

# University of California



## Affirmative Action/ Staff Personnel Services Newsletter

Winter, 2002

Agriculture & Natural Resources

### Special Edition of the Affirmative Action Newsletter

David Dumble

This is a special edition of the Affirmative Action Newsletter that will deal exclusively with the feedback we have received from the USDA audit team that was here in March 2002 that reviewed the state 4-H Youth Development Program. Most of their comments apply to all ANR programs, and every advisor and County Director should take note of their findings and prepare in case an audit team visits your county in the future.

The audit team visited six county offices, the 4-H Statewide Office in Davis, people at the ANR headquarters in Oakland, and they spoke with the regional offices. Almost all of their findings will be easy to implement, if they are not in place already. Virtually all of their comments focused on the actions of the Affirmative Action Office and not on any particular county that was visited.

The recommendations made by the USDA Audit Team (they refer to them as “Required Actions”) should be followed by all ANR Offices and personnel. These are important issues that every ANR staff member should be familiar with and in compliance with. If you have any questions, feel free to contact David Dumble at the ANR Affirmative Action/Staff Personnel Services Office at (510) 987-9345 or at [david.dumble@ucop.edu](mailto:david.dumble@ucop.edu).

#### Statements of Nondiscrimination by Cooperating Groups

This is a direct quote from the USDA Audit Report:

An assurance is a written commitment that is required from every . . . recipient of federal financial assistance that its programs, activities, and facilities will be operated in a nondiscriminatory manner . . .

UC needs to obtain and/or update written assurances from every cooperating group and maintain them on file.

In the past, the Affirmative Action Office has allowed advisors to comply with the “nondiscrimination by cooperating groups” requirement by having the advisor sign a statement listing their groups and certifying none discriminated. This will no longer be considered sufficient. **Every group that receives programmatic assistance must sign a statement stating that they do not discriminate.**

This does not mean that, for example, a youth group that only admits 8-12 year olds “discriminates” against 13 year olds. The nondiscrimination statement refers to discrimination based on any basis prohibited by federal or state law. A comprehensive list of these bases can be found in the UC Statement of Nondiscrimination. The signed statement need not list every basis, but can merely state that the group does not discriminate against any group protected by federal or state law.

#### And Justice For All Posters Must Be Visible

Most offices are aware of the requirement that a copy of the “And Justice For All” poster must be present in every office. Some, however, are not aware that the poster must be placed so that it is easily visible and readable by clientele visiting the office. A few CE offices have placed the poster in the same location as other mandatory posters relating to labor conditions and safety requirements, in areas visible to staff but not the general public; this is incorrect.

Ideally the poster should be in the lobby where clientele enter the office. Given the physical lay out of some offices, this is not always possible. However, every effort should be made to place the poster somewhere where it can be read by clientele.

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## Proposition 209

The USDA Audit Team felt that additional guidance was required regarding Proposition 209. The Audit Team felt that many advisors and staff were still confused as to how Proposition 209 related to ANR activities.

*Proposition 209 does not affect ANR affirmative action activity in any way.* There are several reasons why. First and foremost, under its own terms Proposition 209 does not apply to programs receiving federal money where federal law requires affirmative action activities. Since we would lose federal money if we did not comply with federal laws and regulations, Proposition 209 does not apply to us.

Second, California courts have held that it is permissible under Proposition 209 to collect racial and gender data to monitor for nondiscrimination. Proposition 209 prevents giving members of one race an advantage based on their race, but it does not prevent us from assuring that advisors are serving all members of their clientele on an equal basis.

There will be a proposition on the ballot in 2004 that will restrict the collection of racial data (this proposition will also not apply to us as a federally-funded program, but that's a topic to be addressed in 2004), but for now we are able to collect racial and gender data on our clientele.

If you want to explain this situation to anyone who asks, "Why are you asking me what race I am? Didn't we pass Prop. 209?" the accompanying article in this newsletter will be available to be downloaded off the ANR Affirmative Action Website, as well as another UC document on Proposition 209 which can be found at <http://www.ucop.edu/humres/policies/sp-2.html>. Feel free to use this text to produce a hand-out that can be given to anyone who inquires.

### Proposition 209 and ANR Affirmative Action Policy

Many people are confused about why ANR continues to ask people about their racial identity after the passage of Proposition 209. Asking these questions is permitted under Proposition 209 and helps ensure that ANR programs are available to everybody.

Proposition 209 did not outlaw any recognition of racial identity. What Prop. 209 did was prohibit the state from granting "preferential treatment to any individual or group on the basis of race." ANR does not grant preferential treatment based on race; we collect data on race to assure that all of our programs are being made available in a fair and equitable manner to everyone.

Advisors are not told they have to work with a certain quota of people from one race or another. Often, groups may be unable to take advantage of a ANR program because of language differences, or cultural differences, or a lack of knowledge about ANR. Monitoring the racial make-up of those making use of ANR programs helps us determine if there are any groups who might need our assistance but are not getting it.

California courts have agreed that Proposition 209 does not prohibit using racial data to monitor programs for non-discrimination. In *Connerly vs. State Personnel Board*, the court said, "a monitoring program designed to collect and report accurate and up-to-date information is justified by a compelling governmental need for such information . . . and may be employed without violating the principles of equal protection or Proposition 209."

Also, Proposition 209 expressly exempted programs like ANR, which receive federal funds and would lose those funds if it ceased to follow federal affirmative action requirements. Proposition 209 reads, "Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in loss of federal funds to the state."

Without federal funds, ANR could not operate most of its programs. In order to receive these funds, we must follow federal laws and regulations that require the collection of racial data. This activity is expressly allowed under Proposition 209.

The confusion about Proposition 209 is understandable. However, by asking for racial information, ANR is not violating the spirit or the letter of the law. We are merely attempting to operate our programs as fairly as possible, and for the benefit of the greatest number of people we can help.

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## 4-H Volunteers Should Document Outreach Efforts

4-H Youth Development Programs require volunteer leaders to report their outreach efforts to the 4-H advisor, and these efforts are then reported in the 4-H advisor's CASA report. However, it is not required that volunteers actually produce documentation to back up their report to the advisor. The USDA Audit Team has indicated that this is insufficient to monitor the outreach efforts made by 4-H clubs and programs.

While the actual method used will be left to the advisor, all those who report outreach efforts made on their behalf by others (4-H advisors or otherwise) should take steps to make sure the outreach efforts they are reporting are being reported accurately.

### Nondiscrimination Statement Must Be On All Documents

The USDA Audit Team indicated they found that some public notification and outreach material were being sent out that did not contain the official UC Statement of Nondiscrimination. This statement should be on ALL printed materials being distributed. The statement, which is available in several forms at the ANR Affirmative Action website reads:

The University of California prohibits discrimination against or harassment of any person on the basis of race, color, national origin, religion, sex, physical or mental disability, medical condition (cancer-related or genetic characteristics), ancestry, marital status, age, sexual orientation, citizenship, or status as a covered veteran (covered veterans are special disabled veterans, recently separated veterans, Vietnam era veterans, or any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized) in any of its programs or activities or with respect to any of its employment policies, practices, or procedures.

University policy is intended to be consistent with the provisions of applicable State and Federal laws.

Inquiries regarding the University's equal employment opportunity policies may be directed to the Affirmative Action/Staff Personnel Services Director, University of California, Agriculture and Natural Resources, 300 Lakeside Drive, 6<sup>th</sup> Floor, Oakland, CA 94612-3550, (510) 987-0096.

This statement may be shortened to fit onto smaller documents more easily. Please contact David Dumble at 510-987-9345 if you want to discuss altering the statement on one of your publications.

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### Outreach Efforts Must Be Documented

One item of concern to the USDA team conducting the 4-H audit was that in some instances advisors did not have adequate documentation of their reported outreach efforts. All advisors should be aware that they are responsible for keeping documentation of their outreach efforts and retaining the documentation for at least three years.

The situation is especially acute for 4-H advisors, who often rely on outreach done by leaders, volunteers, or program representatives. Even if outreach is not done by you directly, if you are reporting outreach on CASA you are also responsible for verifying its accuracy.

Outreach efforts reported on CASA should only be "affirmative action outreach," that is those outreach efforts that are targeted towards increasing the participation of underserved populations in your program. Such targeting has been held to be permissible under Proposition 209 (which doesn't apply to federally funded programs such as CE anyway). Volunteers doing outreach on your behalf need to understand that targeting such outreach is not only permissible but encouraged, and that their efforts should be supported by documentation.

*The Affirmative Action/Staff Personnel Services*

*Newsletter is produced by the*

*Office of Affirmative Action*

*& Staff Personnel Services*

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