

Memorandum of Understanding

— among —

the U.S. Department of Labor,
the Equal Employment Opportunity Commission, and
the U.S. Department of Justice

The U.S. Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) first entered into this Memorandum of Understanding (MOU) in 1970 to further the objectives of Congress under Title VII of the Civil Rights Act of 1964, as amended (Title VII), in coordination with Executive Order 11246, 30 FR 12319, as amended (E.O. 11246), and Executive Order 12067, 43 FR 28967 (E.O. 12067) (EEOC's government-wide coordination authority). This MOU (alternately, the "Agreement") has broadly promoted interagency coordination in the enforcement of equal employment opportunity (EEO) laws and has also served to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistency among the operations, functions, and jurisdictions of the parties to the MOU. It has included specific coordination and referral procedures for complaints/charges of employment discrimination filed with OFCCP under E.O. 11246. Further, the MOU has included provisions for sharing information as appropriate and to the extent allowable under law.

The MOU as revised here adds several provisions to strengthen and streamline interagency coordination in the enforcement of EEO laws. First, this MOU adds the Assistant Attorney General for the U.S. Department of Justice Civil Rights Division (DOJ CRD), as a signatory. DOJ's involvement will help to ensure that the agencies take a consistent approach to the complex legal and enforcement issues that arise under EEO laws. Second, this MOU adopts several measures to ensure that senior leadership at all three agencies is directly involved in the ongoing coordination efforts pursuant to the MOU, a step that will elevate the MOU's importance and utility. Finally, this MOU makes other minor changes to promote efficiency.

The parties to this MOU agree as follows:

1. *Sharing Information.*

- (a) As appropriate, EEOC, DOJ CRD, and OFCCP shall share any information relating to the employment policies and/or practices of employers known by EEOC or OFCCP to hold a government contract or subcontract that supports the enforcement mandates of each agency as well as their joint enforcement efforts. Such information shall include, but is not limited to, affirmative action programs, annual employment reports, complaints, charges, investigative files, and compliance evaluation reports and files.

- (b) As appropriate, OFCCP, EEOC, or DOJ CRD shall make available to the Appropriate Requesting Official of EEOC, OFCCP, or DOJ CRD, or his or her designees, for inspection and copying and/or loan, any documents in its possession pertaining to the effective enforcement or administration of any laws or requirements where there is overlapping jurisdiction between OFCCP, EEOC, or DOJ CRD, including, but not limited to:
 - (i) Title VII;
 - (ii) E.O. 11246
 - (iii) the Equal Pay Act of 1963 (EPA);
 - (iv) the Genetic Information Nondiscrimination Act of 2008 (GINA);
 - (v) the Americans with Disabilities Act (ADA) (in accordance with 29 CFR part 1641);
 - (vi) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. § 4212;
 - (vii) Section 503 of the Rehabilitation Act of 1973 (in accordance with 41 CFR part 60-742); and
 - (viii) E.O. 12067.

All documents will be made available within 10 business days or as soon as practicable thereafter. Disclosure of such material by EEOC, OFCCP, or DOJ CRD shall be in accordance with paragraphs 4 and 5 of this Agreement. All transfers of information under this and other paragraphs of this MOU shall only be made where not otherwise prohibited by law and in accordance with paragraph 5 of this Agreement.

- (c) The information sharing described in 1(a) and 1(b) excludes sharing the substance and related documents of claims raised by federal employees or applicants in the EEOC-administered federal sector administrative process.

2. "Appropriate Requesting Official(s)" are, for the purpose of this Agreement, the following:

- (a) For EEOC —
 - (1) The Chair or his or her designee;
 - (2) The General Counsel or his or her designee; and
 - (3) The Deputy General Counsel or his or her designee.
- (b) For DOL/OFCCP —
 - (1) The Secretary or Deputy Secretary of Labor or their designee;

- (2) The Solicitor or Deputy Solicitor of Labor or their designee; and
 - (3) The Director or Deputy Director, OFCCP, or their designee.
 - (c) For DOJ CRD —
 - (1) The Attorney General or Deputy Attorney General or their designee; or
 - (2) The Assistant Attorney General for the Civil Rights Division, or the relevant Deputy Assistant Attorney(s) General for the Civil Rights Division (DAAG) (*i.e.*, the DAAG(s) with responsibility for the Employment Litigation Section, and/or the Disability Rights Section) or their designee.
3. If an Appropriate Requesting Official has designated an official in a field office pursuant to Paragraph 2, requests directed to a headquarters office of one agency from a field office of the other shall first be forwarded through the headquarters of the requesting agency. Responses to all requests for information shall be made to the Appropriate Requesting Official making such request, or his/her designee.
4. *Disclosure of Information.*
 - (a) All requests by third parties to this Agreement, including but not limited to charging parties, respondents, and their attorneys, for disclosure of information shall be coordinated with the agency that initially compiled or collected the information. The decision of that agency regarding disclosure shall be honored.
 - (b) Subparagraph 4 (a), above, is not applicable to requests for data in EEOC files made by any state or local agency designated as a 706 agency with whom EEOC has a current charge resolution contract and a work-sharing agreement containing provisions required by Sections 706 and 709 of Title VII. Provided, however, that any such agency shall not disclose to third parties, including charging parties, respondents, and their attorneys, any of the information initially collected or compiled by OFCCP without express written approval by the Director, OFCCP. Similarly, any such agency shall not disclose to third parties, including charging parties, respondents, and their attorneys, any of the information initially collected or compiled by DOJ without express written approval by the Assistant Attorney General for the Civil Rights Division, or the relevant Deputy Assistant Attorney(s) General for the Civil Rights Division (DAAG) (*i.e.*, the DAAG(s) with responsibility for the Employment Litigation Section and/or the Disability Rights Section) or their designee.
5. *Confidentiality.*

- (a) When EEOC provides information to OFCCP or DOJ CRD under this MOU, the confidentiality requirements of sections 706(b) and 709(e) of Title VII, apply to that information. When OFCCP or DOJ CRD receive the same information from a source independent of EEOC, the preceding sentence does not preclude disclosure of the information received from the independent source. However, OFCCP and DOJ CRD will also observe any confidentiality requirements imposed on such information by the Trade Secrets Act, the Privacy Act, the Freedom of Information Act, or other laws.
 - (b) When OFCCP or DOJ CRD obtain information from their receipt, investigation, or processing of the Title VII component of a dual-filed charge between EEOC and OFCCP, or when OFCCP or DOJ create documents that exclusively concern the Title VII component of a dual-filed charge, OFCCP and DOJ will observe any confidentiality requirements imposed on such information by the Trade Secrets Act, the Privacy Act, sections 706(b) and 709(e) of the Civil Rights Act of 1964, the Freedom of Information Act, or other laws.
 - (c) Questions concerning confidentiality under Title VII, the EPA, the ADA or GINA shall be directed to EEOC's Office of Legal Counsel, or the DOJ CRD, as appropriate.
 - (d) Questions concerning confidentiality under E.O. 11246, 38 U.S.C. § 4212 (Section 402 of VEVRAA), or Section 503 of the Rehabilitation Act shall be directed to the Solicitor of Labor or his or her designee, as appropriate.
 - (e) The sharing of information pursuant to paragraphs (a) and (b) shall not constitute a waiver of any applicable privilege from disclosure of information.
6. EEOC, DOJ CRD, and OFCCP shall establish and/or update procedures for notification and consultation at various stages of their respective compliance activities in order to develop potential joint enforcement initiatives, increase efficiency, ensure coordination, and minimize duplication. Such procedures shall include:
- (a) *Establishment of ongoing Compliance Coordination Committees (CCC).*
 - (1) Field Committees: OFCCP's Regional Directors and EEOC's District Directors and Regional Attorneys, as well as the relevant Section Chief(s) of the DOJ CRD (*i.e.*, the Employment Litigation Section, and/or Disability Rights Section) or his or her designee when appropriate, will meet, not less than biannually, to review enforcement priorities, systemic investigations of mutual interest, compliance review schedules, potential Commissioner Charges, and potential litigation. The Field Committees will work to increase efficiency, and

eliminate competition and duplication, and may engage in consultation regarding any topic that enhances the agencies' mutual enforcement interests. In addition to sharing information about investigations of discrimination based on the grounds in E.O. 11246 and/or Title VII, the Field Committees may also share information related to the enforcement of the EPA, GINA, the ADA and Section 503 of the Rehabilitation Act (in accordance with 29 CFR part 1641 (EEOC) and 41 CFR part 60-742 (OFCCP)). The Field Committees will also discuss approaches to recognizing, accommodating, and enforcing civil-rights and conscience protections afforded under federal law, including 42 U.S.C. §§ 2000e-2(e) and 2000bb-2000bb-4; E.O. 11246 § 204(c); and 41 C.F.R. §§ 60-1.5(5)-(6) and 60-50.1-.5, consistent with the Attorney General's October 6, 2017 memorandum on federal protections for religious liberty.

- (2) Headquarters Committee: Representatives from OFCCP's, EEOC's, and DOJ CRD's Headquarters, designated by Appropriate Requesting Officials, shall meet not less than biannually to discuss topics of mutual interest to all three agencies, including, but not limited to:
- (i) Procedures for appropriate and effective access to and exchanges of electronic databases, including, but not limited to, lists of proposed and completed compliance evaluations; systemic and individual investigation files; and conciliation agreements and settlements;
 - (ii) Review enforcement priorities, systemic investigations of mutual interest, potential Commissioner Charges, and potential litigation;
 - (iii) Work to increase efficiency and eliminate competition and duplication in order to enhance the agencies' mutual enforcement interests;
 - (iv) Consistent analytical approaches to identifying and remedying the overlapping categories of employment discrimination within each agency's purview;
 - (v) Joint and cross-training programs and materials;
 - (vi) Joint policy statements;
 - (vii) Procedures for coordinated collection, sharing, and analysis of data; and

- (viii) Approaches to recognizing, accommodating, and enforcing civil rights consistent with federal law, including religious and conscience protections under 42 U.S.C. § 2000e-2(e); 42 U.S.C. §§ 2000bb–2000bb–4; E.O. 11246 § 204(c); and 41 C.F.R. §§ 60-1.5(5)–(6), 60-50.1–.5; consistent with the Attorney General’s October 6, 2017 memorandum on federal protections for religious liberty.
- (b) Contact, as appropriate, by each agency at the commencement of and during a charge or complaint investigation or compliance evaluation to obtain information in the possession of the agency on the employer being investigated or evaluated, and/or to determine whether to conduct joint or coordinated investigations/compliance evaluations.
- (c) EEOC’s issuance of quarterly reports to OFCCP regarding the outcome of any complaint/charge referred to EEOC by OFCCP involving a federal contractor subject to E.O. 11246.
- (d) Efforts by EEOC to develop a mechanism within EEOC’s charge system for identifying and tracking charges against federal contractors subject to E.O. 11246, and thereafter including information regarding the outcome of such charges in the quarterly reports referenced in paragraph (c).
- (e) Consultation with the appropriate field office of OFCCP, and DOJ CRD as appropriate, when an EEOC field office is contemplating recommending a Commissioner Charge or litigation, and coordination of its activities, in any case involving a federal contractor subject to E.O. 11246.
- (f) Consultation with the appropriate field office of EEOC when an OFCCP Regional Office has issued a Predetermination Notice in order to determine whether there is also a pending matter against the same federal contractor (as the term is defined in 41 C.F.R. § 60-1.3) by EEOC.
- (g) Consultation with the appropriate field office of EEOC, and DOJ CRD as appropriate, when an OFCCP Regional Office is contemplating recommending the issuance of an administrative complaint and coordination of its activities.
- (h) Consultation with EEOC and OFCCP, as appropriate, before DOJ CRD brings a lawsuit to enforce the EEO laws that raises issues of law that are novel, unsettled, or may have significant precedential value for subsequent cases.
- (i) Nothing in this paragraph requires the displacement and/or duplication of the existing consultations between EEOC and the DOJ CRD as outlined in the following Memoranda of Understanding (as amended): MOU Between the U.S. EEOC and the U.S. DOJ-Civil Rights Division Regarding ADA and GINA

Employment Discrimination Charges Against State and Local Governments; and U.S. EEOC and U.S. DOJ-Civil Rights Division Regarding Title VII Employment Discrimination Charges Against State and Local Governments.

7. *Receipt, Investigation, Processing, and Resolution of Complaints Dual-Filed with OFCCP.*

- (a) *Dual-Filed Complaints/Charges.* Pursuant to this MOU, OFCCP shall act as EEOC's agent for the purposes of receiving complaints/charges. All complaints/charges of employment discrimination filed with OFCCP alleging a Title VII basis shall be received as complaints/charges simultaneously dual-filed under Title VII. In determining the timeliness of such complaint/charge, the date the matter is received by OFCCP, acting as EEOC's agent, shall be deemed the date it is received by EEOC. Title VII's charge timeliness rules shall apply to the Title VII component of a complaint/charge. When OFCCP receives such a complaint/charge and determines that the employer is not a federal contractor subject to E.O. 11246, or that the complaint/charge is timely under Title VII but not under E.O. 11246, or that the matter complained of is not within the coverage of E.O. 11246, it shall transfer the charge to EEOC within 10 days of that determination and notify the parties. Such notification shall explain that OFCCP, as EEOC's agent, has received the Title VII charge and that the date OFCCP received it will be deemed the date it was received by EEOC.
- (b) *Dual-Filed Systemic or Class Allegations.* OFCCP will retain, investigate, process, and resolve allegations of discrimination of a systemic or class nature on a Title VII basis in dual filed complaints/charges. OFCCP will promptly notify EEOC, and DOJ CRD as applicable, of OFCCP's receipt of such allegations, by forwarding a copy of the complaint/charge (and third party certificate, if any). OFCCP shall make available to EEOC and DOJ, upon request, information obtained in processing such allegations, pursuant to paragraphs 1 and 5(b) herein. However, in appropriate cases, EEOC may request that it be referred such allegations to avoid duplication of effort and to ensure effective law enforcement, although OFCCP has discretion in determining whether to refer the case. Such requests must be made by and sent to an Appropriate Requesting Official.
- (c) *Dual-Filed Individual Allegations.* OFCCP may refer to EEOC allegations of discrimination of an individual nature on a Title VII basis in dual-filed complaints/charges. In order to avoid duplication of effort and ensure effective law enforcement, OFCCP will inform EEOC of its intent to retain a particular complaint/charge or category of complaints/charges. Upon receipt of a complaint/charge it intends to retain, OFCCP will notify EEOC of the

complaint/charge by forwarding a copy (and third-party certificate, if any). OFCCP shall make available to EEOC, upon request, information obtained in processing such allegations, pursuant to paragraphs 1 and 5(b) herein.

- (d) *Joint or Coordinated Investigations.* In appropriate cases, the agencies will determine whether joint or coordinated investigations would be a more efficient use of agency resources. If the agencies decide to conduct joint or coordinated investigations, and OFCCP finds a violation and EEOC finds reasonable cause, they shall explore with the charging party and the contractor/respondent whether they are both willing to waive their right to confidentiality in the conciliation of the Title VII component of the charge, investigation, and any possible resolution. If one or both decline to waive confidentiality, OFCCP and EEOC will attempt to each negotiate separate conciliation agreements with the contractor/respondent, and neither OFCCP's conciliation agreement nor its press release may make any mention of the Title VII component of the dual-filed complaint/charge or EEOC.
- (e) *Investigating, Processing and Resolving the Title VII Component of Dual-Filed Complaints/Charges.* When EEOC is not conducting a joint or coordinated investigation, OFCCP will act as EEOC's agent for the purposes of investigating, processing and resolving the Title VII component of dual-filed complaints/charges that it retains under this paragraph. OFCCP shall investigate, process and resolve such complaints/charges as set forth in this subparagraph, and in a manner consistent with Title VII principles on liability and relief.
 - (1) *Notice of Receipt of Complaint/Charge.* Within ten days of receipt, OFCCP shall notify the contractor/respondent that it has received a complaint/charge of employment discrimination under E.O. 11246 and Title VII. This notification shall include a copy of the complaint/charge, if taken on OFCCP's complaint form, or otherwise state the name of the charging party, respondent, date, place and circumstances of the alleged unlawful employment practice(s).
 - (2) *Fair Employment Practice Agency (FEPA) Deferral Period.* Pursuant to work-sharing agreements between EEOC and state and local agencies designated as fair employment practice agencies, the deferral period for dual-filed Title VII complaints/charges that OFCCP receives will be waived.
 - (3) *Not Reasonable Cause Findings.* If the OFCCP investigation of a dual-filed complaint/charge results in a not reasonable cause finding under Title VII, OFCCP will issue a Title VII dismissal and notice of right-to-

sue, close the Title VII component of the complaint/charge and promptly notify EEOC's Director, Office of Field Programs, of the closure.

- (4) *Reasonable Cause Findings.* If the OFCCP investigation of a dual filed complaint/charge results in a reasonable cause finding under Title VII, OFCCP will issue a reasonable cause finding under Title VII. OFCCP will attempt conciliation to obtain relief, consistent with EEOC's standards for remedies, for all aggrieved persons covered by the Title VII finding. However, prior to making a reasonable cause finding under Title VII, OFCCP will notify EEOC and provide EEOC with a reasonable time to object, but otherwise will proceed with its finding. EEOC also may request additional investigation from OFCCP as appropriate, in order for EEOC to determine whether it concurs or does not concur. If EEOC objects, OFCCP will follow the steps in Section 7(e)(3) above.
- (i) *Successful Conciliation.* Conciliation agreements will state that the complainant/charging party agrees to waive the right to pursue the subject issues further under Title VII. OFCCP will close the Title VII component of the complaint/charge, and promptly notify EEOC. However, before executing a conciliation agreement resolving an allegation of discrimination under Title VII, OFCCP will notify EEOC and provide EEOC with a reasonable time to object. If EEOC objects, OFCCP will follow the steps in Section 7(e)(4)(ii) below. EEOC will provide any input on the terms of the conciliation agreement as soon as reasonably practicable. Both OFCCP and EEOC will identify a mechanism to obtain consent on terms of broader releases.
- (ii) *Unsuccessful Conciliation.* If conciliation is not successful, OFCCP will consider the E.O. 11246 component of the complaint/charge for further processing under its usual procedures, and it shall transmit the Title VII charge component to EEOC for any action EEOC deems appropriate.
- (5) *Issuance of Notice of Right-to-Sue Upon Request.* Consistent with 29 C.F.R. §1601.28, once 180 days have passed from the date the complaint/charge was filed, OFCCP shall promptly issue upon request a notice of right-to-sue on the Title VII component of a complaint/charge that it has retained. Issuance of a notice of right-to-sue shall terminate OFCCP processing of the Title VII component of the complaint/charge unless it is determined at that time, or at a later time, that it would

effectuate the purposes of Title VII to further process the Title VII component of the complaint/charge.

- (6) *Subsequent Attempts to File a Charge with EEOC Covering the Same Facts and Issues.* If an individual who has already filed an OFCCP complaint/charge that is dual-filed under Title VII subsequently files a Title VII charge with EEOC covering the same facts and issues, EEOC will forward the charge to OFCCP for consolidated processing.

8. *Complaints/Charges Dual-Filed with EEOC under Title VII and E.O. 11246.* Pursuant to this MOU, if EEOC receives a Title VII charge against a respondent that is also a federal contractor subject to E.O. 11246, the complaint/charge will be considered dual-filed. EEOC generally will retain such complaints/charges, but—with OFCCP’s consent—may decide to refer particular dual-filed complaints/charges to OFCCP for investigation and resolution.

- (a) When EEOC does not retain a complaint/charge dual-filed under Title VII and E.O. 11246, it shall transmit the complaint/charge to OFCCP for processing consistent with paragraph 7(e).

- (b) When EEOC retains a dual-filed complaint/charge and issues a letter of determination finding there is reasonable cause to believe an unlawful employment practice under Title VII has occurred or is occurring, a copy and all findings against a federal contractor will be forwarded to OFCCP.

- (1) *Successful Conciliation.* A conciliation of a dual-filed complaint/charge by EEOC will resolve both the Title VII and E.O. 11246 components of the complaint/charge. However, before executing a conciliation agreement resolving the E.O. 11246 component of the complaint/charge, EEOC will notify OFCCP and obtain its concurrence with the terms of the conciliation agreement that would apply to both Title VII and E.O. 11246. If OFCCP does not concur, EEOC will follow the steps in Section 8(b)(2) below. OFCCP will decide whether it concurs with the terms of the conciliation agreement as soon as reasonably practicable.

- (2) *Unsuccessful Conciliation.* When EEOC’s attempt to conciliate the complaint/charge is unsuccessful, it shall retain the Title VII component of the complaint/charge for further processing pursuant to Title VII and transmit the E.O. 11246 component of the complaint/charge to OFCCP. OFCCP shall not make public in any

manner the Title VII component of the dual-filed complaint/charge or EEOC's investigation.

9. *Novel or Precedential Issues.* OFCCP and EEOC will consult with the Appropriate Requesting Official in DOJ CRD before OFCCP issues a Notice of Violation or EEOC makes a reasonable cause determination in cases that raise issues of law that are novel, unsettled, or may have significant precedential value for subsequent cases.
10. *Misfiled Complaints.* When either EEOC or OFCCP receives a complaint not within its purview, but over which it believes the other agency has jurisdiction, it will refer the complaint to the other agency. In determining the timeliness of such complaint, the date the matter was received by the referring agency shall be deemed the date it was received by the receiving agency.
11. EEOC, OFCCP, and DOJ CRD shall conduct an annual review of the implementation of this Agreement.
12. *Coordination Advocate.* EEOC, OFCCP, and DOJ CRD seek to ensure consistent compliance and enforcement standards and procedures, and to make the most efficient use of their available resources through coordination. Therefore, within 60 days of the effective date of this MOU, each agency shall appoint a Coordination Advocate who will be available to assist, as necessary, in obtaining a full understanding of, and compliance with, the procedures set forth in this MOU. The Coordination Advocates will be appointed by the Chair of EEOC, OFCCP Director (in consultation with the Deputy Secretary of DOL), and Assistant Attorney General of the Civil Rights Division, respectively, and each agency can appoint a new Coordination Advocate at its discretion.
13. *Effect of Agreement.*
 - (a) This Agreement is an internal Government agreement and is not intended to confer any rights against the United States, its agencies, or its officers upon any private person.
 - (b) Nothing in this Agreement shall be interpreted as limiting, superseding or otherwise affecting any party's normal operations or decisions in carrying out its statutory, Executive Order, or regulatory duties. This Agreement does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
 - (c) This Agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates the parties to expend appropriations or enter into any contract or other obligations.

14. *Effective Date.* This MOU will take effect once signed by all three parties. The parties can modify this MOU only by mutual consent.
15. EEOC, OFCCP, and the DOJ CRD shall discuss the status of the MOU at regular intervals not to exceed every four years in order to determine whether the MOU should be renegotiated.

15. Signatures.

/s/ [Signature] 11/2/2020
Date

OFCCP Director, U.S. Department of Labor

/s/ [Signature] 11/2/20
Date

Deputy Secretary, U.S. Department of Labor

/s/ [Signature] 11/3/20
Date

Chair, Equal Employment Opportunity Commission

/s/ [Signature] November 3, 2020
Date

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice