



United States Department of the Interior

NATIONAL PARK SERVICE

P.O. BOX 37127

WASHINGTON, D.C. 20013-7127

IN REPLY REFER TO:

A52(022)

OCT 15 1986

Memorandum

To: WASO and Field Directorate and All Superintendents

From: Special Assistant for Policy Development

Subject: Policy on Fund Raising and Philanthropy

Please replace the Fund Raising and Philanthropy policy and model Memorandum of Understanding you received from the Director in a package dated April 1, 1986 with the attached updated materials.

The sample Memorandum of Understanding developed has been revised to follow the format in NPS-20. For example, it is now a Memorandum of Agreement (MOA) instead of a Memorandum of Understanding (MOU).

The Fund Raising and Philanthropy policy has been only altered in order that references to the Memorandum of Understanding be changed to Memorandum of Agreement. No changes in substance have been made to either the policy or the Memorandum of Agreement.

If you have any questions, please call me or Tracy Fortmann, on my staff, at (FTS) 343-4030.

Attachments

PHILANTHROPY AND FUND RAISING IN THE NATIONAL PARK SERVICE

Philanthropy has a long history in the National Park System. In years past the parks have benefitted from donated money, art, furnishings, historic artifacts, land, buildings--even entire parks. Donations are often explicitly authorized or encouraged by Congress in legislation affecting new parks or existing ones.

In the past the National Park Service has been largely a passive recipient of private philanthropy. Over the last decade, philanthropy in the National Park System has seen gradual change. Donations do not come only from very wealthy people, as many people of much more modest means have taken opportunity to express their appreciation and concern for the National Park heritage through gifts as varied as the parks themselves.

Today further change is in process. The National Park Service is moving beyond a merely passive role in philanthropy, to facilitate donations and actively encourage these expressions of public support and concern.

However, fund raising by a Federal bureau is not a common form of activity, and in moving toward a more active role of facilitating private donations, the National Park Service will proceed with orderly caution, not only because such a role is largely new, but also because the Service will take deliberate precautions to avoid problems and conflicts which may possibly arise. For example, the Service will be concerned about the tone and content of campaigns designed and conducted by private organizations on its behalf. The Service will be concerned about who is approached and how. The Service will be concerned at how much fund raising costs and what amount of the funds raised will actually benefit the parks.

Being cautious and concerned about the content of fund raising programs does not, however, mean compromising enthusiasm or building roadblocks to success. A 1985 survey indicates that already 92 percent of all NPS units are involved in some form of fund raising. An active program to facilitate philanthropy is a positive and timely response to constrained Federal and National Park Service budgets that must, of necessity, focus the limited resources on core mission essentials. Private donations can, however, afford a "margin of excellence" to benefitting National Park System units that will enrich visitors' experiences and afford a measure of resource protection otherwise not available.

This evolution in National Park Service strategy is also a timely response to private initiatives that are often the consequence of spontaneous expressions of appreciative concern for individual parks or their natural, cultural, or recreational resources.

This change is, additionally, a timely response to changes in the general climate surrounding parks and recreation as an object of private giving. In the last decade parks and park systems at all levels of government have benefitted from increasing philanthropic expressions by park visitors and supporters. Donations are common at museums and other cultural and recreational facilities. The National Park System is in position to similarly benefit as, indeed, it already does in many locations through donation boxes, wishing wells, and similar devices.

The current private initiatives to restore the Statue of Liberty and Ellis Island are examples of private groups taking action on behalf of a park, without any prior stimulus or coaxing from the National Park Service. It is appropriate that the Park Service have the capability to interact with such external initiatives--to provide factual information, to set voluntary standards and guidelines for such actions, and to do all it can to assure that funds subsequently donated to the National Park Service are used appropriately and effectively.

Of course, NPS cannot control or assume any measure of practical responsibility for the conduct or operations of private individuals and organizations, but it can respond affirmatively with guidance and leadership.

In moving toward a more activist role, the National Park Service is mindful of the need to avoid potential problems. The National Parks are "special places" in public trust, the care and financing of which are the shared responsibility of the Congress and the President, through the National Park Service. Under our system of government, the major policies and financing decisions affecting the National Park System are subject to elaborate checks and balances and oversight to insure accountability, continuity, and integrity. Private donations may or may appear to circumvent those protective processes and thereby cause concern. NPS must avoid such conflicts so that fund raising efforts run smoothly and positively.

The National Park Service will address these concerns directly, through policies and controls that will to the greatest extent possible extend to these actions the same criteria and internal controls afforded appropriated funds and the goods and services they buy.

Except in limited activities detailed below, NPS's role in private philanthropy will be that of facilitator and coordinator for non-governmental institutions or individuals working on the Service's behalf. The Service's role will be that of authorizing the project(s) to be funded, with the Service providing information and reviewing and approving communications materials intended for the public, within a policy structure that insures the integrity of all activities undertaken for the benefit of the National Park System.

The National Park Service program will include donation boxes, gift catalogs, appropriate authorized fund raising campaigns by outside organizations and institutions, and such other creative undertakings and activities as may be approved.

Donation Boxes

Over 120 parks already have donation boxes for voluntary visitor contributions. With each donation box is an official explanation of what the donated funds will be used for. Donation boxes provide a convenient way for visitors to spontaneously express their appreciation for the park during a visit. Monies collected in donation boxes are accounted for in the same way as other cash receipts, including measures for accountability, security, and appropriate documentation.

Gift Catalogs

Gift catalogs list giving opportunities for consideration by a variety of donors. Gift catalogs identify items for which donations may be designated, thereby giving potential donors examples of things the park needs and explaining specifically how a donation may support the park. Over 27 catalogs have been produced for NPS units. Several catalogs cover more than one park unit.

Donations associated with a gift catalog are to be received and accounted for in the same way as any other money or property. All gift catalogs will be paid for by donated funds or services.

Fund Raising Campaigns

The third form of fund raising activity are organized "campaigns" associated with individual parks or park projects. The National Park Service will not directly conduct or execute fund raising campaigns, but will respond to the initiative of others. The Service will (1) identify projects or objects for which donations may be sought, (2) sanction specific organizations to conduct campaigns on behalf of a park or project when that body will operate under standards set by the Service, (3) approve all printed and other informational materials distributed to the public, and (4) insure accountability for all donations received.

There are two major elements of a fund raising campaign on behalf of the National Park Service that merit special clarification. Fund raising by and on behalf of this Federal agency is not (and will not be permitted to become) an activity indicating the failure of the normal appropriations process to meet the day-to-day needs of the National Park System. Those needs are, in fact, met as part of the regular budget process and action

on the budget by Congress. The needs which NPS may identify as appropriate objects for private philanthropic support are external to those which are included in appropriations requests.

It is important that NPS employees and those outside the Service working on behalf of the parks be sensitive to the roles of the President and the Congress in financing the National Park System. Fund raising campaigns may be undertaken to provide a "margin of excellence" for the System and employees and friends must be careful not to derogate the Congress or the President or to imply the failure of others to meet their responsibilities to oversee and finance the System.

The second element of fund raising that is a point of concern is the degree to which the Service will "control" the fund raisers and the materials used by them and on their behalf.

There are distinct limits to what NPS can do to control private actions, even those for which the Service is the direct beneficiary. The Service, will, however, attempt to strongly influence those actions through setting standards, by providing oversight, and, if necessary, through public statements as to the merits of individual efforts. The Service will take special care to make certain its own actions are disciplined and within a carefully drawn policy framework, the substance of which is detailed in the following statements.

Policies and Principles

All major fund raising programs in which the Service is an active participant, will be carried out only after formal approval by the Director of a plan covering such activities. Plans will spell out, to the extent known, the purposes, goals, schedules, potential donors, geographic scope, costs, proposed use of receipts, and the roles, participants, and sponsorships of all affected parties. On-going activities under approved plans will be coordinated through the Deputy Director, who will serve as the Servicewide program coordinator. Major fund raising programs are defined as those whose goals total \$1 million or more.

The Servicewide coordinator will also be responsible for the review of all individual gifts having a value in excess of \$250,000. Such gifts will be accepted only after approval in advance by the Deputy Director.

Other activities, including donation boxes, gift catalogues, and campaigns for less than \$1 million, will be approved and coordinated by the appropriate Regional Director.

Fund raising activities totalling less than \$250,000 may be approved by the Regional Director or that approval may be delegated to superintendents or unit managers.

All fund raising activities will be in concert with Interior Department standards governing employee conduct and conflicts of interest. (See 43 CFR, Parts 1 through 7.)

The aims of all fund raising campaigns and philanthropic activities sanctioned by the National Park Service will be consistent with approved General Management Plans and other park specific plans, and with the National Park Service "Management Policies."

Major fund raising campaigns will not be directed toward life-safety projects or materials, or recurring maintenance activities, but should emphasize capital improvements or major programs, such as summer-in-the-parks.

Research projects, books, mapping, and all projects requiring planning and design (including films and exhibits) to be funded by donations require the same review and approval stages as similar projects funded through the normal budget process.

Money and other negotiable donations received by the National Park Service shall be deposited to the appropriate NPS donations account. Donations may also be made to third parties, such as the National Park Foundation, a cooperating association, friends organization, or other non-profit institution, etc. on behalf of the National Park Service for subsequent expenditure by the association, etc., on specific approved projects. However, NPS can assume no responsibility for third party donations prior to their formal acceptance by the Service.

Neither appropriated funds nor contributions deposited to an NPS donation account may be used to fund or reimburse the costs of professional fund raising consultations or services, purchase of mailing lists, postage for mass mailings, or telethon or phone bank expenses, or similar activities.

All efforts will be made by the Service to formalize fund raising campaigns on its behalf through a Memorandum of Agreement with the organization conducting the campaign. Such Memoranda shall not impose any liability or obligation of any type on the Government and shall contain a termination-for-convenience clause. Memoranda of Agreement covering fund raising campaigns by outside parties and organizations will also require that all printed and audio-visual materials, posters, advertisements, and other literature be approved in advance by the Service. Memoranda of Agreement will receive policy and legal reviews prior to execution by the park Superintendent or manager. A model Memorandum is available from the Office of the Director.

The level of review follows the dollar levels associated with delegations. Reviews will cover technical and legal adequacy, and compliance with NPS policy and practice.

Efforts will be made to negotiate a Memorandum of Agreement covering all outside fund raising activities on behalf of the parks. Should this not be possible, the National Park Service will not approve the effort.

Further, in order to remove concerns that donations are being used to circumvent decisions made by Congress, all gifts which will require annual funding for operations and maintenance or staffing (FTE's) or unfunded non-recurring costs may only be accepted when approved in advance by the Deputy Director. Requests for approval must identify the source(s) of funding, whether within current resources or proposed future increases.

There will be no duplication in items accepted for donation or for which donations are being solicited and items included in an annual budget request to Congress.

Accountability will be achieved by requiring that all monetary gifts be accounted for and disbursed under the same standards of accountability and the same internal processes and protections as monies appropriated by Congress. All non-monetary gifts and items purchased with donated funds will be recorded, accounted for, managed, and otherwise treated in the same manner as other property of the United States Government.

Gifts will be appropriately acknowledged, but will not be recognized by any special privilege associated with the park, or through the naming of features after living persons or in wilderness areas. (See also the relevant policies of the U.S. Board on Geographic Names.)

As provided in the NPS "Management Policies" (See Memorials, III-15) donors will normally not be recognized by the installation of permanent plaques or memorials. If such recognition is merited, the Director's prior approval is required.

Third party organizations which receive and hold donations prior to transfer to NPS units are expected to maintain accountability for all contributions and interest generated therefrom. It is required that these organizations have independent annual financial audits and that they publish an annual report for the interested public.

All gifts and donations to NPS and to its cooperating organizations are a matter of public record. All records of fund raising activities are subject to the Freedom of Information Act.


The National Park Service will neither knowingly solicit nor accept gifts from concessioners or their principals or beneficial owners, nor permit others to do so on its behalf when such gifts may involve a conflict of interest or an appearance of conflict or when a gift is to be used for a service to or on behalf of a concessioner. Sums provided under legal contracts or agreements are not donations.

NPS will not solicit gifts from businesses or institutions (or their principals or beneficial owners) having a contractual relationship with the Service; the Service may accept unsolicited gifts from such businesses or institutions only where there can be no appearance of conflict of interest or impropriety. This prohibition does not extend to Cooperating Associations operating under a formal agreement.

NPS will publish an annual report on fund raising and philanthropy.

These policies may be waived only by the Director, National Park Service.

Approved: _____


William Penn Mott
Director

Date: 10/09/86

MODEL
MEMORANDUM OF AGREEMENT
BETWEEN THE
NATIONAL PARK SERVICE
AND
[NAME OF COOPERATING ORGANIZATION]

Article I - Background

THIS AGREEMENT is hereby entered into this _____ day of _____, 19____, by and between the [name of cooperating organization], a corporation organized and doing business under the laws of the State of _____, hereinafter referred to as the Corporation, and the National Park Service, U.S. Department of the Interior, covering certain fund raising and philanthropic activities which are intended to benefit the National Park System.

Whereas [name of park], a unit of the National Park System, hereinafter referred to as "the park," would receive [identify benefits to be obtained] through this fund raising effort; and whereas the benefits to the park are consistent with the intent of Congress in authorizing the park as part of the National Park System;

Whereas, the National Park Service through the Secretary of the Interior has authority to accept donations for the purposes embraced by this Memorandum of Agreement (See 41 Stat. 917, 16 U.S.C. 6);

Whereas, nothing in this Agreement shall affect or interfere with fulfillment of the obligations or exercise of the authority of the National Park Service or any other Federal Agency;

Whereas, NPS wishes to recognize and encourage [name of cooperating organization] in conducting its fund raising effort to benefit the park.

Article II - Responsibilities of Parties

NOW THEREFORE the parties agree as follows:

(1) The National Park Service recognizes the Corporation as an organization suited to raise funds for the benefit of the park;

(2) The Corporation intends to donate to the National Park Service funds, materials or services to [insert a description of the projects and activities to be undertaken] under the following terms and conditions:

The Corporation shall be fully qualified under State and Federal law to engage in fund raising and receive philanthropic contributions for the purposes enumerated herein.

All activities performed under this Agreement will be accomplished in conformance with the formal fund raising policies of the National Park Service which are made a part of this Agreement. (See Appendix 1).

All costs of the fund raising campaign shall be borne by the Corporation.

Funds donated to the National Park Service by the Corporation will be placed in a special donations account and shall be used solely on behalf of and for benefit of the projects and activities set forth above unless otherwise provided by law.

The National Park Service will make available to the Corporation such information and data as may reasonably be required and is generally available to inform potential donors and others about the status of plans for the projects and activities to benefit.

The Corporation is recognized as a fund raiser of donations for the purposes and projects enumerated in this Agreement. The National Park Service may choose to enter into similar arrangements with others.

Article III - Term of Agreement

This Memorandum of Agreement shall be effective when signed by both parties and shall remain in effect as needed for up to three years from that date, subject to renewal by mutual agreement for a further period not to exceed three years.

Article IV - Key Officials

Key Officials.

NPS:

Insert: [Name of NPS Representative]
[Mailing address]
[Telephone number]

[Corporation]:

Insert: [Name of Organization's Representative]
[Mailing address]
[Telephone number]

Article V - Property

The Corporation may not construct any structures or buildings on park land or otherwise make any alternations to park land without further written permission from the National Park Service.

Article VI - Prior Approvals

Any materials prepared for public consumption, such as individual promotional activities, brochures, or any other form of publicity will be submitted to the National Park Service for formal review and approval prior to its release. In addition, any agreements the Corporation proposes to enter into with third parties in furtherance of its activities hereunder shall be subject to approval by the National Park Service.

The National Park Service to the extent practicable agrees to arrange for and conduct tours, interpretive events and inspections for individuals and groups at the request of the Corporation provided that such activities shall not, in the judgment of the National Park Service, unduly infringe upon or detract from normal visitor activities and services of the park. The Corporation shall request such tours and other events through the park Superintendent (hereinafter referred to as "Superintendent") in advance. The Superintendent shall have final decision-making responsibility as to such arrangements, depending upon park workloads and staff availability.

The Corporation shall apply for and abide by the terms and conditions of a special events permit for each such event it proposes to conduct. The Superintendent shall have the final authority over the granting of such permits.

Article VII - Reports

Within 60 days of the effective date of this Agreement, the Corporation shall furnish to NPS for approval a plan of operations which will clearly identify the roles and responsibilities of both the National Park Service and the Corporation and will also indicate the overall strategy for fund raising, the specific fund raising techniques to be used, timetables covering the length of time required for the fund raising effort, administrative and support structures, projected costs, and estimated results. Such plan shall be updated as conditions change, and, in any event, on at least an annual basis.

Within 90 days from the execution of this Agreement and quarterly thereafter, the Corporation shall submit status reports to the National Park Service setting forth the progress of the fund raising effort, any

present or anticipated problems, and financial projections for remaining work and the progress of the fund raising programs. The report shall also set forth quarterly goals for the fund raising efforts and shall compare the performance during the prior quarter to the goals set forth for that quarter. The reports following the first shall be submitted by the 15th day of the month following the end of each calendar quarter.

Funds received and expended by the Corporation from whatever source and for whatever purposes shall be accounted for under a system of accounts and financial controls meeting accepted professional standards for non-profit charitable organizations; the Corporation shall engage an annual audit by a qualified audit firm, and shall publish an annual report of its activities and finances. All such accounts shall be subject to audit by NPS or its authorized representative.

Article VIII - Termination

The National Park Service or the Corporation may terminate this Agreement by providing sixty days written notice to the other.

Article IX - General

All obligations of the National Park Service hereunder are subject to the availability of funds, and to such direction and instructions as may have been or are hereafter provided by Congress.

During the performance of this agreement, the participants agree to abide by the terms of Executive Order 11246 (Appendix 2) on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

Dated the _____ day of _____, 19____.

AGREED TO BY:

Representative, National Park Service

Representative, [Corporation]

APPENDIX 1

NATIONAL PARK SERVICE
POLICY ON
PHILANTHROPY AND FUND RAISING

PHILANTHROPY AND FUND RAISING IN THE NATIONAL PARK SERVICE

Philanthropy has a long history in the National Park System. In years past the parks have benefitted from donated money, art, furnishings, historic artifacts, land, buildings--even entire parks. Donations are often explicitly authorized or encouraged by Congress in legislation affecting new parks or existing ones.

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Today further change is in process. The National Park Service is moving beyond a merely passive role in philanthropy, to facilitate donations and actively encourage these expressions of public support and concern.

However, fund raising by a Federal bureau is not a common form of activity, and in moving toward a more active role of facilitating private donations, the National Park Service will proceed with orderly caution, not only because such a role is largely new, but also because the Service will take deliberate precautions to avoid problems and conflicts which may possibly arise. For example, the Service will be concerned about the tone and content of campaigns designed and conducted by private organizations on its behalf. The Service will be concerned about who is approached and how. The Service will be concerned at how much fund raising costs and what amount of the funds raised will actually benefit the parks.

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The level of review follows the dollar levels associated with delegations. Reviews will cover technical and legal adequacy, and compliance with NPS policy and practice.

Efforts will be made to negotiate a Memorandum of Agreement covering all outside fund raising activities on behalf of the parks. Should this not be possible, the National Park Service will not approve the effort.

Further, in order to remove concerns that donations are being used to circumvent decisions made by Congress, all gifts which will require annual funding for operations and maintenance or staffing (FTE's) or unfunded non-recurring costs may only be accepted when approved in advance by the Deputy Director. Requests for approval must identify the source(s) of funding, whether within current resources or proposed future increases.

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NPS will not solicit gifts from businesses or institutions (or their principals or beneficial owners) having a contractual relationship with the Service; the Service may accept unsolicited gifts from such businesses or institutions only where there can be no appearance of conflict of interest or impropriety. This prohibition does not extend to Cooperating Associations operating under a formal agreement.

NPS will publish an annual report on fund raising and philanthropy.

These policies may be waived only by the Director, National Park Service.

Approved:


William Penn Mott
Director

Date: 10/09/86

APPENDIX 2

Executive Order 11246

SECTION 1. The following office and position is placed in level IV of the Federal Executive Salary Schedule:

(1) Special Assistant to the Secretary (for Enforcement), Treasury Department.

LYNDON B. JOHNSON

THE WHITE HOUSE,
September 16, 1965.

Executive Order 11245

PLACING A POSITION IN LEVEL V OF THE FEDERAL EXECUTIVE SALARY SCHEDULE

By virtue of the authority vested in me by subsection (f) of Section 303 of the Government Employees Salary Reform Act of 1964, and as President of the United States, it is ordered as follows:

SECTION 1. The following office and position is placed in level V of the Federal Executive Salary Schedule:

(1) Commissioner on Aging, Department of Health, Education, and Welfare.

LYNDON B. JOHNSON

THE WHITE HOUSE,
September 16, 1965.

Executive Order 11246

EQUAL EMPLOYMENT OPPORTUNITY

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102. The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103. The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications

for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

SUBPART A—DUTIES OF THE SECRETARY OF LABOR

SEC. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

SUBPART B—CONTRACTORS' AGREEMENTS

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, 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, creed, color, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under

Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the con-

tractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of

Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SUBPART D—SANCTIONS AND PENALTIES

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a)(5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

Sec. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209(a)(6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

SUBPART E—CERTIFICATES OF MERIT

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations there-

under, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

PART IV—MISCELLANEOUS

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE,
September 24, 1965.

Executive Order 11247

PROVIDING FOR THE COORDINATION BY THE ATTORNEY GENERAL OF ENFORCEMENT OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

WHEREAS the Departments and agencies of the Federal Government have adopted uniform and consistent regulations implementing Title VI of the Civil Rights Act of 1964 and, in cooperation with the President's Council on Equal Opportunity, have embarked on a coordinated program of enforcement of the provisions of that Title;

WHEREAS the issues hereafter arising in connection with coordination of the activities of the departments and agencies under that Title will be predominantly legal in character and in many cases will be related to judicial enforcement; and

WHEREAS the Attorney General is the chief law officer of the Federal Government and is charged with the duty of enforcing the laws of the United States:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

SECTION 1. The Attorney General shall assist Federal departments and agencies to coordinate their programs and activities and adopt consistent and uniform policies, practices, and procedures with respect to the enforcement of Title VI of the Civil Rights Act of 1964. He may promulgate such rules and regulations as he shall deem necessary to carry out his functions under this Order.

SEC. 2. Each Federal department and agency shall cooperate with the Attorney General in the performance of his functions under this Order and shall furnish him such reports and information as he may request.

SEC. 3. Effective 30 days from the date of this Order, Executive Order No. 11197 of February 5, 1965, is revoked. Such records of the President's Council on Equal Opportunity as may pertain to the enforcement of Title VI of the Civil Rights Act of 1964 shall be transferred to the Attorney General.