

June 25, 2001

**TO: Chancellor Cicerone
Executive Vice Chancellor Gottfredson
Vice Chancellors
Associate Vice Chancellors
Deans
Directors
Chairs**

RE: AFFIRMATIVE ACTION LAW IN CALIFORNIA

Enclosed is a summary of laws and resolutions that have impacted the affirmative action debate in California. This summary has been developed by my office to help answer the questions many campus constituents have asked regarding the state of affirmative action at the University in light of Proposition 209 and the recent repeal of SP-1 and SP-2 through Regents Resolution RE-28. I hope you find the attached document helpful in answering those questions.

For easy reference, this document will soon be available on the OEOD website as well (<http://www.eod.uci.edu/>).

Should you have additional questions regarding the role of affirmative action at UC Irvine, please do not hesitate to contact Gwendolyn Kuhns, Kirsten Quanbeck, or myself at x45594.

Thank you,



Ron Wilson
Assistant Executive Vice Chancellor
Office of Equal Opportunity and Diversity

Enclosure

Affirmative Action is the Law

On May 16, 2001, the University of California Board of Regents unanimously adopted a resolution that rescinds SP-1 and SP-2, resolutions that were considered by many as an "affirmative action ban." This repeal reaffirms the University's commitment to a student body and workforce representative of California's diverse population. "This sends a clear and unequivocal message that people of all backgrounds are welcome at the University of California," said Regent Judith L. Hopkinson, who introduced the resolution, RE-28.

Students and state lawmakers urged the repeal, arguing that the ban on affirmative action had caused the University to be perceived as inhospitable to minority students. Proponents of the repeal cited a sharp drop in the number of in-state black and Hispanic first year students and the hiring rates of women and underrepresented minority faculty members. The University of California remains governed, however, by both Proposition 209, a 1996 amendment to California's constitution which bans the use of preferences, and by federal law that bans employment discrimination by federal contractors. Although the repeal will have little immediate, practical impact, RE-28 includes a commitment to K-12 outreach programs that aim to improve the educational preparation of California's elementary and secondary school students to pursue a college education.

Below is a brief summary of affirmative action law and its impact on the University of California.

History of Affirmative Action

Executive Order 11246

On September 24, 1965 President Lyndon B. Johnson issued Executive Order 11246, prohibiting employment discrimination based on race, color, religion, and national origin by those organizations receiving federal contracts and subcontracts. In 1967, President Johnson amended the order to include sex on the list of attributes. Executive Order 11246 also requires federal contractors to take affirmative action to promote the full realization of equal opportunity for women and minorities. The Office of Federal Contract Compliance Programs (OFCCP), under the Department of Labor, monitors this requirement for all federal contractors, including all UC campuses, and has developed regulations to which these contractors must adhere. For federal contractors employing more than 50 people and having federal contracts totaling more than \$50,000, compliance with these regulations includes:

- disseminating and enforcing a nondiscrimination policy
- establishing a written affirmative action plan and placement goals for women and minorities
- implementing action-oriented programs for accomplishing these goals

- assigning an official of the organization responsibility for the implementation of equal employment opportunity and the affirmative action program.

An excerpt from the executive order follows (Part II, Subpart B, sec. 202(1)):

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SP-1 and SP-2

On July 20, 1995 the Board of Regents of the University of California adopted Regents Resolutions SP-1 and SP-2. In effect, SP-1 required that race, religion, sex, color, ethnicity, and national origin not be considered in the admissions decision process. SP-2 focused on University employment and contracts, eliminating consideration of the same attributes in hiring and contracting decisions. Both resolutions stipulated that nothing contained within these sections should be interpreted to prohibit any action strictly necessary to maintain or establish eligibility to receive federal or state funding. The relevant sections are as follows:

SP-1, Section 2:

Effective January 1, 1997, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for admission to the University or to any program of study.

SP-2, Section 1:

Effective January 1, 1996, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria in its employment and contracting practices.

SP-1, Section 6 (tad SP-2, Section 3):

Nothing in Section 2 (Section 1 of SP-2) shall prohibit any action which is strictly necessary to establish or maintain eligibility for any federal or state program, where ineligibility would result in a loss of federal or state funds to the University.

Proposition 209

During the November 5, 1996 election, Californians voted 54% to 46% to amend the California Constitution through an initiative commonly known as Proposition 209, or the California Civil Rights Initiative. The proposition has been incorporated into the California Constitution under Article 1, Section 31. Although the constitutionality of the initiative was legally challenged, the U.S. Supreme Court denied further appeal and let

stand the new California law on November 3, 1997. The proposition includes the following sections:

(a) The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.

(f) For the purpose of this section, "State" shall include, but not necessarily be limited to, the State itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the State.

RE-28

On May 16, 2001 the Board of Regents of the University of California unanimously approved Regents Resolution RE-28. This resolution rescinded SP-1 and SP-2 and at the same time acknowledged the University would be governed by Article 1, Section 31 of the California Constitution (Proposition 209). The section of the resolution referring to the above statements is as follows:

*Now, therefore, be it resolved that SP-1 and SP-2 are rescinded by this resolution, and:
A. That the University has complied with and will be governed by Article 1, Section 31 of the California Constitution by treating all students equally in the admissions process without regard to their race, sex, color, ethnicity or national origin, and by treating employees and contractors similarly.*

What Does It All Mean?

Affirmative action itself has not been outlawed or eliminated by SP-1, SP-2, Proposition 209, or RE-28. Not one of the resolutions or the initiative include the words "affirmative action," whereas Executive Order 11246 specifically directs federal contractors to "take affirmative action." Although SP-1, SP-2 and Proposition 209 all include language prohibiting preferential treatment on the basis of race, sex, color, ethnicity, or national origin, they also include language that ensures that action needed to maintain and establish eligibility to receive federal funding will not be prohibited.

The difference between Executive Order 11246 and the more recent resolutions and proposition is the focus: Executive Order 11246 focuses on prohibiting discrimination, whereas SP-1, SP-2, and Proposition 209 focus on prohibiting preferential treatment or special consideration. The impact of all this legislation means that the University must:

- continue to publish its nondiscrimination policy
- develop a written affirmative action plan
- take affirmative action to ensure discrimination is not practiced based on race, color, religion, sex, or national origin
- monitor its activities to ensure employment and admission decisions do not take into consideration race, sex, color, ethnicity, or national origin, and that programs or contracts offered are not restricted to certain groups of people based on those attributes.

The University of California at Irvine is and has been in compliance with the requirements of all of these laws and policies. The Office of Equal Opportunity and Diversity (OEOD) is responsible for maintaining, updating and ensuring compliance with University non-discrimination policy. OEOD also prepares and distributes both an Affirmative Action Plan and an Abridged Affirmative Action Plan, and compiles data for affirmative action and organizational analysis. For more information about University policies or affirmative action, please contact the Office of Equal Opportunity and Diversity at (949) 824-5594 or visit the website at: www.eod.uci.edu/.