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The federal government's obligation to protect the rights of women and minorities has received considerable attention in Washington over the past six months, and as a result there have been a series of rulings, disclosures, and congressional maneuvers which should have an effect on the academic marketplace.

Among these events have been:

- The proposal that HEW's Office of Civil Rights no longer investigate (or at least promise to investigate) individual claims of discriminatory action but limit its efforts to rooting out "systemic" abuses;

- The publication of final regulations concerning affirmative action plans for higher education institutions that prohibit discrimination in hiring, scholarships, and tenure and call for internal grievance procedures, expanded record keeping, and formal self-analysis;

- The disclosure that the Equal Employment Opportunity Commission has fallen as much as three years behind in pursuing allegations of discrimination by federal contractors, a congressional investigation and a General Accounting Office report revealing mismanagement of government enforcement activities, and a battle between HEW, the Labor Department, and thirteen colleges and universities over affirmative action requirements;

- A Supreme Court decision telling employers (and this presumably includes higher education institutions) that they will have to restore unpaid back wages to employees who win discrimination suits.

HEW's proposal to shift away from pursuing individual civil rights complaints (what it calls the "mailbag approach" to enforcement) in favor of broad decisions affecting large classes of students or employees has brought heavy criticism from civil rights and women's groups. On July 15 the Leadership Conference on Civil Rights, a coalition of some 130 organizations, accused HEW of "a shocking abdication of responsibility" in abandoning the investigation of individual complaints. The coalition called the decision inconsistent with federal civil rights legislation and urged HEW to pursue both individual and broad-based complaints.

Peter Holmes, director of HEW's Office of Civil Rights, had told a June 5 press conference that the proposed enforcement guidelines represented "an honest and straightforward way" to

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establish clear procedures for settling affirmative action and civil rights complaints.

Up to now, says the introduction to the proposed rules in the *Federal Register*, HEW "has attempted, wherever possible and as quickly as possible" to resolve individual complaints brought to its attention.¹ However, with the increasing number of complaints the workload has forced longer and longer delays in processing individual cases, and the office has shifted, perforce, to seeking broad "systemic" decisions.

"This procedure in no way suggests the Office of Civil Rights will *not* be handling individual complaints," Holmes explained, but it was simply "a question of how complaints will be used by the department in establishing its priorities." The office will acknowledge an individual complaint within thirty days, he said (although this is not stated in the regulations), and will notify the individual whether a compliance review is scheduled at the institution in question within the next twelve months. If not, the office will notify the complainant of "those governmental agencies at the Federal, state and local levels known to have current legal authority" to conduct an investigation.

Holmes said, "we are trying to say honestly to that individual if we expect to get to that complaint within a reasonable amount of time."

But civil rights and women's groups disputed the HEW explanation. Clarence Mitchell, director of the NAACP Washington bureau, told Holmes at the press conference that individuals often spoke "for hundreds and thousands of individuals who lack the courage or know-how" to make their cases heard. Kathy Kelly, president of the National Student Association, told Rep. Shirley Chisholm during a hearing June 17 that "the only way a pattern of discrimination can be seen is through a series of individual complaints."

HEW says it has received about fifty comments on the proposed enforcement guidelines, mostly criticizing the shift away from individual complaints. The guidelines must now be published in final form and presented to Congress for a forty-five-day waiting period in which either house may disapprove the regulations.

Up to now neither house has sent back an HEW regulation under the forty-five-day provision which became law in 1974, but for several weeks in July it appeared that the final rules on affirmative action based on Title IX of the Education Amendments of 1972 would become the focus of a lengthy congressional battle.²

The principal issue reported by the press was

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chives, 1774-1776. A gift in 1927 from John D. Rockefeller, Jr., made possible the photographic reproduction of millions of pages of manuscripts in foreign libraries and archives.

The guide is \$8.70 (Stock No. 3003-0011) from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

- A bibliography of all doctoral research done in the field of educational media from 1969 to 1972, with short annotations, has just been made available from the ERIC Clearinghouse on Information Resources.

The 100-page *Doctoral Research in Educational Media* divides the citations into eight categories—audio, audiovisual, computers in instruction, library, programmed instruction, projected materials: motion, projected materials: stills, and television.

Sources for titles were *Dissertation Abstracts* and *American Doctoral Dissertations*, published by University Microfilms. According to authors Charlene Kirschner, Joseph Mapes, and Ray Anderton (all of the University of Colorado at Boulder), this publication was produced "to assist those people who are engaged in educational media research, and those who need to know the results of this doctoral research. . . . Dissertations were selected . . . if they used some form of educational media as the subject of their research or as the methodology of their research." In addition to short annotations, volume and page citations to *Dissertation Abstracts* are included to aid the reader in locating the full abstract.

Doctoral Research in Educational Media is available for \$5.00 from: Box E, School of Education, Stanford University, Stanford, CA 94305. Checks must be included with orders and made payable to "Box E." The paper is available for the same price from the American Library Association, 50 E. Huron St., Chicago, IL 60611.

Annual updates to this publication are planned.

- *Women in a Woman's Profession: Strategies: Proceedings of the 1974 ALASRRT Women's Conference*—the proceedings are 96 pages long and include a bibliography and photographs. The price is \$3.50 and is available, prepaid, from Betty-Carol Sellen, Brooklyn College Library, Brooklyn, NY 11210. ■■

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the effect of the regulations on intercollegiate football. Actually, a more serious dispute centered on HEW's right to make regulations on specific administrative practices of colleges and universities. Setting aside the athletic entanglement as a special issue, Rep. James O'Hara (D—Mich.), chairman of the House select subcommittee on higher education, argued that requiring institutions to establish internal grievance procedures and carry out extensive self-analysis activities exceeded the requirements of the statute.

"I don't want you to discuss the wisdom of this procedure. I think it's probably a good idea," O'Hara said to then-secretary of HEW Caspar Weinberger at one point during hearings on the regulations, "but the Congress only said 'Thou shalt not discriminate.' Where in the plain language of Title IX does the Department of Health Education and Welfare find the authority to tell institutions to set up internal grievance procedures?"

Accusing HEW of usurping the legislators' role, O'Hara concluded that "some way has to be found so that Congress writes the laws and nobody else." Privately, O'Hara bemoaned the fact that the long-brewing battle between Congress and HEW over "administrative lawmaking" had erupted over regulations on affirmative action, a subject which most liberal Democrats favor.

After weeks of testimony and two acrimonious subcommittee meetings in which representatives Shirley Chisholm and Bella Abzug lobbied assiduously for the regulations, the O'Hara motion to disapprove the regulations was bottled up in committee and on July 21 they went into effect.

At one point in the Title IX hearings a Republican congressman had suggested the HEW procedures were unnecessary and that affirmative action complaints should be handled instead by the independent Equal Employment Opportunity Commission. On the contrary, re-torted Rep. Frank Thompson, Jr. (D—N.J.), that "would be a mistake of major proportions unless EEOC can be straightened out. They have a backlog of three years now and I don't share the gentleman's confidence that they can handle the work."

The relationship between EEOC, the Labor Department, and other federal agencies charged with enforcing civil rights and employment regulations had already been held up to public examination during June. In addition to unveiling a history of lackluster administration at EEOC, Rep. Augustus Hawkins (D—Calif.) subcommittee on equal opportunities discov-

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ered a long pattern of downgrading of the Labor Department's Office of Federal Contract Compliance, a top-level agency detailed to organize governmentwide antidiscrimination efforts. Coordination of the efforts of the 1,800 compliance officers assigned throughout the government appeared to be minimal.

Hawkins' actions were stimulated by an eighty-nine-page report from GAO further criticizing labor for failing to take the lead as designated by Congress and for failing to coordinate with EEOC. "The almost nonexistence of enforcement actions could imply to contractors that the compliance agencies do not intend to enforce the programs," the report warned.³

Meanwhile, the U.S. Commission on Civil Rights has called for an entirely new, consolidated agency with power to enforce a broad federal statute forbidding employment discrimination. The commission, which has in the past accused HEW of failing to enforce the law, recommended in its report, "The Federal Civil Rights Effort 1974," that a new National Employment Rights Board be established with quasi-judicial authority and the right to bring suit in federal court.

At the same time, the Labor Department has called for "information concerning implementation of the affirmative action requirements of Executive Order 11246, which mandates affirmative action by government contractors as applied to employment at institutions of higher education." An informal hearing was to be held in Washington on August 20 to further explore problems within higher education. The request for information and the subsequent hearing stem from a recommendation by the Administrative Conference of the United States that federal civil rights enforcement activities be examined for their effect on specific professions.⁴ (The Administrative Conference is a presidentially appointed board that oversees regulatory activities of federal agencies.)

Matters had already been brought to a head in higher education in late June when HEW, the Labor Department, and thirteen colleges and universities reached a deadlock on how much information must be supplied concerning affirmative action plans and hiring practices before the schools can receive funds as federal contractors. In the end Weinberger, who de-claimed against the affirmative action requirements as "questionable social engineering by ineffective and meddlesome government,"⁵ declared a moratorium on paperwork until a better arrangement could be worked out. Among the Washington press corps it was rumored that the dispute had been engineered by HEW and the institutions at a time when affirmative action regulations and requirements were already being questioned in public and on Capitol Hill.

As Congress left for its August recess and Dr. David Mathews, the former president of the University of Alabama, takes office as secretary of HEW, the original intention of affirmative action has become partly obscured behind the arguments over government forms and regulatory policies. But the wording of Title IX, sec. 901 (a), is clear. "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal assistance. . . ."

In late June, the Supreme Court cut away one more obstruction when it declared that if employers discriminated in employment practices they would be liable for back wages even if they thought they had acted within the law. "If employers faced only the prospect of an injunctive order, they would have little incentive to shun practices of dubious legality," the court found.⁶ While the decision relates specifically to Title VII of the Civil Rights Act of 1964 as amended, the opinion seems equally applicable to cases of sex discrimination.

With this in mind, both employers and employees (prospective and otherwise) should read the proposed enforcement guidelines and also the new Title IX regulations. Familiarity with the rules is quickly becoming a matter of economic necessity.

REFERENCES

1. See the *Federal Register* (June 4, 1975), p.24148-59.
2. For the text of the final regulations, see the *Federal Register* (June 4, 1975), p.24128-45.
3. *The Equal Employment Opportunity Program for Federal Nonconstruction Contractors Can Be Improved* (The Comptroller General, April 29, 1975).
4. *To Eliminate Employment Discrimination: The Federal Civil Rights Enforcement Effort 1974* (U.S. Commission on Civil Rights, July 1975).
5. Speech delivered at the Commonwealth Club of San Francisco; July 21, 1975.
6. *Albemarle Paper Co. v. Moody*; decided June 25, 1975. ■■

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