of national life.*

As a society, we understand that the legacies of prejudice and discrimination have not yet been overcome. We know it is not enough to forbid discrimination without tangible sanctions,

and we therefore accept the role of government in imposing penalties for illegal acts of discrimination.

- *To expect that our government will continually open up avenues of education and training for those in need in order to ensure real equality of opportunity for all citizens.*

There is widespread agreement that government should continue education and training strategies to help disadvantaged people prepare for employment in a workplace that requires ever-changing, more sophisticated skills.

These principles are widely shared throughout most of the population and reflect the fundamental values of our society. At issue are the methods used to pursue these principles. While government cannot decree changed attitudes, we know from our history that government *can* successfully exert leadership in achieving our egalitarian goals. Government leadership has contributed considerably to the achievements of the past three decades and can play a constructive role in the future.

A New Approach

In offering new affirmative action strategies, we reaffirm the above core principles while considering new ways to pursue them. The new approach would:

- Strengthen all antidiscrimination enforcement and retain affirmative action as a potential remedy where discrimination is found;
- Reemphasize the temporary nature of each specific affirmative action program by adjusting it where there is clear evidence of progress toward desired goals or in those instances where goals are not being achieved. (This approach has precedence worth noting in the Voting Rights Act of 1965);
- Review current policies and, where appropriate, revise them to eliminate abuses; and

- Renew our efforts to make education and training opportunities available for those in need.

In the chapters that follow, we review the history and current status of affirmative action, assess its impact on equal opportunity, examine public attitudes toward various strategies, and argue for revised strategies to meet our common goal of a more just society. We found abundant evidence that affirmative action policies and programs have played an important role in improving the status of African Americans in a remarkably short time. Several specific indicators reflect the progress toward civil rights' goals, but the most telling is the expansion and strengthening of the black middle class. Another striking outcome of affirmative action programs is the dramatic increase in the number of women in the workforce and their increasing presence in occupations previously dominated by men. Both business executives and civil rights groups have found that the workforce as a whole has benefited from affirmative action strategies, with fairer procedures in place for hiring and promotion and enhanced employer sensitivity.

Chapter 2. The History and Present Status of Affirmative Action

Federal affirmative action programs began to take shape in the 1960s, developing gradually through legislation, executive orders, and court decisions. These programs address three broad areas: employment, education, and government contracting. In spite of this gradual, piecemeal development, these programs and the broader affirmative action concept now cover most academic institutions and virtually all workplaces in both the public and private sectors.

The concept of affirmative action had its origins in the Kennedy and Johnson administrations. President Kennedy's Executive Order 10925, issued in 1961, required that all government contracts contain an equal employment opportunity clause. The order also established the Commission on Equal Opportunity to carry out enforcement of the requirement. Meanwhile, then Vice President Lyndon Johnson initiated a voluntary equal opportunity program for large government contractors, entitled "Plans for Progress." During his own administration, President Johnson issued the executive order most associated with the term *affirmative action*, Executive Order 11246. This set of tools and incentives has continued to evolve over subsequent presidential administrations.

Over time, the term affirmative action has been applied to a wide variety of programs with significantly different features. Some programs involve vigorous outreach efforts to increase the pool of applicants for jobs or for admission to educational institutions. Other programs broaden or redefine qualifications to facilitate inclusion of covered groups. Still others involve set-asides or numerical goals and timetables. Set-asides are most frequently used in government contracting, but they have been used in other areas as well, usually when mandated by court order.

The size and composition of the covered classes have changed over the years as well. When affirmative action policies were first developed in the 1960s, African Americans were the primary minority group in this country, making up approximately 10 percent of the population. In the 30 years following, modifications to immigration and refugee policies led to increased immigration from

non-European countries, resulting in a rapid rise in the Hispanic and Asian populations. By legislative and executive actions, women were added to the protected groups for many programs, and the disabled were incorporated into many programs through the Americans With Disabilities Act of 1990.

Given the complexity, number, and evolution of the affirmative action strategies, it is essential to examine carefully their major features and how they have changed over time. Following is a broad review of each of the three domains—employment, education, and government contracting.

Affirmative Action in Employment

Workplace affirmative action measures have attracted much attention because of their effect on the lives of Americans. For most households, employment is the primary source of income, and programs that provide greater access to jobs for some groups are often seen as reducing opportunities for others. Moreover, the development of affirmative action strategies began with employment, and much of the early case law revolved around employment practices.

Present affirmative action policies in employment are based on Title VII of the Civil Rights Act of 1964, Executive Order 11246, and several subsequent court decisions. Title VII outlaws employment discrimination in private firms with 15 or more employees, educational institutions, state and local governments, employment agencies, and unions. The enforcement agency, the Equal Employment Opportunity Commission (EEOC), monitors employment practices, investigates allegations of discrimination in any phase of employment, and requires that firms with more than 100 employees report the racial and gender composition of their workforce.

In pursuing its responsibilities, the EEOC has encouraged employers to develop affirmative action plans, although, in practice, Title VII does not require affirmative action programs unless imposed by a court after a finding of discrimination. EEOC does have the power to bring class-action suits, and in several cases it has exacted large settlements upon proving that company policies had limited the access of women and minorities to better jobs. The threat of such costly suits has served as a major impetus for companies to establish affirmative action policies. Also important—given EEOC's

limited direct enforcement activity—has been the establishment of “sweeping legal precedents” that have made it easier for private litigants to bring successful actions against companies, thereby increasing pressure on companies to avoid these problems by developing their own affirmative action plans (Leonard 1990).

Executive Order 11246, signed in 1965 by President Johnson, directly addressed the need to ensure equitable treatment of minorities in the area of employment. In addition to extending previous presidential directives against employment discrimination, this order directs that federal contractors (including colleges and universities) with 50 or more employees and contracts of over \$50,000 are required to take affirmative action to ensure equality of employment opportunity without regard to race, creed, color, gender, or national origin.

The executive order initially focused on racial and ethnic minorities, but in 1967 the order was extended to include women. To implement these requirements, the Johnson administration created the Office of Federal Contract Compliance Programs (OFCCP) within the Department of Labor. In 1979, various enforcement agencies from different departments were consolidated into the OFCCP, which now enforces the rules for all federal contractors. While the order's primary compliance tools are reporting requirements and an audit function, compliance is also enforced through sanctions, including cancellation of contracts, debarment from future contracts, and recommendations for additional legal action by EEOC. Executive Order 11246 does not mandate preferential treatment in employment decisions nor does it require employers to hire unqualified individuals to meet racial or gender goals.

With the revised Philadelphia Plan in 1969, the federal government instituted the first use of goals and timetables in affirmative action programs, which were then incorporated into OFCCP procedures. Regulations now require federal contractors to develop affirmative action plans, including goals and timetables, and to make good-faith efforts to reach these goals. The executive order does not mandate *attainment* of the goals, however. Failure to reach established goals may result in an investigation of

the employer's efforts to achieve the objective, but rarely does it result in a penalty (Hill and Jones 1993, 350). Nevertheless, the goals and timetables provision has been a source of controversy and is often perceived as establishing quotas.

Separately, the courts have played a prominent role in enforcing nondiscrimination policies under Title VII. The courts have clarified what constitutes evidence of discrimination, notably using the standard of "disparate impact" of routine practices on different racial or gender groups in the workforce. The landmark *Griggs v. Duke Power Company* case (1971) established that the employer must prove that the employment practice in question is necessary for the individual to perform the duties of the position. The burden of proof was shifted temporarily to the shoulders of employees filing discrimination suits as a result of *Wards Cove Packing Company v. Atonio* (1989). In practice, this meant that even if there were strong evidence of discrimination, the employer was under no obligation to prove the necessity of the employment practice in question. The Civil Rights Restoration Act of 1991, however, overturned *Wards Cove* and restored the *Griggs* rule.

Affirmative Action in Higher Education

Concurrent with the development of affirmative action programs in employment was the development of programs to combat discrimination in higher education. Here, too, the Civil Rights Act of 1964 (principally Title VI), other legislative provisions, and court decisions have together provided the basis for affirmative action. Since 1976, the U.S. Department of Education's Office of Civil Rights has investigated complaints of discrimination in admissions and conducted periodic reviews of the admissions practices of colleges and universities (Butler 1992).

In the American experience, education has proved the principal ladder to success and an especially important gateway to increased opportunity for blacks, other minorities, and women. Affirmative action in higher education has attempted to accomplish at least three goals: provide equal access to higher education; narrow quickly the wide gap in educational attainment between the black and white populations; and increase racial and ethnic diversity in student, faculty, and administrative populations on college and university campuses.

Although some institutions of higher education were recruiting black students and faculty during the 1960s, it was not until the 1970s that much changed. The establishment of special admissions procedures allowed a greater number of blacks, other minorities, and women to gain admission to selective four-year colleges and universities. Over time, this resulted in more graduates from these groups with a high-quality education, the social networks necessary for professional success, and increased access to positions of power, prestige, and decisionmaking (Orlans, 1992 144).

The strategies used to facilitate the admission of greater numbers of blacks, other minorities, and women to selective institutions have been the source of much debate and controversy. In theory, admissions officers of selective colleges and universities wanted to provide equal access to applicants from all backgrounds. In order to do that, numerical goals based on the estimated proportion of available candidates were established to measure progress. Many institutions broadened their admissions criteria to increase the acceptance rate for members of targeted groups. While this procedure has been criticized for being preferential, it can be compared to the differential requirements for other groups, such as children of alumni and talented athletes. (Hacker 1992).

One example of how affirmative action works is the changed admissions procedures of the University of California (UC) at Berkeley. In 1973, the California university system attempted to reflect in its student population the ethnic, gender, and economic composition of the state's high school graduates. However, selective campuses such as UC-Berkeley had higher admissions standards than other campuses in the system. They admitted only students who ranked among the top 12.5 percent of graduates in the state, based on a combination of SAT scores and grade point average. Black and Hispanic students were much less likely than others to be in the highest scoring groups and, consequently, did not get admitted at rates high enough to change the composition of Berkeley's student body. After changing academic admissions criteria to include in the pool of eligible candidates all blacks and Hispanics who met the minimum standards for the state system, UC-Berkeley was able to come closer to its set goals (Hacker 1992, 136–138).

The courts have had a significant impact on the evolution of affirmative action in education. In 1973, a series of district-level court decisions, known today as the *Adams* cases, tried to compel the U.S. Department of Health, Education and Welfare (HEW) to enforce the elimination of segregation in state colleges and universities in 19 southern and border states. In 1977, HEW determined that the measure of desegregation would be minority representation in state colleges and universities equal to minority student representation among high school graduates. This was to be achieved by increasing black enrollment in traditionally white institutions and white enrollment in historically black colleges and universities. In addition, programs were to be strengthened in the weaker (and therefore less attractive) institutions. While some progress was made, the goals were never met. Nevertheless, oversight by the U.S. Department of Education ended in the mid-1980s.

Another key decision was handed down in 1978 by the U.S. Supreme Court in *Regents of the University of California v. Bakke*. The University of California-Davis medical program guaranteed a number of places for minority applicants. The High Court ruled that while a diverse student body is a constitutionally permissible and compelling goal, a quota—the reservation of a specified number of slots based solely on ethnicity—did not meet the court's standard as a narrowly tailored mechanism. *Bakke* upheld the use of goals but not quotas and specified race as only one of many factors to be considered during the admissions process.

A recent court decision affecting affirmative action programs in higher education is *Podberesky v. Kirwan*, in which the Fourth Circuit Court of Appeals declared unconstitutional a University of Maryland scholarship program for which only black students were eligible. This ruling limits the ways universities can overcome the financial barriers to higher education that black students face. The Supreme Court declined to hear the case on appeal. Given the lower average income of black families and given that lingering black/white enrollment differences may be in large part traceable to racial disparities in access to financial aid, those barriers remain considerable (Jaynes and Williams 1989).

On the administrative front, a recent decision by the University of California Regents to eliminate affirmative action programs in higher education ends the proactive measures undertaken by UC-

Berkeley and the entire UC system. Given a continuing disparity in test scores and grade point average between minority and white high school graduates, the primary reliance on such measures may well result in a significant decline in the enrollment of black and Hispanic students in selective California institutions. If this spreads to institutions in other states, current enrollment levels for these groups may be difficult to maintain.

Affirmative action is used to increase diversity and promote equal opportunity among faculty and administrators as well as students. As mentioned above, Executive Order 11246 requires that more than one thousand institutions with over \$50,000 in federal contracts establish numerical goals for hiring more women and minority faculty.

In addition to efforts resulting from government enforcement or encouragement, the institutions themselves have initiated efforts to diversify their faculties, in part to reflect changes in the student body. Greater recruitment efforts, special efforts to provide employment for both partners in dual-career couples, and extra faculty slots or budget increases established when a minority or a woman faculty member is added have had a significant impact on the composition of faculty at institutions of higher education. The number of white women on faculties increased by 33 percent between 1979 and 1989, in contrast to a 3.5 percent increase in white male faculty. Minority faculty also increased significantly, with black faculty numbers rising by 19 percent, Hispanic faculty by nearly 50 percent, and Asian faculty by 84 percent. Even with these changes, only 4.5 percent of faculty were black, and 2.0 percent were Hispanic. Asians reached 4.7 percent of faculty, close to their percentage of the student population, while white women comprise 27.9% of faculty.

Affirmative Action in Government Contracting

Even as the civil rights movement reached its peak in 1965 with passage of a comprehensive voting rights act one year after the enactment of the Civil Rights Act, the nearly complete absence of blacks from the ranks of business owners and entrepreneurs stood out as an indicator of their economic

disadvantages. The Kerner Commission, created in 1967 to study the causes of widespread racial violence, called attention to the relative absence of black-owned businesses in major U.S. cities.

Affirmative action in government contracting began partly in response to the Kerner Commission report. However, no real progress was made in this area until President Richard Nixon took administrative steps to establish minority business development as a priority, including the creation of the Office of Minority Business Enterprise, later known as the Minority Business Development Agency.

A separate measure at the federal level was undertaken by the Small Business Administration (SBA). Known as the Section 8(a) program, it attempted to provide markets to minority and other disadvantaged business owners and entrepreneurs by setting aside a small percentage of federal contracts for minority firms. After substantial controversy, Congress gave the SBA program a statutory basis by enacting Public Law 95-507, which required that federal agencies establish percentage goals for contract awards to small, minority-owned businesses. It also required prime contractors in certain larger construction projects to set aside a percentage of the subcontracts for small minority-owned firms. In 1979, President Jimmy Carter issued Executive Order 12138, which required federal agencies to take affirmative action in support of woman-owned businesses.

In addition to the SBA-based programs, a number of appropriation bills included provisions requiring set-asides of a fixed percentage of contract funds for minority- and woman-owned businesses. One example of such a bill is the 1977 Public Works Employment Act, which mandated \$4 billion to stimulate a sluggish economy, particularly in the construction trades. In 1980, the U.S. Supreme Court upheld the plan in *Fullilove v. Klutznick*, which sustained a federal public works program that set aside 10 percent of the value of contracts for minority-owned businesses. Another example of legislated set-asides is the 1982 Surface Transportation Assistance Act. Many state and local governments have followed the federal governments' lead in creating set-aside programs for minority- and female-owned businesses.

Summary

Affirmative action has taken many turns during the past 30 years. Initially a somewhat passive set of guidelines for equal treatment, it has become a more active set of programs including outreach, adjustment of standards, and set-asides. In recent years, the combination of judicial review and executive redirection has begun a movement toward more "race-neutral" solutions, at least in the areas of business and education.

Chapter 3. The Impact of Affirmative Action Programs

Determining whether progress made over time can be attributed to any one program or policy is a complicated endeavor, and this is especially true of affirmative action programs. However, evidence suggests that despite inconsistencies with regard to implementation and enforcement, affirmative action programs have expanded opportunities for blacks, women, and ethnic minorities in the three domains discussed in the previous chapter—employment, education, and government contracting.

In the area of employment, for example, blacks have moved into higher status occupations, and women have made gains in occupational choices and levels as well as earnings relative to white males. In higher education, college graduation rates have increased for most protected groups; in contracting, black businesses have increased in number and in size. In spite of these gains, however, measurable disparities remain in all three areas reviewed.

This chapter reviews these and related impacts, and then concludes with a look at public perceptions and opinions.

Impact in the Workplace

During the time affirmative action has been in place, employment among minorities and women has undergone significant change. White women have increased their labor force participation and moved into higher status jobs, with the proportion of women in professional and managerial jobs increasing from 17 percent in 1972 to almost 30 percent in 1995. The earnings of white women who worked full-time year-round increased relative to those of their white male counterparts, rising from 58 percent in 1969 to 71 percent in 1993. Blacks nearly doubled their representation in professional and managerial jobs. The earnings of black males who worked full-time rose modestly relative to white males, increasing from 67 to 74 percent. The double impact of occupational change and more equal wage rates resulted in an increase in earnings among black women who work full-time, rising from 46 percent of white male earnings to 64 percent (Bennett 1995). While not all of the gains can be

attributed to affirmative action, the evidence indicates that it has made a significant difference in employment for both minorities and women.

Affirmative action has permanently changed the personnel policies and practices of the U.S. business world. In a recently published survey by Organization Resources Counselors Inc. (ORC) (Robertson 1995), 92 of 140 corporate chief executive officers of companies affected by contract compliance programs (70 percent of those surveyed) reported that their affirmative action experience had generally led to an improvement in their hiring and selection programs. The Citizens' Commission on Civil Rights (1984) concluded that affirmative action resulted in benefits to the workforce as a whole, including fairer procedures for hiring and promotion, the elimination of job criteria not related to performance, and enhanced employer sensitivity to such employee needs as counseling and fair grievance procedures.

Although many CEOs in the ORC survey said they would make changes in existing affirmative action programs, 73 percent said they would still use numerical goals to keep track of progress in workplace fairness even if government-mandated affirmative action programs were discontinued. A large percentage of the CEOs surveyed also believed that affirmative action programs increase workplace efficiency and organizational effectiveness.

The absence of uniform federal enforcement standards, however, would likely leave large national firms vulnerable to idiosyncratic state and local practices and decrease efficiency due to the need to be aware of and adhere to a host of different standards (Robertson 1995).

Title VII. Title VII litigation had the greatest impact on white-collar occupations for blacks, especially during the 1960s and 70s. According to Badgett and Hartmann (1995), Title VII investigations and settlements also had a net positive effect on earnings for both white and black women. In particular, during the sixties and seventies, it increased women's access to jobs previously held by men.

A report by the U.S. Civil Rights Commission points to a serious backlog problem in enforcement of Title VII. From 1981 to 1994 the number of federal employees working on civil rights enforcement declined by 19 percent. The backlog of cases at the EEOC has grown alarmingly during this period. In 1994, while resolving 71,563 private sector employment complaints, the EEOC had a backlog of 96,945 pending cases and received 91,189 new complaints. The Commission on Civil Rights reports that some complaints have taken up to 10 years to resolve (*The Washington Post* June 24, 1995).

Executive Order 11246. Enforcement of Executive Order 11246 by OFCCP was relatively weak during its early years (1966 to 1973), but was undertaken more vigorously between 1974 and 1980. This increased enforcement, together with greater centralization of activities within OFCCP, resulted in a greater number of debarments and back-pay awards. According to Leonard (1990), the contract compliance program increased the black male share of annual employment in the contractor sector by 1 percent and the black female employment share by 2 percent. Most of these gains came about because blacks were able to retain jobs while overall employment levels in that sector were decreasing.

There have been allegations that affirmative action has deepened social class divisions within the black population, but there is no evidence to support this claim. While affirmative action has helped professional and white-collar blacks, it has not hurt low-skilled and blue-collar blacks and, therefore, has not directly led to the growing economic gaps within the black community (Badgett and Hartmann 1995).

Impact on Education

Another indication of progress aided by affirmative action is in the area of education. Several measures show that educational gains have been made among both minorities and women. In 1960, the median educational attainment of persons between the ages of 25 and 29 was 9.9 years for blacks and 12.3 years for whites. By 1980, attainment had risen to 12.6 years for blacks, only 0.4 points lower than the level for whites (13.0 years) (Jaynes and Williams 1989). At the end of the decade, the median years of education for both races had nearly converged (12.5 for blacks, 12.7 for whites).

Similarly, between 1976 and 1995, SAT scores for blacks improved relative to those for whites. Average verbal SAT scores for black students increased 24 points (from 332 to 356) and average math SAT scores improved 34 points (from 354 to 388). These increases, combined with a decrease of three points in verbal SAT scores and an increase of only five points in math SAT scores for whites in the same period, narrowed the gap between whites and blacks by 29 points in each subject. (College Board 1995).

Increases in the percentage of minorities completing college have been spectacular. The proportion of black Americans 25 years or older who had completed college nearly tripled—increasing from slightly more than 4 percent in 1970 to over 11 percent in 1990. During this same period, the percentage of Asian Americans with college educations rose from 20 percent to about 35 percent. Among white women, the proportion rose dramatically, from 8.4 percent to 19 percent. For Hispanics, the increase was from 6 percent to 9 percent, and for Native Americans, from 4 percent to over 9 percent (Harrison and Bennett 1995).

The overall growth in the proportion of college-educated blacks, however, obscures a more sobering reality concerning college enrollment. Between 1970 and 1976, the proportion of black high school graduates enrolled in college grew from 26 percent to 33 percent, but by 1985 it had fallen back to 26 percent. By 1993, it still had not yet managed to rise above 1970 levels (Bennett 1995). In addition, among those admitted to college, black graduation rates are much lower than those of whites: 60 percent of blacks graduate within five years compared with 80 percent of whites. The graduation rates of Hispanics and Native Americans are also significantly lower than those of whites.

Impact on Government Contracting

The issue of set-asides in government contracting remains one of the most controversial and bitterly argued topics of the affirmative action debate. In 1989, in *City of Richmond v. J.A. Croson Co.*, the U.S. Supreme Court ruled that state and local governments must apply stricter standards of scrutiny to their remedial race-conscious contracting policies. The new, extremely stringent standards in effect

invalidated the city's requirement that 30 percent of city contracts or subcontracts be reserved for minority-businesses (Hill and Jones 1993). The court's ruling was based on the following: There was no proof that the city had discriminated against minority firms in contracting nor that it had been a passive participant in discrimination by others, such as banks or prime government contractors; the city had not indicated that it had tried race-neutral alternatives and found them to be ineffective; there was no basis for the specific set-aside percentage chosen by the city in terms of minority firm capacity. These shortcomings contributed to the court's finding that the city had not met strict-scrutiny standards.

Despite the initial negative effects of the *Croson* decision, minority business set-aside programs around the country were reviewed and restructured after the ruling, and procurement assistance programs of some type continue to be nearly universal in the nation's largest cities. Many states that initially suspended their programs reinstated them, with changes, in the early 1990s.

The recent *Adarand v. Peña* decision extends the ruling of the *Croson* case to federal contracts, requiring the government to defend its programs with a detailed documentation of past discrimination. Together, the *Adarand* and *Croson* decisions make the documentation of racial discrimination in government procurement contracts pivotal to their continuation. If discrimination is proven, the federal government will then have to determine whether race-neutral alternatives might achieve the same objectives as race-based programs. If not, then the government would have to design a program that was narrowly tailored to achieve the objective of eliminating racial barriers. Programs targeted toward women business owners will also have to be reviewed, although they only have to meet a lower scrutiny standard.

The potential impact of the *Adarand* ruling on minority business development could be substantial, at least if the experience after *Croson* is an appropriate comparison. Twelve percent of minority-owned businesses that operated nationwide sold goods or services to state and local governments in 1987, representing a multibillion-dollar market. These firms provided employment opportunities to many minority workers. In the wake of the *Croson* ruling (and revisions in SBA 8(a) programs in the

early 1980s), many minority firms suffered significant losses of business as government contracting opportunities declined and were not replaced by opportunities in private business. However, research completed by Timothy Bates suggests that overreliance on government contracts is not necessarily good for minority companies. According to Bates' analysis, the minority businesses most apt to survive long term are those that do the majority of their business in the private sector (Bates and Williams 1995).

The lessons gleaned from the experience of federal, state, and local governments can provide guidance in structuring effective programs. When governments do not have rigorous certification programs, "front" companies that serve as conduits of contract work to larger, white-owned firms proliferate. In addition, poorly run programs may do more harm than good to minority-owned businesses by awarding large contracts to small firms with little capacity to carry out the work. On the other hand, well-run programs that provide technical assistance and access to working capital contributed to the success of some minority businesses by strengthening their capacity, thereby enabling them to perform effectively and allowing them to expand into private-sector work. These findings can be useful as minority business programs are modified in the post-*Adarand* environment.

Measuring Economic Gains and Explaining Remaining Differences

During the last three decades, numerous demographic, economic, and political trends have complicated the achievement of equal opportunity and confounded evaluations of progress. As indicated in the education section above, enormous progress was made in narrowing the gaps in educational attainment. These gains have contributed to occupational improvements among women and minority workers, thereby boosting the effect of affirmative action efforts in employment. Because the pool of qualified people became larger, it became easier for potential employers to identify minority and women candidates for white-collar positions.

Educational gains also contributed to advancements in minority-owned businesses. As minority business owners became more educated and acquired experience in the corporate world, they were

able to start businesses with greater employment and profit potential. These firms were well-positioned to take advantage of government contracting initiatives. As a result, the number of minority-owned firms in industries that are more likely to have government contracts increased between 1960 and 1980 as a percentage of all minority firms by 46 percent (manufacturing) to 175 percent (business services) (Bates 1993).

While these gains are impressive by most standards, gaps in income and earnings still exist between groups. Some differences remain, even after adjusting for factors that contribute to employability such as education and occupation. For example, in 1993, black men with college degrees who were in professional occupations earned only 73 percent of the amount earned by white males in the same or similar occupations. Moreover, black males are still much less likely than whites to be in the better-paying managerial and professional specialties (15 percent vs. 27 percent) and more likely to be in the much lower-paying operator, fabricator, and laborer occupations (31 percent vs. 19 percent) (Bennett 1995).

Although legislation outlaws racial discrimination, there is evidence that employers still take race into account when making hiring decisions. The Urban Institute conducted a study in which teams of young men with identical qualifications and similar attire, differing only by race or ethnicity, applied for the same entry-level position. At every stage of the employment process—completing an application, obtaining an interview, receiving a job offer—black and Hispanic candidates were less likely to advance toward employment than their white counterparts. In 31 percent of the Hispanic/white employment audits, the white applicant advanced farther through the hiring process; this was also the case in 20 percent of the black/white audits (Fix and Struyk 1993).

Not all of the remaining differences in employment and earnings can be attributed to discrimination, though some may indirectly result from discrimination and segregation. During the affirmative action period, many firms moved to the suburbs and to the Sunbelt, generally leaving areas with relatively large black populations for areas with relatively small ones. These shifts in location, along with overall shifts in employment opportunities by industry and occupation, accounted for 40 percent of the

relative erosion in black/white earnings gaps for young men. Because of residential segregation, these location trends affected black women as well, but not white women.

Minorities with attributes similar to those of blacks—geographic concentration and low levels of educational attainment—showed similar employment and earnings gaps. Asian Americans, however, though they too tend to be concentrated in urban areas and in certain low-growth regions, had very large gains in educational attainment which offset the downward economic trend of certain areas.

Moreover, whites with similar skills and located in low-growth areas also had wage levels comparable to those of blacks and other minorities. Conversely, African Americans who lived in high-growth areas and who possessed highly valued skills in mathematics, science, technology, or entertainment advanced along with whites.

Finally, during this period, union activity and government minimum-wage policies, which normally mitigate the effects of deteriorating economic conditions, played a much reduced role, and their absence contributed to widening employment gaps. However, even after accounting for all these factors, statistical studies are unable to account for about 20 percent of the wage differences between blacks and whites. This unexplained portion has been attributed to discrimination.

Public Support for Affirmative Action

Since the early 1970s, there has been a general consensus among Americans that blacks should “have as good a chance as white people to get any kind of job” (Sigelman and Welch 1991). What have not been unanimously supported are the various affirmative action measures that have been implemented to achieve that goal. Although inconsistencies in wording complicate efforts to measure increases or decreases in public support for affirmative action programs over time, some useful observations can be made.

According to one survey, support increased from 69 percent in 1969 to 75 percent in 1985 for "federal laws requiring affirmative action programs for women and minorities in employment and education provided there are no rigid quotas" (The Harris Survey 1985). Another poll, however, showed that support for "affirmative action programs in business for blacks and other minority groups" dropped from 68 percent to 59 percent during the 1980s (NBC News/*The Wall Street Journal* 1991). Such results highlight a critical point in the current debate: there is an increase in support for affirmative action programs which do not include quotas or when women are included in the target group, and a decrease in support when the affirmative action measure is not as clearly defined. Since 1991, there has been a slight decrease (3 percent) in support for affirmative action among the total population (*The Los Angeles Times* Poll 1995). Along with that decrease in support for affirmative action has been a concurrent increase of 10 percent (from 19 percent to 29 percent) in persons opposed to affirmative action.

Nevertheless, public opinion has changed little over time where certain affirmative action strategies are concerned. Since 1972, poll data suggest that most Americans have consistently favored government involvement in efforts intended to help blacks and other minorities compete equally with whites in the workforce but have been less supportive of government intervention in the form of preferential treatment. In a 1980 survey, respondents were asked to choose between (a) strong government action to improve the socioeconomic status of blacks and (b) no government action, with individuals left to make it on their own. Results showed that white Americans favor a combination of the two, with greater weight given to individual effort. This emphasis on individual effort becomes especially pronounced when preferential treatment is presented as the alternative (Kluegel and Smith 1986).

Public opinion has also changed toward other affirmative action measures. Support for education, job training, and special advice for minorities and women to help make them better qualified for jobs has increased over time (The Harris Survey 1982 and 1985; Kluegel and Smith 1986; *USA Today*/CNN/Gallup Poll 1995). On the other hand, opposition to the use of quotas and set-asides also has increased over time.

As with general questions about affirmative action, responses to questions on preferential treatment vary according to the wording and context of the question. One recent poll shows more support than opposition among both blacks and whites for hiring a minority over an equally qualified white, and such hiring was not considered discrimination against the white applicant (*USA Today/CNN/Gallup Poll* March 17-19, 1995). While neither whites nor blacks have historically favored hiring a minority over a more qualified white applicant, their opposition to hiring a minority when applicants are *equally* qualified has changed little.

However, other opinion poll questions that were similar in content but framed differently generally received far less support. When asked whether preferences should be granted to equally qualified minorities in education and employment matters because of past discrimination, all groups (whites, blacks, Hispanics, men, and women) expressed more opposition than support (*The Los Angeles Times Poll* March 30, 1995). Such responses are consistent with answers to a similar question in a 1984 poll; only 49 percent of black and 9 percent of white respondents supported granting preference to blacks because of past discrimination (Gallup Joint Center Poll 1984).

The increased negative response can be attributed to at least two factors. First, references to “past discrimination” imply that discrimination according to race and gender is no longer a serious problem. Because Americans who believe that discrimination still exists are also more inclined to support affirmative action programs, the implication that discrimination in America is a thing of the past has a substantial impact on the response. In addition, the use of the term “preference” (which equates affirmative action with the granting of undeserved rewards) almost always generates a negative response (Leadership Conference on Civil Rights March 30, 1995). This is most evident in the survey taken by *The Washington Post* in March 1995, often cited as proof of great opposition to affirmative action, which is full of questions using the terms “preference” and “past discrimination” (*The Washington Post-ABC News Poll* March 16-19, 1995). In contrast, many other surveys taken in recent years that did not use the terms “preference” or “past discrimination” as heavily received

significantly more favorable responses to questions on affirmative action (*USA Today/CNN/Gallup* 1995; *The Los Angeles Times* Poll 1995; NBC News/*The Wall Street Journal* Poll 1991).

Attitudes about affirmative action differ considerably according to race: a greater proportion of blacks than whites support it. This difference is particularly pronounced on support for numerical measures that help gauge the success of the effort. Issues that divide whites and blacks the most include scholarships at public colleges and universities that are available only to minorities and women; set-asides for government contracts; and quotas, goals, and timetables. While approximately 70 percent of blacks favor the establishment of quotas, for example, nearly the same proportion of whites are opposed (*USA Today/CNN/ Gallup* Poll March, 1995). This may be related to the fact that most blacks felt quotas were the only way to achieve fairness in admissions, hiring, and promotion decisions although whites felt fairness could be accomplished without quotas (Gallup Poll April 23-25, 1991). Blacks perceive greater amounts of discrimination in the workplace and higher education than do whites. When asked in a 1995 survey whether they thought "schools and businesses would or would not provide blacks and other racial minorities with equal opportunities if the government dropped all affirmative action programs," blacks and whites had different opinions: almost half of whites said "would" while nearly 70 percent of blacks said "would not" (*USA Today/CNN/Gallup* Poll, March 17-19, 1995).

On the complex issue of preferential treatment described above, there are also differences of opinion according to race. When asked whether preferential treatment in hiring or promotion should be given "where there has been job discrimination against blacks in the past," 53 percent of all respondents said "no." This slim-majority opposition to preferences, however, masks a substantial division along racial lines; while 58 percent of whites opposed such preferences, 66 percent of blacks favored them (CBS News/*The New York Times* Civil Rights Poll 1993).

It is important to note also that on certain issues blacks and whites agree. Both blacks and whites have long supported affirmative action measures that promote equal opportunity in higher education

and employment for minorities and women, provided there are no rigid quotas (NBC News/*The Wall Street Journal* Poll 1991).

Conclusion

Despite the influence of other factors, it is clear that affirmative action measures have contributed to gains made by blacks, other minorities, and women. In light of the enormous changes in the U.S. economy over the past 20 years, even small signs of progress by blacks, Hispanics, and women are significant. While affirmative action cannot by itself nullify other economic forces nor eliminate all racial disparities, it has been an effective policy tool for increasing opportunity (Simms 1995).

As affirmative action policies have evolved, public response to them has also changed. While public support for equal opportunity has remained constant, opposition has increased to policies that some have come to perceive as preferential treatment, especially those that use goals and timetables. In contrast, polling data indicates increased support for education and training programs to help minorities and women compete more successfully.

Chapter 4. New Directions to Achieve Equal Opportunity

In the relatively brief span of thirty years since the passage of the Civil Rights Act of 1964, the country has made enormous progress toward a more equitable society. Even in the face of significant changes in the U.S. economy and increasing immigration, opportunities have improved demonstrably for women, blacks, and other minorities. The emergence of a substantial black middle class and the increasing presence of women in occupations previously dominated by men are some of the more obvious products of public and private policies in which affirmative action has played a role. Without government-initiated affirmative action programs and a generally supportive public, these gains would not have been possible.

In spite of the progress, however, there is compelling evidence that discrimination still exists in the United States and that we have not reached the goal of a truly equal-opportunity society. It is essential, therefore, that the nation continue to pursue the goal of a society that does not condone discrimination on the basis of race, ethnicity, and sex and that guarantees to all an opportunity to compete in all spheres of life.

We affirm the important role that affirmative action strategies have played in the past and continue to play today in pursuit of that goal. Some of these strategies are now being challenged in the courts, in Congress, and in several state governments, making it unrealistic to assume that they will or should continue unaltered indefinitely. Moreover, the country needs to intensify efforts to achieve equal opportunity, both by adopting new strategies and by modifying existing ones, preserving the valuable aspects of our current efforts while continuing to develop more effective ones.

Finally, additional progress toward achieving the goals of ending discrimination and maximizing inclusion may be facilitated by substantially increasing the pool of the educated and trained. If we should retreat in this area, affirmative action goals would be that much more difficult to achieve. We

therefore view the emphasis on preparing people through education and training as a viable and necessary complement to efforts in affirmative action.

The nation has embarked on a serious review of its affirmative action strategies. We join this important enterprise by reaffirming the need to continue strategies moving us toward an equal opportunity society while modifying some of those strategies in a way that will facilitate their effectiveness. In an effort to encourage consensus, we offer the following recommendations for consideration by the public.

Recommendations for the Workplace

Discrimination in the workplace is still a factor in American economic life. The following recommendations speak to specific means of dealing with this problem through improved strategies to achieve our goals. These recommendations are aimed at strengthening legal enforcement against discrimination and introducing new concepts to aid us in constructing a society where there is equal opportunity for all.

- *Antidiscrimination enforcement under Title VII should be strengthened with more financial resources and greater coordination between enforcement agencies.*

Because there is clear evidence that discrimination continues to be a problem in the workplace, there cannot and should not be any substitute for vigorous enforcement of antidiscrimination laws. At a minimum, we should not tolerate massive backlogs in processing and resolving discrimination complaints. We should seek to modify administrative processes and allocate resources so as to ensure a credible and responsive enforcement system.

The enforcement effort might be further strengthened through proactive steps, such as occasional employment audits using paired job applicants to uncover discriminatory hiring practices. Audit

testing has also been used very successfully in identifying housing discrimination. Such audits might have a salutary effect, since employers who are inclined to discriminate might be deterred by the knowledge that these tests occur. They could also signal the intention that not even the most capricious forms of discrimination will be tolerated.

- *Executive Order 11246 should be amended to allow for the graduation of companies that have achieved their affirmative action goals.*

We recommend that OFCCP's compliance review process be modified to allow for graduation of companies that have achieved their affirmative action goals. Companies with a history of compliance might be designated "certified Equal Opportunity Employers" and relieved of requirements for annual reports to OFCCP as well as OFCCP audits. Instead they would be required to publish the demographic composition of their workforce at regular intervals, such as every three years. This modification would provide incentives for companies to reach their targets.

- *OFCCP should develop guidelines and training materials for use by private sector agencies to engage in arbitration procedures to resolve allegations of discrimination.*

Encouraging the use of arbitration to resolve allegations of discrimination would broaden the array of options available for pursuing equal opportunity in the workplace. Moreover, the procedure has the advantages of mutual consent, objectivity, and expeditiousness. However, the aggrieved should not lose their judicial rights, and financial support may be needed for a fair arbitration procedure. Additionally, standards should be in place to ensure noncoercive, impartial, and fair procedures. All parties involved and the society as a whole would benefit from adding this approach to the options for resolving discrimination disputes.

Recommendations for Education and Training

African Americans are overrepresented among our disadvantaged citizens. Many are obliged to prepare for life in unstable families and in schools that cannot provide an education adequate to permit successful competition in today's demanding, constantly changing technological society. To assure the continuing competitiveness of the United States in the global marketplace, it is imperative that all of our citizens are capable of productivity at their maximum level. As important as affirmative action has been and remains, it will not of itself suffice to provide the equality of opportunity which we in America have defined as a right of all citizens.

Therefore, in addition to our support for affirmative action in higher education, we strongly urge that improving learning opportunities for all our disadvantaged citizens be made a number one priority for the next decade.

- *Increase support for education and training for all socially and economically disadvantaged individuals to improve their ability to compete successfully for higher education and job opportunities.*

This undertaking will involve greater commitment of public and private funds than is now the case. Investment in educational opportunity and job training is one of the most reliable means for facilitating inclusion, and for achieving the goal we stated earlier, for each person to be free to achieve as much as individual will and capacity permit. In the long run, without educational opportunity, all else is problematic if not doomed to fail.

- *Encourage colleges and universities to pursue their own voluntary efforts for student diversity, employing race and gender among their other permissible criteria for achieving this goal.*

Federal laws prohibit colleges and universities from discriminating against minorities and women. The Supreme Court has permitted race and gender to be considered as one factor among many in the admissions process (*Bakke*). More recently, the Fifth Circuit Court of Appeals in Texas has rejected the use of affirmative action even for the “wholesome practice” of correcting racial imbalance in the student population in that circuit (*Hopwood v. Texas*). We believe this decision could eventually move the country in the wrong direction.

We endorse the concept that the use of affirmative action to promote diversity in the student body should be a decision left to each individual college and university. Historically, colleges and universities have used a range of criteria other than strict test-score rankings to admit students. It has been common practice to favor the sons and daughters of alumni, talented athletes, those possessing unusual artistic or social skills, or others with qualities deemed valuable to the university society. Doing so not only enriches the educational environment, but allows the school to extend opportunity to a broad range of capable young people. While each university must set its own standards and compete in the academic marketplace as it sees fit, the Department of Education, among other organizations, might be a source of useful information regarding strategies to be followed.

Recommendations for Government Contracting

We believe that the federal government’s efforts since the late 1960s to encourage and facilitate the development of minority- and female-owned businesses have been effective and remain vital. We recognize that a number of federal set-aside programs, developed as part of this effort, have been challenged in court and have been among the more controversial affirmative action programs. However, in recognizing that discrimination limits access to markets and capital for many minority and female-owned businesses, we support a continued but refocused role for the federal government in assisting such businesses. This continued role should be justified by evidence of discrimination. Additionally, we see a special need for start-up assistance to minority and female-owned companies to help them overcome obstacles while preparing them for open and full competition. The intent of

these recommendations is to accelerate the movement of businesses from sheltered status to viable participation in the larger competitive market.

Small business has played a major role in the development of the American economy and has served as a key avenue for individual economic advancement. Investment in this approach will provide significant benefits to the vitality of the American economy as well as to the minority community.

- *Establish goals for procurement from minority- and female-owned companies by federal agencies, based on evidence of discrimination by these agencies; graduate agencies with effective compliance records.*

Government agencies should review and evaluate their current procurement policies. Based on evidence of discrimination in their contracting practices, agencies should develop goals, timetables, and strategies for contracting with minority- and female-owned firms, institutions, and organizations. Require agencies to file annual reports on their contracting activities, which would include the value of contracts awarded and the categories of contractors. When goals have been achieved, agencies would rely on open competitive procurement practices.

- *Modify the 8a program to ensure faster graduation and to prevent abuses by ineligible businesses.*

We believe that the initial purpose of the Section 8a program remains a legitimate one, namely to broaden the base of those participating in the entrepreneurial mainstream. This purpose can be well served for both the nation and for eligible small and disadvantaged companies by providing an initial boost rather than a permanent shelter for any particular company.

Each 8a certified company would be graduated out of the program after seven (rather than nine) years under sheltered competition. During the period of eligibility, participating companies should continue to provide specific data on their efforts to expand their business beyond the 8a program. This data should serve as a guide to better target technical assistance to participating companies as they grow into the wider market.

Oversight of the program should be enhanced to eliminate ineligible applicants such as non-minority companies who install a minority as a "front" to obtain contract awards.

- ***Strengthen programs that assist small and disadvantaged businesses in obtaining needed capital and technical assistance to enable them to develop and compete effectively.***

Continue to provide needed assistance to start-up minority- and female-owned businesses through such programs as the Minority Business Development Centers of the Department of Commerce and the Small Business Administration's Office of Minority Enterprise Development. These agencies offer assistance in business and financial planning, management, marketing, estimating, bonding, and loan packaging to help increase the chances of an enterprise's long-term success. In this context it is important to increase support for the collection and dissemination of data relating to minority- and woman-owned business enterprises and expand coverage to larger corporations that are presently excluded. These surveys are vitally important to measuring progress and identifying areas of continuing need.

- ***Emphasize affirmative action strategies aimed at assisting firms that provide job opportunities in those economically distressed geographic areas where unemployment levels are persistently high.***

As affirmative action seeks to broaden the entrepreneurial base, we should additionally pursue programs designed to encourage the creation of private sector employment opportunities in areas of high concentrations of unemployed people. This country has a long history of such "place-based" economic policies, including the Area Redevelopment Act of the 1960s, and more recently, "empowerment" and "enterprise" zones. Such programs reflect the role government and the private sector can play in partnership to alleviate problems of lack of opportunity. These measures are not seen as traditional affirmative action strategies because they offer assistance without regard to race, ethnicity, or gender. However, by concentrating on economically depressed areas, they offer assistance to those in greatest need.

Conclusion

It is important to assess the impact that 30 years of affirmative action have had on our nation and to chart a course for the future that will help achieve equal opportunity for all citizens. Unfortunately, the fervor and fear engendered by the current, rhetorically charged debate on the subject have too often complicated an objective review of our progress and substituted emotional appeal for cooperative, reasoned, and well-informed dialogue. We hope this statement will provide the chance for such a dialogue so that we can explore new models and strategies for expanding opportunities. We must reduce the deep racial divisions that threaten our society as we intensify our efforts to make equal opportunity a reality.

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