



## NATIONAL SCIENCE FOUNDATION

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April 18, 2006

Division of Human  
Resource Development

To the LSAMP Community:

Finally, our 2006 Joint Annual Meeting has successfully concluded. And, many thanks to each of you, for your presence, keen insight and participation. As a follow-up to the conference, three important items must be addressed in order to bring final closure to a power packed agenda at the national meeting.

First, I remind you that the Louis Stokes Alliances for Minority Participation Program (LSAMP) is one of NSF's flagship programs and is conducted with full Congressional approval and authorization. The program, including, the Bridge to the Doctorate (BD) Initiative, is an integral part of NSF's efforts to respond to the legislative mandate of the Science and Engineering Equal Opportunities Act of 1980. That law directs NSF to increase the number of women, persons with disabilities, and underrepresented minorities in science, technology, engineering and mathematics (STEM) fields generally, and in our research and education programs specifically. As LSAMP alliance partners, NSF encourages awardees and their member institutions to make use of comprehensive and creative approaches to broaden participation in STEM disciplines. And, you may do so vigorously and effectively to achieve these goals.

As set forth in the LSAMP program announcement and your cooperative agreement, NSF alliance partners are reminded that no person on grounds of race, color, age, gender, national origin or disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from NSF. Based on these nondiscrimination provisions, *activities that condition participation on membership in underrepresented groups should be avoided in favor of inclusive, creative approaches that attract diverse participants without excluding others.* Alliance partners are also reminded that these nondiscrimination provisions equally apply to your member institutions through the terms and conditions of your sub-award instruments. For guidance on how to conduct your project activities in furtherance of NSF's program goals and in accordance with applicable federal and state laws, we encourage you to consult your university counsel if you have any questions and to urge all alliance member institutions to do the same.

Second, you are to continue close monitoring and supervision of your budgets in order to ensure timely draw down and spending in accordance with Federal guidelines. Proper and appropriate record keeping, and timely reporting remains essential for both, the lead campus and sub-awardees!

April 18, 2006

Third, tracking your students, and evaluation of your project remain central to national expectations of accountability. Therefore, I am confident that each project will continue measuring up to these expectations. At the national level, the publication, "Revitalizing the Nation's Talent Pool in STEM," is an evaluation and major document attesting to the effectiveness of the LSAMP Program. Surely, you will use the results to enhance your project and disseminate, widely, these findings and recommendations. The URLs for the evaluation reports are as follows:

Dissemination Report (25 pp.) <http://www.urban.org/url.cfm?ID=311299>  
Full Report (250 pp.) <http://www.urban.org/url.cfm?ID=411301>

Again, thank you for contributing to the long list of LSAMP Program successes at the institutional level. Also, with your help, we have had a significant and positive impact on revitalizing the nation's talent pool for the 21st century. Indeed, we look forward to continuing our alliances as we progress toward additional successes and positive developments in the future.

Sincerely,



A. James Hicks, LSAMP  
Program Director

Attachment: March 16, 2006/Presentation by  
Dr. Koropchak and Atty. Blakemore

Cc:

Donald Thompson  
Victor Santiago  
Martha James

## Graduate Diversity Programs at Southern Illinois University: Recent Challenges from the Department of Justice

John A. Koropchak  
Vice Chancellor for Research and Graduate Dean  
Southern Illinois University Carbondale  
&  
Jerry D. Blakemore  
General Counsel  
Southern Illinois University



- Part of the Southern Illinois University System
- Carnegie Doctoral Research/Extensive
- Enrollment: 21,400, including 4000 grad students  
Minorities-->14.3% of graduate students
- Placed among top 100 universities in terms of  
serving minorities by *Diverse: Issues in Higher  
Education*

e.g., Reflective Responsive University Initiative



## Minority Graduate Programs/History at SIUC

- **Graduate Dean's Fellowship, 1970**  
-for students who have overcome economic & social  
challenges; 1999 focus shifted to women & minorities
- **Proactive Recruitment of Minority  
Professionals for Tomorrow (PROMPT)  
Fellowship, 1994**
  - specifically for minority students
  - 1996 CGS Peterson's Award for Innovation in  
Recruitment and Retention of Minority Graduate  
Students
- **McNair Scholars, 2003**



## Minority Graduate Programs/History at SIUC (cont'd)

- **LSAMP Bridge to the Doctorate, 2004-07**  
- collaboration with Chicago State University
- **Illinois Minority Graduate Incentive  
Program (IMGIP) and Illinois Consortium  
for Educational Opportunity (ICEOP)\*  
Fellowships, Illinois Board of Higher  
Education, 1985**
  - Statewide programs managed by SIUC for  
**supporting traditional minority groups**

\*programs combined to form Diversifying Faculty in  
Illinois (DFI) program in 2004





## Center for Equal Opportunity

- Correspondence of Feb. 20, 2004, challenging 10 programs, including 5 graduate-related programs:
  - IMGIP/ICEOP Fellowship Programs
  - PROMPT Fellowship Program
  - Graduate Dean's Fellowship Program
  - McNair Scholar's Program
- ... and a variety of undergraduate programs in Business, Engineering, etc.



## Center for Equal Opportunity

- Request Language: "... not seeking to end any of these ten programs. ... request that you simply open the programs described above to all students regardless of skin color.."
- Basis: Title VI of Civil Rights Act of 1964
- Threat to file a formal complaint with the U.S. Department of Education's Office for Civil Rights



## SIU Response

- ".....do not agree that the conduct of this University conflicts with the Supreme Court's recent decisions ..."
- Some changes made to increase accessibility of programs
- CEO Reaction.....referred to federal government because of 'sluggish response' by SIUC



## Department of Justice

- *Not* Department of Education
- July 19, 2005
- Investigation pursuant to Section 707 of Title VII of the Civil Rights Act of 1964 related to 'employment discrimination'
- Requested detailed information on:
  - A. Fellowship Programs: ICEOP, IMGIP, DFI, PROMPT, Graduate Dean's, Chancellor's Fellowship Program, McNair Scholar's, Bridge to the Doctorate, *and*
  - B. Faculty Hiring



## Department of Justice

- **November 18, 2005**
  - **“United States will file a complaint with SIU” regarding:**
  - **-PROMPT**
    - Bridge to the Doctorate**
    - Graduate Dean’s**
- .....unless SIU signs consent decree.



## Department of Justice

- **Problems identified by DOJ:**
  - Bridge:** a) students assigned a 10 hour/week teaching/research assignment during the 1<sup>st</sup> 2 years; contract with students to provide years 3-5 as assistantship, both interpreted as employment by DOJ; b) exclusively for minorities
  - PROMPT:** a) students had teaching assignments as 50% teaching assistants, i.e. employment; b) exclusively for minorities
  - Graduate Dean’s:** a) not open to white males; b) 2<sup>nd</sup> year of commitment was a teaching assistantship, i.e., employment

## The Legal Issues

### Southern Illinois University Exposure to 1964 Civil Rights Act Legal Issues/Title VII “Students” or “Employees”

The primary issue is whether the current practice of selecting participants for the subject matter programs exclusively on the basis of race, gender or national origin is a violation of Title VII of the Civil Rights Act.

The determining factor is whether the program participants are “employees” and therefore within the gambit of Title VII or are students and therefore not within the purview of Title VII.

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Legal Issues/Title VII  
"Students" or "Employees"**

A review of the case law in the Seventh Circuit Court of Appeals (our federal appellate court circuit) as well as other circuits that have addressed the issue of employee versus students in the context of higher education, indicates that the University would most probably be unsuccessful in litigating this point and a federal District Court would likely find that the program participants are "employees" and therefore subject to the antidiscrimination provisions of Title VII.

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Legal Issues/Title VII  
The Michigan Cases**

Barbara Grutter v. Lee Bollinger 539 U.S. 306, 123 S.Ct. 2325 (June 23, 2003)

Jennifer Gratz and Patrick Hamacher v. Lee Bollinger 539 U.S. 244, 123 S.Ct. 2411 (June 23, 2003)

- Grutter and Gratz applies to admissions and scholarships and not employment.
- Grutter and Gratz allow for consideration of race in admissions and scholarships but require that
  1. "The University's use of race in its current admissions program employs 'narrowly tailored measures that further compelling governmental interests.'"
  2. The use of race not "unduly harm" other persons or groups.

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Legal Issues/Title VII  
Students or Employees**

In either case, it is my opinion that given the exclusive nature of the program criteria, even if a court found that the program participants were students and thus arguably not within the gambit of Title VII, the most recent U.S. Supreme Court cases on affirmative action would not provide protection from excluding other groups and persons exclusively on the basis of race.

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Legal Issues/Title VII  
"Students" or "Employees"**

1. Program Descriptions
2. University/IRS Treatment
3. Appellate Court Precedents
  - Two Seventh Circuit cases which found the graduate students to be employees for the purposes of Title VII Czubaj v. Ball State Univ. & Suvannunt v. Thompson
  - Economic Realities Test
  - Eleventh Circuit Court of Appeals decision in Cuddeback v. Florida Bd. Of Educ.

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Legal Issues/Title VII  
"Students" or "Employees"**

**Suvannunt v. Thompson** 58 Fed. Appx. 233 (7<sup>th</sup> Cir.  
Feb. 18, 2003)

**Czubaj v. Ball State Univ.** 107 Fed. App. 664 (7<sup>th</sup> Cir.  
Aug. 13, 2004)

- Seventh Circuit did not specifically address whether student was employee or not, but assumed employment as a presumption of status.
- Graduate students with similar employment responsibilities as SIU subject matter program graduate students.

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Legal Issues/Title VII  
"Students" or "Employees"**

**Economic Realities Test**

The economic realities test focuses on an employee's dependence on the employer for support. Factors to be considered in applying the economic realities test include:

- the nature and degree of employer's control over manner of work;
- employer's opportunity for profit or loss depending on managerial skill;
- employer's (as opposed to employee's) investment in materials, equipment or employment of workers;
- whether the service requires special skill;
- the degree of permanence and duration of the working relations; and
- the extent to which the service rendered is an integral part of the alleged employer's business.

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Legal Issues/Title VII  
"Students" or "Employees"**

**Eleventh Circuit Court of Appeals decision in *Cuddeback v. Florida Bd. Of Educ.*** 381 F3d 1230 (11<sup>th</sup> Cir. 2004).

- In *Cuddeback* notwithstanding the fact that the student's research in the University laboratory done primarily for the purpose of satisfying her lab-work, publication and dissertation requirements for the graduate program, Eleventh Circuit found that the student was actually an employee.
- Court relied the following factors:
  1. The plaintiff received a stipend and benefits for her work;
  2. The plaintiff received sick and annual leave;
  3. A comprehensive collective bargaining agreement governed the plaintiff's relationship with the University;
  4. The University provided the equipment and training; and
  5. The decision not to renew the plaintiff's appointment in the lab was based on employment reasons, such as attendance and communication problems, rather than academic reasons.

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Recommendation/Change Subject Matter Programs  
and Broaden Participation in Other Programs**

**Amend the eligibility criteria for the three subject matter programs.  
Eliminate exclusive nature of application criteria.**

**Modify application criteria to include all persons. Maintain primary focus of program. Selection criteria to include:**

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Recommendation/Change Subject Matter Programs  
and Broaden Participation in Other Programs**

**Graduate Dean's Fellowship**

"The Graduate Dean's Fellowship is designed for traditionally underserved individuals who have overcome social, cultural or economic conditions that have adversely affected their educational progress. The Graduate Dean's Fellowship will be awarded for up to a maximum of two years. These awards will be made to students who are qualified by the usual indicators of promise for success in graduate study."

- A citizen, immigrant, or permanent resident of the United States
- Have at least a grade point average of 2.7 (A=4.0) in all undergraduate work or a 3.25 (A=4.0) in prior graduate work.

**Southern Illinois University  
Exposure to 1964 Civil Rights Act  
Recommendation/Change Subject Matter Programs  
and Broaden Participation in Other Programs**

**PROMPT Fellowship**

"The PROMPT Program (Proactive Recruitment of Multicultural Professionals for Tomorrow) is an initiative developed by the Graduate School of Southern Illinois University Carbondale (SIUC) to increase the number of individuals receiving advanced degrees in the United States from families which have traditionally not had access to the opportunities of higher education and who, through his or her life and/or cultural experiences, have unique and potentially positive contributions to make to the program, the discipline, and in the larger academic community."

- New incoming students who have been unconditionally admitted to either a master's or doctoral degree program.
- Applicants with an earned degree(s) from an accredited institution of higher learning. The minimum grade point average (scale 4.0=A):
  - For a master's program – 3.00 in the last 60 hours of undergraduate work.
  - For a doctoral program – 3.25 in prior graduate study.
- U. S. Citizens.

**The Modifications**



**Program Changes in  
Response to Consent Decree**

- **BEFORE:**  
**PROMPT:** ... an initiative ... to increase the number of minorities receiving advanced degrees in the United States in disciplines in which they are underrepresented.
- **AFTER:**  
**PROMPT:** ... an initiative ... to increase the number of individuals receiving advanced degrees in the United States from families which have traditionally not had access to the opportunities of higher education and who, through his or her life, cultural and/or ethnic experiences, have unique and potentially positive contributions to make to the program, the discipline, and in the larger academic community.  

New Application Req't: *Award Essay* indicating how .... personal or family background, life, cultural, and/or ethnic experiences could contribute to a more reflective responsive environment in the program, the discipline, and in the larger academic community.





## Program Changes in Response to Consent Decree

- **BEFORE:**  
**Graduate Dean's:** ... designed for **women and other traditionally underrepresented students who have overcome social, cultural or economic conditions** that have adversely affected their educational progress.
- **AFTER:**  
**Graduate Dean's:** ... designed for **traditionally underserved individuals who have overcome social, cultural or economic conditions** that have adversely affected their educational progress.  
  
New Application Requirement: *Award Essay* indicating how .... personal or family background, life, cultural, and/or ethnic experiences could contribute to a more reflective responsive environment in the program, the discipline, and in the larger academic community.

## An Important Result Negotiated as Part of Consent Decree

- **Current students in programs unaffected, unharmed**
- **All promises and commitments to be honored**



**SIU remains firmly committed to being a diverse university community, reflective of and responsive to our citizenship**

**-e.g., SIUC targeting growth of ~1300 graduate students by 2010, with about 30% from 'underserved groups'**

**We look forward to working with you as we strive to achieve these goals!**

**SOUTHERN**