

Affirmative-Action Plans: Recommended Procedures for Increasing the Number of Minority Persons and Women on College and University Faculties

The report that follows was approved by the Association's Committee on Women in the Academic Profession and adopted by the Association's Council in June 1983.

What is sought in the idea of affirmative action is essentially the revision of standards and practices to ensure that institutions are in fact drawing from the largest marketplace of human resources in staffing their faculties and a critical review of appointment and advancement criteria to ensure that they do not inadvertently foreclose consideration of the best-qualified persons by untested presuppositions which operate to exclude women and minorities.

—*Affirmative Action in Higher Education:
A Report by the Council Committee on Discrimination*

Since this report was issued in 1973, the commitment of the American Association of University Professors to affirmative action in higher education has remained strong. Our concern has been heightened, in fact, by a number of worrisome trends:

1. Although some faculty members have vigorously supported affirmative action, faculty members have too often abrogated their traditional role in institutional policy formulation and implementation by allowing administrators to assume major responsibility for affirmative-action requirements.
2. The administrations of many institutions have promulgated rules that not only intrude into the academic decision-making process, but also are counterproductive to the aims of affirmative action.
3. Insufficient progress has been made in removing the vestiges of discrimination and achieving equality.
4. Failure of many universities and colleges to end discriminatory policies and practices or to provide effective internal means of redress has led faculty members to resort to federal agencies and the courts. At the same time, enforcement activities have been viewed as unwarranted interference with institutional autonomy.
5. Criticism of affirmative action—from litigation attacking the use of race as a criterion in student admissions policies to political initiatives restricting the consideration of diversity as a factor in hiring at public institutions—has been widespread. Affirmative action has provided a handy target for the critics of government regulation of academic institutions, although other aspects of government regulation may in fact be far more intrusive and expensive to implement.

AAUP Policies

In view of these concerns, now is an appropriate time for the AAUP not only to reaffirm its stand in support of affirmative action, but also to suggest ways that affirmative action might be implemented in such a fashion as to be both effective and consonant with AAUP standards. The AAUP has long endorsed the principle of nondiscrimination, and the 1973 report of the Council Committee on Discrimination saw affirmative action as a necessary corollary to that principle.¹

Although affirmative action involves the identification of groups, such identification need not and should not imply a remedy that sacrifices individual rights to purported group entitlements. The AAUP has consistently supported the rights of individuals, advocating that an individual receive neither more nor less favorable treatment simply because of his or her race or sex.²

We believe that the following forms of affirmative action are consistent with the principle of nondiscrimination in the protection of individual rights.

1. *Examination of policies to be certain that they are scrupulously nondiscriminatory in principle and in practice, followed by corrective action where needed.* Included would be a review of recruitment practices to ensure all qualified candidates for a position an opportunity to be considered fairly; to eliminate stereotyping assumptions, such as a belief that women with young children will be unable to devote themselves adequately to their profession; and to provide adequate internal grievance procedures for those who perceive that they have been the victims of discrimination.
2. *Examination of policies and procedures that, while facially neutral, have an adverse impact on women or minorities.* Whenever possible, they should be eliminated or replaced by less exclusionary policies designed to accomplish the same legitimate purpose.³ The goal is to do away with gratuitous barriers to the fair consideration of women and minorities. Examples would be the narrowing of anti-nepotism policies or the liberalization of child-bearing and child-rearing leave policies. Another, less direct, action might be provision for day-care facilities, the absence of which tends to have a heavier impact on women than on men.
3. *Race- or sex-sensitive selectivity.* Awareness of race or sex in the appointment and retention process reaches a more difficult concept, but one that we believe was affirmatively addressed by the 1973 committee and by the AAUP's amicus brief in the *Bakke* case.⁴ It is contemplated that in the interest of "diversity" a faculty might make the academic judgment that it would be desirable to have more men or more women or more black or more white persons among the faculty or student body. Such a judgment raises a delicate matter in that we must ensure that the call for diversity does not itself lead to a violation of individual rights. It also raises the question of what types of considerations may appropriately be taken into account in the development and application of assessment criteria.

At church-related institutions (although probably not at public institutions), for example, a religious affiliation may be considered in providing a degree of homogeneity in institutional values. With respect to political views, on the other hand, the AAUP would not endorse the right of a faculty to make judgments based on diversity criteria, nor could a public institution do so legally. At the same time there are some considerations that faculty might quite properly take into account in order to achieve a certain heterogeneity they might view as beneficial to the stated purpose of the college or university. Institutional diversity may, in itself, be an appropriate goal. Under certain circumstances it can be sound policy to avoid appointing large numbers of Ph.D.'s from a single institution, apart from the merits of individual candidates, and an age mix may also be sought in a manner consistent with nondiscrimination principles.

Affirmative action may thus permit the inclusion of sex or race among a number of characteristics assessed in a potential candidate—along with his or her publications, area of specialization, academic credentials, and so on. Sound academic practice requires that these criteria provide the basis for a complex assessment of relative merit and not merely establish a large pool of minimally qualified candidates. Nonetheless, it is frequently the case that the selection process produces a group of two or more highly rated candidates who are viewed as approximately equivalent. In such circumstances, and in the interests of diversity, affirmative-action considerations might control the final selection. This type of selectivity is still consistent with the principle of nondiscrimination in that, as a matter of faculty judgment, the decision may be made that more males are needed in a predominantly female department or more whites at a predominantly black institution.⁵ It should be kept in mind, however, that what is permissible or desirable in race- or sex-sensitive selectivity in the appointment process differs from what may be permissible in subsequent personnel decisions.⁶

4. *The establishment of achievable goals for the appointment of women and minority faculty members.* A "goal is nothing more or less than an expectation of what an institution has reason to suppose will result under conditions of nondiscrimination."⁷ The setting of goals in an affirmative-action plan does not guarantee representation for the groups for whom the goals are set, but it does serve as a useful monitoring device consistent with the principle of nondiscrimination and the rights of individuals.

Despite recognition of past and continuing discrimination in higher education and the slow progress in achieving a more diverse faculty in terms of race and sex, the AAUP does not support affirmative action that would set rigid quotas in the appointment of faculty members. We recognize that special efforts may be needed to attract and retain women and minority faculty members. It is our position, however, that if the first three means of implementing affirmative action described above were fully implemented at colleges and universities, there would be no need to mandate appointments from underrepresented groups. Where the principle of nondiscrimination is truly operative, the expectation is that all groups, where large enough units were considered, would achieve adequate representation.⁸ The focus of our concern, in light of our equal concern for the rights of individual candidates, must necessarily fall on the decision-making process and how to make it as nondiscriminatory as possible within the academic setting. It is important that faculty members take the initiative in the establishment of numerical goals as well as in other aspects of affirmative action; if, however, individual departments are unwilling to accept responsibility, then there must be effective means within the institution to ensure that provisions are made for equality of opportunity.

The AAUP recognizes that a fundamental commitment to nondiscrimination and equal opportunity requires the careful development and vigorous implementation and monitoring of affirmative-action plans designed to meet the needs and standards of the academic community. In line with the types of affirmative action described above, affirmative-action plans may include a wide range of lawful and academically sound corrective policies and procedures employed to overcome the effects of past or present barriers to equal employment opportunity. We believe that such plans are essential not only to ensure that equal opportunity is realized, but also to remove those vestiges of past discrimination that would otherwise perpetuate indefinitely the disadvantages of unequal treatment.

The second assumption on which these procedures are founded is that primary responsibility for affirmative action should reside within the academic community and especially with the faculty. Members of the academic community frequently regard affirmative action as a bureaucratic intrusion and respond with merely cosmetic formal compliance. We ought instead to recognize that outside pressure, though at times intrusive and insensitive, is sometimes required to stimulate the reform of long-standing discriminatory policies and procedures. We need, in fact, to reexamine long-standing policies to ascertain whether there are some facially neutral policies that have an adverse impact on women or minority persons without providing a substantial contribution to academic excellence. We need to integrate affirmative-action efforts into the routine conduct of personnel decisions through established procedures for peer review and collegial governance. While the primary responsibility lies within the institutions, we recognize that their policies and judgments cannot be exempted from administrative and judicial scrutiny and review. The right to institutional autonomy does not include the right to violate the law. The role of the government should, however, vary inversely with the efforts of the academic community to implement the principles of nondiscrimination.

Affirmative-Action Plans

1. *Designing the Plan.* Consonant with principles of sound academic governance,⁹ the faculty should play a major role in formulating an institution's affirmative-action plan. To the extent that persons affected participate in the development and ratification of a plan, the document's acceptability will be enhanced.

The content of affirmative-action plans should be sensitive to classifications requiring academic expertise. Attention must also be paid to institutional policies governing tenure and promotion and fringe benefits and salary, and to any other area of professional life where vestiges of bias may persist. The most difficult aspect of plan development is the formulation of goals and timetables that not only are realistic, but also will serve as an incentive to maximum effort in providing equality of opportunity. Realism requires an honest recognition of diminishing resources, shrinking enrollments, and the limits of the candidate pool available to a specific institution and in specific disciplines or professional fields.

The existence of a formal document which sets forth the institution's commitment to equal-opportunity obligations, including goals, timetables, and procedures for the rectification of inequities, should be publicized. Incorporating the plan in faculty, staff, and student handbooks ensures its availability and facilitates its use as a ready reference.

2. *Implementing the Plan*

a. *The Affirmative-Action Office*

- (1) The institution should establish an affirmative-action office.
- (2) An affirmative-action officer for faculty should be a person selected by a representative committee on which faculty members have a major role; it is preferable that the person selected have had faculty experience in order to ensure an understanding of the role of faculty and to foster cooperation.
- (3) The affirmative-action officer should have power of effective oversight of search and appointment procedures for faculty and academic administrative positions and their implementation. For example, the affirmative-action officer should have the authority, upon determining that a department's search for candidates has not been adequate, to defer an appointment pending appropriate faculty and administrative review.
- (4) The affirmative-action officer should play a role in the normal personnel-action procedures of the institution, including promotion, tenure, and salary determinations. Timely reviews of individual actions should be complemented by public disclosure through periodic reports on the overall situation at the institution with respect to personnel decisions affecting faculty status.
- (5) The administration of an institution's affirmative-action program should encourage and provide a mechanism for faculty participation. Support from members of the faculty and the administration is of the utmost importance. A committee established by the appropriate institutional governing body should be responsible for promoting the policies established in the institution's affirmative-action plan and for periodic review of the plan once adopted. An institution-wide committee would be able to see to the integration of the affirmative-action plan into the personnel decision-making process and the coordination of equal-opportunity activities on campus.
- (6) A charge for implementation of the affirmative-action plan should be given by the president of the institution to the affirmative-action officer and to the committee that has oversight responsibilities. This charge should be communicated to the faculty, staff, and students.

b. *Recruitment*

- (1) A plan for the recruitment of minority persons and women should be developed by each department and approved by the affirmative-action officer.
- (2) Departments should establish search committees that would work in consultation with the department chairperson and other members of the department toward meeting departmental goals in appointing minority persons and women.
- (3) Plans for recruitment should include advertising in appropriate professional publications, in newsletters of minority or women's groups, and in publications of

minority and women's caucuses or professional organizations. If a search is to be internal only, announcements should be circulated only internally. The deadline for applications should allow for a reasonable period of time after the announcement appears.

- (4) Descriptions of vacant positions should be clear concerning teaching load, research expectation, departmental duties, and other responsibilities. Written criteria and procedures for reappointment, promotion, and tenure at the institution should be available for all interested candidates.
- (5) Search committees should ask minority and women's caucuses of professional organizations for suggestions of candidates.
- (6) Department chairpersons in graduate programs should be asked to call the opening to the attention of their current students or recent graduates.
- (7) Search committees should consider going beyond those institutions from which faculty at the institution have been traditionally recruited. Consistent use of the same few institutions may perpetuate a pattern of discrimination in faculty hiring. In addition to broadening the base of sources from which candidates are seriously considered and appointed, the regularly recruited institutions should be asked to submit names of all qualified candidates.
- (8) Search committees should contact the minority and women graduates (or men in departments where there are few men) and present and former members of the department for suggestions of possible candidates.
- (9) Departments might well consult with the appropriate minority and women's groups on campus to secure their aid in recruitment efforts.
- (10) Women and minority candidates who have recently acquired their professional training, after having been absent from formal academic pursuits for some years, should be judged with other recently trained persons for the same positions.
- (11) In recruiting for faculty, the standards should be the same for all candidates. White males should not be considered on "promise" and all others, of comparable education and accomplishments, on "achievement." Search committees should be sensitive in reading letters of reference for indications of bias.
- (12) The fact that the pool of minority persons and women candidates for a particular vacancy is small should not be used as an excuse for not attempting to recruit for such candidates.

c. *Screening of Candidates*

- (1) Search committees should make every effort to include among the applicants a diversity of candidates. After receipt of candidates' credentials and accompanying letters of recommendation, search committees should invite applicants—men and women, majority and minority—to the campus for interviews.
- (2) When feasible, the affirmative-action officer and/or members of the appropriate minority or women's group on campus should be invited to meet with the minority or women candidates. It is important for the candidates to know that there are current faculty members who are minority persons or women.

d. *Appointments*

- (1) Appointments should be made on the basis of individual merit. Careful consideration should be given to the criteria traditionally used for merit to be certain that they serve to further academic excellence. It is especially important to reconsider any facially neutral policies that have an adverse impact on affirmative-action efforts that is disproportionate to their contribution to the determination of merit. The need for an institution to justify a criterion as appropriate rises in direct proportion to its exclusionary effect.

- (2) Offers to minority and women candidates should be made as attractive as possible; for example, appointment to full-time probationary or tenured positions, arranging course assignments in an area of the candidate's specialty, or a part-time appointment when mutually desirable or advantageous. This last item requires special attention because of the tendency to relegate women involuntarily to part-time or irregular positions on the faculty.
- (3) Reports on faculty personnel decisions should include information on the department's search for minority and women candidates, interviews held, and the basis for a final choice.

e. *Professional Advancement*

- (1) Criteria for reappointment, promotion, or tenure should have been made clear to the candidate at the time of his or her appointment. They should be reviewed with the appointee on a regular basis afterwards.
- (2) Sexual or racial qualifications for reappointment, promotion, or the granting of tenure should not be introduced. Although a decision to seek diversity may be a legitimate factor in the appointment process, denial of retention or advancement because of this consideration is inappropriate and often a breach of stated criteria and expectations. While it is understood that needs of institutions change, a redefinition of criteria and/or the imposition of requirements substantially different from those stated at the time of the initial appointment are suspect and should be carefully examined for their potentially discriminatory impact.
- (3) As in the case of all new appointees, care should be taken not to appoint a woman or minority candidate to a position for which she or he is marginally qualified and then to provide no opportunity for professional development, such as a lightened teaching load to enable access to further study or research opportunities. Without support for professional development that is made available to all new appointees equitably, these faculty members often are denied reappointment. The cycle is likely to be repeated with their replacements. Where this occurs, there may be the appearance of a viable affirmative-action program without the reality of one.
- (4) Because the number of minority and women faculty members at most institutions is small, it is important that they be made to feel welcome at the institution and educated into practical professional concerns. They should be given advice, if needed, on appropriate journals for the publication of scholarly papers, on obtaining grant support, and on participation in professional meetings and conferences.
- (5) An institution can provide various incentives for the professional development of faculty members in junior academic positions, including postdoctoral opportunities in those fields historically closed to women and minorities, early leaves or sabbaticals, summer research grants, and funds for attendance at professional meetings. Because women and minority persons have traditionally been excluded in disproportionate numbers from such support, special encouragement may be required to ensure their participation.

f. *Retrenchment*

In those situations where an administration moves to terminate the positions of faculty members on continuous appointment on grounds of financial exigency or discontinuance of program, Regulation 4c of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* recognizes that "judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status."¹⁰ That is, special care should be taken that the burden of retrenchment does not fall inequitably on those for whom affirmative action was taken. The same careful scrutiny must be given to retrenchment criteria as to those used in appointment, promotion, and tenure.

3. *Monitoring the Plan.* Through its governance structure, the faculty is best qualified to ensure that the letter and spirit of affirmative action are followed in the search for new appointees, as well as in promotion, retention, and tenure decisions. Furthermore, it is essential that the faculty, in conjunction with the administration, establishes and implements appropriate grievance procedures. Information regarding nondiscrimination policies, and notice of the recourse available should they not be followed, should be distributed to the faculty. Grievance committees should have access to the files and statements on which disputed decisions have been based, and, upon request, the faculty member should be provided an explanation of decisions affecting his or her status on the faculty.

Conclusions

Progress in the appointment and professional advancement of women and minority persons in higher education has been exceedingly slow. There are few minority and women faculty members in most academic fields; those there are tend to be concentrated in the lower academic ranks and in part-time and temporary positions. Unequal treatment of the underrepresented groups continues. The AAUP's surveys of faculty compensation consistently show a gap in salary between men and women faculty members.¹¹ It is clear that discrimination has not been eliminated, and effective affirmative-action plans are necessary. We urge a greater commitment—psychologically, ideologically, and materially—to the basic principles of affirmative action, and to the implementation and monitoring of affirmative-action plans, so as to approach real equality of opportunity.

Notes

1. This committee report endorsed federal guidelines establishing numerical goals and timetables and asked institutions to "review the effects and the assumptions of stated or unstated standards of appointment and advancement, to provide statistical forecasts under an affirmative-action plan, and to monitor equal protection provisions" ("Affirmative Action in Higher Education: A Report by the Council Committee on Discrimination," AAUP, *Policy Documents and Reports*, 9th ed. [Washington, D.C., 2001], 193–200).

2. This is the basis of the AAUP's position on pension benefits that similarly situated men and women should receive equal periodic benefits. To give each man more in benefits to make up for the fact that more men die early means that men and women who in fact live the same number of years will be treated differently. The Supreme Court in *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702 (1978), found this difference in treatment to be an illegal preference for group rights over individual rights. Limited federal legislation guaranteeing group entitlement has been upheld by the Supreme Court in *Fullilove v. Klutznick*, 448 U.S. 448 (1980), but there is no general constitutional provision for group rights, which would, for example, provide for representational voting as is done by some governments. While the AAUP recognizes, as does federal law, the right of religious institutions to formulate appointment policies based on religious affiliation, it has never endorsed a policy of guaranteed representation of certain groups in employment.

3. See "Affirmative Action in Higher Education," n. 1.

4. The AAUP's amicus curiae brief in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). In this brief the AAUP took the position that when (a) a faculty was convinced on the merits that racial heterogeneity was in fact relevant to conditions of its own professional excellence, and when (b) failure to "count" race might necessarily frustrate that possibility to improve its excellence, then it might consider race in deciding on admissions. Justice Powell found this position to be the sole basis on which it was constitutional for a public university to make any use of race. This position has been reiterated subsequently in other amicus briefs filed by the AAUP, including *Gratz v. Bollinger* and *Grutter v. Bollinger*, challenging the admissions policies and practices at the University of Michigan, and *Smith v. University of Washington Law School*, challenging affirmative action in law-school admissions.

5. While the body of this statement refers rather consistently to women and minorities, because that is where the problem usually is, it is recognized that, in some cases, affirmative action may be desirable to increase the number of men or whites on the faculty. Again, that would be an academic judgment by the faculty.

6. See 2e, Professional Advancement (2).

7. "Affirmative Action in Higher Education," *Policy Documents and Reports*, 9th ed., 199.

8. We recognize the great difficulties in eliminating the historical effects of discrimination; nonetheless, we believe these historical disabilities can be remedied through a truly nondiscriminatory system without the imposition of mandatory quotas or a double standard that would merely perpetuate the myth of inferiority.

9. See "Statement on Government of Colleges and Universities," *Policy Documents and Reports*, 10th ed. (Washington, D.C., 2006), 135–40.

10. *Policy Documents and Reports*, 10th ed., 24.

11. See, e.g., "Annual Report on the Economic Status of the Profession, 1999–2000," *Academe: Bulletin of the AAUP* 86 (2000).