cerning your proposed order on pre-award compliance procedures for construction contractors.

As stated in my earlier letter, the American Road Builders Association strongly objects to any requirement or use in the Federal highway program of the pre-award compliance procedures outlined in your proposed regulations and orders. We continue to believe that your objective of securing equal opportunity—which we support—can be better accomplished in highway construction through a pre-qualification procedure. A copy of my earlier letter is attached for your reference.

The ARBA's further comments on the Proposed Permanent Regulations are offered in a cooperative but critical spirit. We fully recognize the need for insuring non-discrimination in Federal contract employment. In our judgment, however, certain of your Proposed Permanent Regulations would place undue or impossible obligations on contractors and would not adequately safeguard contractors against arbitrary action by compliance officials.

We are concerned with the scope of the contractor's obligations as indicated in the Proposed Regulations, the proposed delegations of authority to interpret those obligations and the proposed procedures for determining compliance and imposing sanctions on those considered to be in noncompliance.

Our principal concerns with the contractor's obligations as outlined in the Proposed Regulations are that they do not give sufficient recognition to qualifications as a proper basis for employment decisions and that they do not deal adequately with situations in which labor contract provisions raise compliance questions.

Section 60–1.1 of the current Government Contract Employment Regulations, 41 C.E.R. Chapter 60, states that:

"The purpose of the regulations in this part is to achieve the aims of Part III of Executive Order 10925 and Executive Order 11114 for the promotion and insuring of equal opportunity for all *qualified* persons . . . ." [Emphasis supplied.]

Section 60–1.20(a) of the same regulations also provides that:

"The purpose of compliance reviews shall be to ascertain the extent to which the Orders are being implemented by the creation of equal employment opportunity for all *qualified* persons . . . in accordance with the national policy. *They are not intended to interfere with the responsibilities of employers to determine the competence and qualifications of employees and applicants for employment.*" [Emphasis supplied.]

These statements are consistent with the provisions of Executive Orders 10925, 11114 and 11246 and of Titles VI and VII of the Civil Rights Act of 1964. However, the underlined references to qualifications have been omitted from proposed Sections 60–1.1 and 60–1.20(a).

"Unqualified" Negroes are as much entitled to protection against racial discrimination in employment as "qualified" Negroes, but employers are entitled to assurance that their contract obligations to take "affirmative action to ensure" nondiscrimination allow them to employ the most qualified persons available regardless of race. Similarly employers should be assured that their determinations of necessary qualifications will not be interfered with unless there is evidence that they are using qualifications to discriminate on racial or other improper grounds.

The Federal Government has a legitimate interest in promoting the employment of presently unqualified workers but this should not be made a matter of compliance with contract obligations not to discriminate on the basis of race. Employers can effectively be encouraged and induced to hire hard core unemployed through programs such as the National Alliance of Businessmen and with financial assistance from Manpower Development and Training Act funds and procurement preferences under Defense Manpower Policy No. 4. Any attempts to compel such hiring not only are unauthorized by Executive Order 11246 and contrary to Title VII but may jeopardize the voluntary efforts that are being undertaken.

Accordingly, we recommend that the substance of the language on qualifications now contained in sections 60–1.1 and 60–1.20(a) be included in the Permanent Regulations.

In addition we recommend that the substance of the order adopting 29 C.F.R. Part 30 as the standard for resolving compliance questions concerning the apprenticeship programs (41 C.F.R., 60–80.2) be included in the Permanent Regulations. Secretary Wirtz's letter to President Haggerty of the Building and Con-