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EXECUTIVE (5)

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March 20, 1967

*Friedan, Betty
Davis, Caroline*

Dear Dr. Clarenbach:

The President has asked me to acknowledge and thank you for your letter of March 6, 1967, in which you report that the Board of Directors of NOW has voted its support of the proposed Civil Rights Act of 1967.

You also urge that the President take action to prohibit discrimination on account of sex in Federal employment and by Federal contractors by amendment of Executive Order No. 11246 of September 24, 1965.

Earlier this month, the Federal Woman's Award Study Group, which was established by the President on February 28, 1966, recommended the issuance of a new Executive order or modification of the present Executive order on Equal Employment Opportunity, to reinforce actions already taken to prevent discrimination on account of sex. On March 8, 1967, the President asked Secretary Wirtz to have the Interdepartmental Committee on the Status of Women give early consideration to the form of issuance of the proposed Executive order. I am enclosing copies of White House press releases relating to these actions.

In view of the President's firm and repeatedly expressed intent to eliminate arbitrary discrimination on account of sex, your recommendations on this matter -- as well as your support for the civil rights bill -- are most welcome.

Sincerely,

Harry C. McPherson, Jr.
Special Counsel to the President

Dr. Kathryn F. ^XClarenbach
Chairman of the Board
^XNational Organization for Women
1629 K Street, N. W., Suite 500
Washington, D. C. 20006

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CENTRAL FILES

Encls - Press Release, Mar 8, 1967, "Text of Ltr from the President to Mrs. Penelope H. Thunberg, Chairman, Federal Woman's Award Study Group, U. S. Tariff Commission, Washington, D. C. w/report attached "Federal Woman's Award Study Group Reports to the President on Careers for Women"

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bcc: Bur of Budget

NOW

Full equality for women in truly equal partnership with men

National Organization for Women

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Washington, D.C. 20006

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March 6, 1967

The President of the United States
The White House
Washington, D. C.

Dear Mr. President,

I am happy to report to you that the Board of Directors of NOW, new National Organization of men and women devoted to full equality for women at the meeting in Chicago last week voted our support of your Civil Rights Bill with special enthusiasm for proposals to start prohibiting employment discrimination because of sex, and to ban sex discrimination in jury service.

In view of your comitment we again urge that you use your power to prohibit sex discrimination in federal employment and by federal contractors by adding the word sex in the executive order 11246. We feel that women can, should be protected against employment discrimination by the federal government by the same manner as other discriminated against groups as by other procedures as it is now the case in government employment.

We enclose a memorandum prepared by our legal committee in support of the action.

Respectfully yours,

National Organization for Women

Betty Friedan

Betty Friedan
President

Katherine P. Clarenbach

Dr. Kathryn F. Clarenbach
Chairman of the Board

Caroline Davis

Caroline Davis
Secretary-Treasurer

NOTE CONCERNING PROPOSAL TO AMEND
EXECUTIVE ORDER 11246
TO PROHIBIT DISCRIMINATION IN EMPLOYMENT ON BASIS OF SEX

Executive Order 11246 (September 24;1965; 30 F.R. 12319) prohibits discrimination, because of race, creed, color or national origin; in Government employment (Part I); in employment by Government contractors and subcontractors (Part II); and in work under Federally assisted construction contracts (Part III). It does not specifically prohibit discrimination on the basis of sex.

The second proviso of sec. 701(b) in Title VII of the Civil Rights Act of 1964 (P.L.88-352, Act of July 2, 1964 78 Stst. 241, 254; 42 U.S.C. 2000e(b) provided as follows:

"That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion sex or national origin and the President shall utilize his existing authority to effectuate this policy."

The act of September 6, 1966 (P.L.89-554, p. 146; 80 Stat. 378, 523), which codified Title 5 of the U.S.Code, reenacted and codified the foregoing provision as 5 U.S.C. 7151 (and the proviso in sec. 701(b) was repealed at p. 285 of P.L. 89-554). The new section reads as follows:

" It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex, or national origin. The President shall use his existing authority to carry out this policy."

Section 7151 refers to "employees, " whereas section 701(b) of the Civil Rights Act had referred to " Federal Employees." However, the House and Senate Committee reports (H. Rept. 901, page 126, and Senate Rept. 1380, page 147, both 89th Cong.) indicate that the word "Federal" was eliminated from the codification as being unnecessary in view of the definition of the word "employee" in 5 U.S.C. sec. 2105. The latter section defines " employee" as including various categories of Federal employees as well as any individual who is "(2) engaged in the performance of a federal function under

authorization of law or an Executive Act; and (3) subject to the supervision of " specified Federal officers or employees " while engaged in the performance of the duties of his position."

It is proposed that the President amend Executive Order 11246 to prohibit employment discrimination based on sex. Insofar as concerns Part I (nondiscrimination in Government employment), such proposal is clearly in conformity with, and perhaps required by, the Congressional policy and directive expressed in 5 U.S.C. 7151.

In view of the definition contained in sec. 2105 with respect to the word "employee" in sec. 7151, there would probably be few instances in which such employees would be encompassed by the parts of the Executive Order relating to nondiscrimination in employment by Government contractors and subcontractors (Part II) and nondiscrimination in work under Federally assisted construction contracts (Part III). Hence the policy expressed in sec. 7151 might not, technically, seem to constitute a mandate with respect to amending Parts II and III of Executive Order 11246 to prohibit discrimination because of sex in employment by Government contractors and subcontractors and in work under Federally assisted construction contracts.

Nevertheless, it is probable that most Government contractors and subcontractors have 75 or more employees (25 or more after July 2, 1968) and are engaged in interstate commerce, and thus would be subject to the equal employment requirements of Title VII of the Civil Rights Act of 1964 which prohibits discrimination in employment based on sex. Moreover, such Government contractors and subcontractors, as well as all Federally assisted construction contracts, are subject to the nondiscrimination requirements applicable to all Federally assisted programs and activities, pursuant to Title VI of the Civil Rights Act of 1964. The latter Title also authorizes the issuance of rules and regulations to achieve the objectives of nondiscrimination.

Accordingly, amending Parts II and III of Executive Order 11246 to prohibit discrimination because of sex in employment by Government contractors and subcontractors and in work under Federally assisted construction contracts would be in accordance with the policy enunciated in the Civil Rights Act in 1964 and 5 U.S.C. 7151.