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## Philadelphia Plan

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**PHILADELPHIA PLAN.** The genesis of AFFIRMATIVE ACTION in government contracting (and arguably all federal affirmative action programs) is the Philadelphia Plan. Designed to respond to the virtual exclusion of racial minorities in the industrial and craft unions participating in federally funded construction projects in the Philadelphia area, the Philadelphia Plan demanded that government contractors submit minority employment goals as part of their contracting bids. These goals were to fall within a range specified by the DEPARTMENT OF LABOR'S Office of Federal Contract Compliance and based upon the following factors:

(1) the current extent of minority group participation in the trade; (2) the availability of minority group persons for employment in such trade; (3) the need for training programs in the area and/or the need to assure demand for those in or from the existing training programs; and (4) the impact of the program upon the existing labor force.

The story of the Philadelphia Plan begins in the final months of the Johnson administration. Pursuant to President Johnson's 1965 EXECUTIVE ORDER 11246 demand that government contractors make adequate use

of minorities and women, contracts in Philadelphia and other selected cities were held up until contractors submitted pledges to hire minority workers. After the GENERAL ACCOUNTING OFFICE challenged the Philadelphia Plan as "unauthorized," the Johnson administration rescinded it. However, on 27 June 1969, the Philadelphia Plan was reintroduced by the Nixon administration.

Labor unions and Comptroller General Elmer Staats attacked the revised plan as inconsistent with antidiscrimination legislation prohibiting race-conscious decision making in employment. For example, plumbers and pipefitters were given a minority goal that escalated from a range of 5 to 8 percent in 1970 to a range of 22 to 26 percent in 1973. Labor Secretary GEORGE SHULTZ and Attorney General JOHN MITCHELL answered these charges, arguing both that numerical targets simply reflected what "might be expected" from nondiscriminatory hiring and that contractors who had "exerted good faith efforts" would not be penalized for failing to meet their hiring goals.

This dispute was settled in Congress when it considered, in the fall of 1969, legislation blocking the Philadelphia Plan. Comptroller General Staats, who initiated this challenge, did more than argue against the legality of the plan. He also contended that the ATTORNEY GENERAL sought to subordinate COMPTROLLER GENERAL authority over federal contracting procedures, thereby calling into question legislative control over federal expenditures. Although this argument prevailed in the Senate, it failed in the House and was ultimately defeated. The key to this defeat was a major White House lobbying campaign, including a threatened veto. Following the administration's victory, the Department of Labor extended the plan to nineteen other cities. In April 1971, pointing to Congress's continued funding of the Philadelphia Plan program as indicative of Congress's implicit ratification of the plan, the Third U.S. Circuit Court of Appeals upheld the plan in *Contractors Ass'n of Eastern Pa. v. Secretary of Labor* (1971).

Today the Philadelphia Plan stands as the backbone of Executive Order 11246 demands on all federal contractors. Without question, the revised Philadelphia Plan represents the Nixon administration's most significant civil rights initiative. In light of President Nixon's antibusing "southern strategy," the plan is also Nixon's most surprising civil rights initiative. The Philadelphia Plan, however, made good political sense to Nixon. First, it enabled Nixon to counterbalance his antibusing initiatives and appeal to minority voters. Second, the Philadelphia Plan created a political dilemma for the Democrats, namely, the division of

two traditional Democrat constituencies—labor unions and civil rights groups. "The NAACP wanted a tougher requirement; the unions hated the whole thing," according to Nixon's chief of staff John Ehrlichman. While these groups "were locked in combat," the Nixon administration "was located in the sweet and reasonable middle."

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