

Legislative Recommendations for Anti-discrimination and Equal Employment Opportunity Requirements in Federal Contracting

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Introduction

In 1964, President Lyndon B. Johnson signed the Civil Rights Act of 1964, prohibiting discrimination on the basis of race, color, religion, sex, or national origin and creating the Equal Employment Opportunity Commission to enforce its protections. But even after the Civil Rights Act of 1964 was enacted, President Johnson's administration recognized that more was needed to disrupt the entrenched legacy of discrimination that had excluded too many from opportunity. Delivering a commencement speech at Howard University in June 1965, Johnson noted "it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates. . . . We seek not just freedom but opportunity."¹

On September 24, 1965, President Lyndon Johnson signed Executive Order 11246.² Strengthened through amendments over the last 60 years, the order prohibited federal contractors³ from discriminating based on race, color, religion, sex, sexual orientation, gender identity and national origin and from retaliating against employees for asking about or discussing their pay. The order also required federal contractors to take proactive steps to identify and eliminate barriers to equal employment opportunity, what it termed "affirmative action," but did not require preferences or quotas. The Office of Federal Contract Compliance Programs (OFCCP) at the U.S. Department of Labor enforced these requirements, with the contractors under its jurisdiction employing more than 20 percent of the overall workforce.⁴

While Title VII of the Civil Rights Act of 1964 prohibits discrimination,⁵ E.O. 11246 demanded federal contractors do more to demonstrate compliance with anti-discrimination requirements. The order's requirements to collect and analyze data and take proactive action to identify and address potential barriers to equal employment opportunity, along with the OFCCP's authority to review contractor data and policies, deepened accountability across the federal contractor community.

Research demonstrates E.O. 11246's impact on breaking down barriers to employment for underrepresented groups. According to 2015 study, from 1973 to 2003, the share of Black and Native American women and men employed by federal contractors subject to the order's requirements grew more, on average, than at noncontracting firms.⁶ A separate 2012 study showed that, from 1973 to 2003, the share of Black women and men and Hispanic and white women in high-paying skilled occupations increased more at federal contractors subject to the order's requirements than at noncontracting firms.⁷

Despite the order's proven success in helping instill better compliance practices, on January 21, 2025, President Donald Trump issued Executive Order 14173 to revoke E.O. 11246.⁸ OFCCP remains responsible for enforcing protections for workers with disabilities under Section 503 of the Rehabilitation Act⁹ and for veterans under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).¹⁰

While a subsequent President can – and should – issue a new executive order that restores and strengthens protections under E.O. 11246, a new order would remain vulnerable to later rescission.

Congress must restore and strengthen requirements originally established under E.O. 11246, as well as the Labor Department's authority to effectively enforce these requirements. While E.O. 11246 was successful in combating discrimination, additional and modified statutory requirements and enforcement tools can better help workers and ensure that taxpayer dollars do not support discriminatory employment practices.

This brief discusses and makes legislative recommendations across three areas: (1) requirements for federal contractors, including non-discrimination requirements, anti-retaliation requirements and requirements to prevent and remedy discrimination, (2) applicability and exemptions and (3) compliance and enforcement. Recommendations are to codify previous policy under E.O. 11246 (or its regulations) or to update previous policy.

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Requirements for Federal Contractors

As amended, E.O. 11246 mirrored Title VII's prohibitions on employment discrimination based on race, color, religion, sex, sexual orientation, gender identity and national origin. However, E.O. 11246, as amended, included additional non-discrimination protections related to discussing pay and required federal contractors to take affirmative steps to promote equal opportunity in employment, setting it apart from Title VII and, as discussed later, giving the Labor Department unique authority to proactively enforce its requirements.

Non-discrimination Requirements for Federal Contractors

Despite federal and state non-discrimination laws, employment discrimination – including harassment, retaliation and unfair treatment in hiring, firing, promotion and pay – remains a persistent issue in the United States.¹¹ Over 40 percent of women and Black workers report experiencing unfair treatment in their workplace.¹² Almost half of all LGBTQ+ employees and nearly 70 percent of transgender employees report experiencing unfair treatment at work.¹³ In fiscal year 2024, OFCCP recovered \$12.1 million for workers for alleged race- and/or gender-based hiring and pay discrimination.¹⁴

Discrimination impacts workers in multiple ways, including by limiting their employment in higher-paying industries and occupations. For example, construction trade workers face race- and sex-based discrimination, including harassment.¹⁵ This discrimination likely contributes to challenges in attracting and retaining women and Black workers in trade occupations, where workers are typically paid nearly double the average hourly wage of other jobs that do not require a college degree.¹⁶ In 2024, only 4.3 percent of workers in the construction trades were women.¹⁷ While labor unions and worker organizations have taken significant steps to address discrimination, federal intervention remains critical.¹⁸

Prohibit Contractors from Discriminating Based on Protected Characteristics

As issued in 1965, E.O. 11246 required certain federal government contracts to include clauses prohibiting contractors from engaging in discrimination on the basis of race, color, religion and national origin.¹⁹ In 1967, President Johnson signed Executive Order 11375, adding prohibitions against discrimination based on sex to E.O. 11246.²⁰ In 2014, President Barack Obama signed Executive Order 13672 to bar discrimination based on sexual orientation and gender identity.²¹

While E.O. 11246 aligned with anti-discrimination protections established under Title VII of the Civil Rights Act of 1964, the order and its implementing regulations explicitly named a broader list of protected characteristics, such as gender identity, which Title VII has long been interpreted to include, but is not expressly named in the law.²² Legislation should include these non-discrimination requirements but also make clear that Congress intends such requirements to be interpreted in line with Title VII,²³ except where there are express statutory deviations.

Recommendation to codify previous policy: To combat discrimination, expressly prohibit discrimination by federal contractors against any employee or applicant based on race, color, religion, sex, sexual orientation, gender identity, or national origin.

Define Sex Discrimination Clearly

E.O. 11246 implementing regulations provided important clarity on the many forms sex discrimination can take, including distinguishing between disparate treatment discrimination – where discrimination is intentional – and disparate impact discrimination – where a seemingly neutral policy or action causes disproportionate harm to individuals based on a protected trait and cannot be justified by business necessity.²⁴ The regulations further defined sex discrimination to include, among other things, discrimination on the basis of pregnancy, childbirth, or related medical conditions, sex stereotypes and “actual or perceived gender identity or transgender status.”²⁵ This helped ensure employees of federal contractors were protected against various forms of sex discrimination. Legislation should include this added clarity on sex discrimination.

Recommendation to codify previous policy: To ensure consistency and clarity, clearly define sex discrimination to include discrimination based on pregnancy, childbirth, or related medical conditions; gender identity; transgender status; sexual orientation; sex characteristics (including intersex traits) and sex stereotyping.

Clarify Disparate Impact Protections

As the Supreme Court recognized, discrimination is a “complex and pervasive phenomenon” most accurately described “in terms of ‘systems’ and ‘effects’ rather than simply intentional wrongs.”²⁶ Since the Supreme Court first recognized disparate impact in the 1971 case, *Griggs v. Duke Power Co.*,²⁷ this standard has been a critical tool for combating discrimination. In 1991, Congress codified it into Title VII,²⁸ and despite the

Trump administration's attempt to eliminate the use of disparate impact through executive order, disparate impact remains a critical and lawful tool.²⁹

While E.O. 11246 did not explicitly reference disparate impact, its requirement to monitor employment decisions and systems implicitly encompasses this type of discrimination.³⁰ E.O. 11246 regulations expressly prohibited both disparate treatment discrimination and disparate impact discrimination.³¹

Recommendation to codify previous policy: To ensure workers are protected against various forms of discrimination, clearly include disparate impact, as defined under Title VII, as a form of unlawful discrimination.

Clarify Intersectional Discrimination is Prohibited

E.O. 11246 did not explicitly address intersectional discrimination, which is discrimination based on the combination of two or more protected characteristics, such as gender and race. Federal courts have recognized that harm against workers may be exacerbated when negative stereotypes, biases and adverse conduct are directed at workers with intersecting identities.³² For example, Black women may experience unique and compounding mistreatment compared to both Black men and white women.³³ Although intersectional discrimination has been increasingly understood and recognized in the law, many courts and enforcement agencies have struggled to conceptualize the intersectional identities of plaintiffs and to apply established frameworks for proving discrimination to the compounded biases they face, making it more difficult for workers to succeed on intersectional claims.³⁴ Legislation should address intersectional discrimination.

Recommendation to update policy: To prevent intersectional discrimination from going unrecognized and unaddressed, explicitly provide that discrimination is prohibited not just based on one protected characteristic but also because of the combination of two or more protected characteristics.

Prohibit Pay Discrimination

Although federal lawmakers have long recognized and protected the right of workers to receive equal pay for equal work, women, workers of color and LGBTQ+ workers continue to be paid less than their counterparts. In 2024, women working full-time and year-round were paid 81 cents for every dollar paid to their male counterparts.³⁵ In 2024, Black workers were paid 76 cents per dollar paid to white workers.³⁶ In 2024, the average LGBTQ+ household was paid 85 cents for every dollar earned by non-LGBTQ+ households.³⁷ Research suggests that discrimination contributes to these pay gaps. For

example, according to researchers, 38 percent of the gender pay gap is thought to be due to discrimination.³⁸

E.O. 11246 required contractors to act to ensure workers were not treated in a discriminatory manner based on protected characteristics in “rates of pay or other forms of compensation.”³⁹

Recommendation to codify previous policy: To combat pay inequity, prohibit discrimination in compensation on the basis of race, color, religion, sex, sexual orientation, gender identity, age or national origin.

Prohibit Retaliation Against Workers Who Discuss Pay

Nearly 60 percent of private sector employees report that discussing wages is prohibited or discouraged at their workplaces.⁴⁰ When workers cannot discuss pay – whether due to an employer policy or fear of reprisal – inequitable compensation can go undiscovered and unchallenged for years, if ever.⁴¹ Workers are less likely to file complaints and less likely to disclose discriminatory policies and practices to enforcement agencies during investigations or audits.⁴²

In 2014, President Obama amended E.O. 11246 to prohibit contractors from firing or otherwise discriminating against any employee or applicant for asking about, discussing, or disclosing their own compensation or that of another employee or applicant.⁴³ These provisions provided protections not expressly afforded to workers under Title VII and the Equal Pay Act. These laws prohibit discriminatory pay but may not always protect workers against discrimination for asking about or discussing their pay.⁴⁴ Workers covered by the National Labor Relational Act (NLRA) enjoy the right to engage in “concerted activity,” which includes the right to discuss pay with other employees.⁴⁵ But when an employee asks their manager about their own pay, it may not be considered concerted activity protected under the NLRA.⁴⁶ Furthermore, the NLRA excludes numerous categories of workers that may be employed by federal contractors, including agricultural workers and supervisors.⁴⁷ Legislation should prohibit retaliation for asking about or discussing pay.

Recommendation to codify previous policy: To help workers discover potential pay discrimination, prohibit federal contractors from discharging or discriminating against any employee or applicant for inquiring about, discussing, or disclosing their compensation or that of another employee or applicant.

Prohibit the Use of Compensation History

Because women workers and workers of color – particularly women of color – earn less than their counterparts in virtually every industry and occupation, reliance on prior salary can perpetuate gender and race-based wage gaps.⁴⁸ Recognizing the harmful effect of prior salary inquiry and reliance, in January 2024, the Federal Acquisition Regulatory Council (FAR Council) issued a proposed rule⁴⁹ that would have prohibited federal contractors from seeking and considering compensation history when making employment decisions. In January 2025, before the Trump administration took office, the FAR Council formally withdrew the proposed rule.⁵⁰

Recommendation to update policy: To prevent the perpetuation of pay discrimination, prohibit federal contractors from seeking or requesting an applicant’s compensation history or relying on their prior compensation for employment decisions.

Require Salary Ranges in Job Postings

Practices promoting pay transparency, including requiring compensation disclosure in job postings, can help combat gender- and race-based pay disparities.⁵¹ Specifying clear compensation expectations in job postings can change or reduce bias in pay negotiations.⁵² This is crucial for women and people of color, who are more likely to face backlash from their potential employer when they do attempt to negotiate.⁵³ When negotiations do take place, clearly delineating the range in which negotiation can occur “can inform an opening offer that is less tied to [an applicant’s] previous pay levels or personal identity.”⁵⁴ The much narrower wage gap in the public sector,⁵⁵ where agencies have typically had more transparent and public pay structures, is further evidence that salary range transparency can help address unlawful pay discrimination.

The January 2024 FAR Council proposal would have also required disclosure of salary, wage and benefits information in all advertisements for job openings related to a federal contract.⁵⁶ Legislation should require disclosure of compensation information.

Recommendation to update policy: To help workers negotiate fair salaries that help close wage gaps, require federal contractors to provide in job postings a salary range that reasonably reflects expected compensation and a description of benefits or other forms of compensation.

Anti-Retaliation Requirements

According to the EEOC, retaliation has been the most frequently alleged basis of discrimination for more than a decade, consistently accounting for between 40 and 55 percent of all complaints filed with the EEOC.⁵⁷ When workers fear negative consequences from asserting their rights or speaking up about unlawful practices, discrimination can go unchecked and systemic inequities can remain hidden. Retaliation also undermines enforcement agencies' ability to uncover systemic discrimination. Fear of reprisal produces a chilling effect that discourages other employees from reporting violations or assisting investigators.⁵⁸ Research also shows that workers who experience or witness retaliation suffer measurable declines in job satisfaction, career stability and mental health.⁵⁹

E.O. 11246's implementing regulations barred retaliation against employees or applicants who engaged in protected activity, including filing complaints or participating in investigations.⁶⁰ Legislation should include these anti-retaliation protections.

Recommendation to codify previous policy: To prevent retaliation, prohibit contractors from harassing, intimidating, threatening, coercing or discriminating against any worker who takes part in protected activity, including exercising their rights, filing a complaint, assisting or participating in an investigation or compliance evaluation or opposing any practice made unlawful under any Federal, state or local law requiring equal opportunity.

Requirements to Prevent and Remedy Discrimination

In addition to banning discrimination, E.O. 11246 held federal contractors to a higher standard for demonstrating compliance by requiring them to regularly review their employment practices for potential discrimination and make good-faith efforts to remedy problems they identified. The order's implementing regulations addressed three key practices collectively labeled "affirmative action": evaluating utilization and representation; conducting statistical and other analyses of hiring, promotion, pay and other employment practices for potential discrimination; and taking proactive remedial steps to remove barriers to equal opportunity. These requirements to prevent and address potential discrimination reflected the fundamental premise of the order – that companies that do business with the federal government needed to actively demonstrate they were maintaining fair workplaces.

Under the order's regulations, non-construction (supply and service) contractors with 50 or more employees and federal contracts of \$50,000 or more were required to develop and maintain a written Affirmative Action Program (AAP) for each establishment.⁶¹ AAPs had a "diagnostic component" aimed at helping to identify underrepresentation. Contractors were required to group jobs with similar content, responsibilities, pay, and career opportunities together and place employees in these job groups to analyze what percentage of minorities and women were employed in each.⁶² This was then compared to estimates on the number of qualified women and minorities in each job group available to work in the larger labor pool based on census data, labor market surveys, and other demographic sources. Based on these comparisons, contractors were tasked with evaluating whether women and minorities were underrepresented across comparable positions.⁶³

Where underrepresentation was identified, contractors set aspirational goals aimed at increasing the employment of women and minorities in affected job groups over a defined period.⁶⁴ Regulations also expressly required "action-oriented programs designed to correct any problem areas identified. . . to attain established goals and objectives."⁶⁵ The regulations further required contractors to "demonstrate that [they had] made good faith efforts to remove identified barriers, expand employment opportunities and produce measurable results."⁶⁶ Contractors were not required to submit AAP plans, but were required to annually certify they had completed them.⁶⁷

While construction contractors were not required to develop affirmative action programs, the OFCCP director set "goals and timetables for minority and female utilization. . . based on appropriate workforce, demographic or other relevant data [covering] construction projects or construction contracts performed in specific geographical areas."⁶⁸ These goals were measured by the percentages of total hours worked by women and by minorities, not by the percentages of a contractor's total workforce who were women or minorities.⁶⁹ They were based on the percentage of the total civilian workforce in a location who are qualified for construction-trades jobs and who were members of a minority group; for this purpose, that was considered to be the percentage of people actually working in a construction trade.

Require OFFCP to Provide Approaches for Proactive Analysis

For Non-Construction

According to experts, contractors had too much flexibility in developing written affirmative action programs. Because contractors had flexibility in designing job groups,

they could create inappropriate or overly broad groupings of jobs that would lead to inaccurate analysis of the percentage of women and minorities employed. Without an accurate analysis of where workers were underrepresented, contractors were able to avoid setting meaningful placement goals. OFCCP had limited ability to challenge job grouping decisions.⁷⁰ OFCCP focused on compliance with the requirement to have a program, rather than whether and how those programs provided a proactive approach to non-discrimination and equal opportunity.

Ultimately, the purpose of AAPs was to ensure contractors regularly evaluated their workforce demographics to identify patterns or trends of underutilization that might indicate a barrier to equal opportunity. While differences between the representation of individuals from a particular demographic group and their availability in the qualified labor force is not itself evidence of discrimination, it could indicate areas for further analysis.

OFCCP would be more effective at protecting workers and promoting equal opportunity by providing contractors with approaches for conducting effective availability and barrier analysis and for using government data and other external sources to benchmark.

Recommendation to update policy: To ensure contractors are better able to conduct proactive analysis, require OFCCP to issue regulations outlining approaches to (1) conducting effective availability and barrier analysis to monitor equal opportunity in hiring, promotion, termination and compensation, among other practices, and (2) estimating or identifying demographic and compensation data for available and qualified workers by occupational, industry and geographic area. Legislation should clarify that contractors should not be held liable for failure to use specific approaches outlined under regulations but that they remain accountable for preventing and remedying discrimination.

For Construction

The OFCCP goals set for construction workers were woefully out-of-date: the geographic minority goals were derived from the 1970 Census, and the nationwide 6.9 percent goal for women was set in 1977.⁷¹ Regulations also set goals for “minorities,” putting together in one category “individuals who are Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native.”⁷² This allowed contractors to mask underutilization and possible discrimination. For example, under the previous regulations, a contractor whose Hispanic construction workers worked 13 percent of its total hours would easily meet the 4 percent goal, even if it employed no Black workers.⁷³

OFCCP-set goals were based on a flawed methodology, in that they were based on the percentage of (then-current) trades workers who were already working in such jobs or in occupations with overlapping skill sets. This did not take into account the possibility that people not working in the construction trades might nevertheless be qualified for such jobs and therefore should be included in the calculation of the available labor pool. Legislation should direct the agency to set benchmarks using sound methodology.

Recommendation to codify previous policy: To ensure construction contractors continue to progress towards equal employment opportunities, require OFCCP to determine, through regulation, benchmarks for race/ethnicity and gender in each location for each trade.

Require Data Collection and Analysis

Legislation should also restore and strengthen regulatory requirements that contractors collect and maintain demographic data on applicants and employees.⁷⁴ This data would allow contractors to evaluate potential discrimination and barriers to equal opportunity in all employment decisions and practices, including recruitment, hiring, promotion, compensation and termination.

Requiring AAPs for establishments, rather than a company, was also often problematic and less effective, particularly for large or multi-site contractors whose employment and management structures operate across multiple locations. Contractors also often conducted analysis on a companywide and site-level basis, but establishment-based programs left the agency at a disadvantage without this full picture of what the employer had already analyzed. Focusing programs at the establishment level led to fragmented oversight, obscured systemic issues that were more visible by looking at patterns across establishments and unnecessary administrative burdens.

Recommendation to update policy: To help identify potential discrimination, require contractors to (1) collect, for their entire workforces, demographic and compensation data as well as data to support analysis of employment practices, including recruitment, hiring, promotion, compensation and termination practices, and (2) compare their workforce data with benchmarks by industry, geographic location and occupation⁷⁵ and conduct analysis to proactively assess potential discrimination or barriers to equal employment opportunity.

Require Action to Prevent and Remedy Discrimination

For Non-Construction

Supply and service regulations expressly required “action-oriented programs designed to correct any problem areas identified. . . to attain established goals and objectives.”⁷⁶ The regulations further required contractors to “demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities and produce measurable results.”⁷⁷ Legislation must require contractors to regularly assess their practices and take action to remedy any problems they find.

Recommendation to codify previous policy: To ensure non-construction contractors take action in response to identified issues, require non-construction contractors to develop company-wide programs to proactively monitor the workplace for discrimination and make good faith efforts to remedy any problems they find in recruitment, hiring, promotion, compensation and termination practices.

For Construction

E.O. 11246 regulations required construction contractors to take 16 specific steps related to recruitment, retention, promotion and training. For example, contractors were required to “conduct, at least annually, an inventory and evaluation of at least all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.”⁷⁸

Requirements for construction contractors differed because jobs and contracts in the construction trades operate differently from those in supply and service industries. The construction trades workforce is extremely transitory. Many – though not all – contractors have a core group of workers who are on their payrolls full-time, but many – if not most – hire additional workers for each contract. The precise roles they need to fill, the number of people they need to fill them and the duration of time for which they need those people varies according to the contract. Workforce needs can change mid-contract, requiring contractors to make adjustments on very short notice. It is not uncommon for a worker to be hired on notice of only one hour notice and laid off just as abruptly. Many, if not most, construction tradesworkers work for multiple different contractors over time.

This means that, unlike supply-and-service contractors, whose workforces are relatively stable, construction contractors cannot develop long-range programs for increasing the

opportunities for women and people of color. So instead of requiring construction contractors to develop AAPs, OFCCP devised the 16 Steps. While the reasoning behind the separate 16 Steps remains valid, the specifics of the 16 steps must be updated to reflect today's workforce realities and legal developments.

Recommendation to codify previous policy: To ensure construction contractors act in response to identified issues, require the OFCCP to issue regulations outlining specific steps to prevent and remedy discrimination required of construction contractors.

Require Data Reporting to Facilitate Oversight

It is also critical that contractors submit workforce data using a standard format, allowing the agency to review for initial indicators of the need for an audit. Since 1966, the EEOC has required certain employers to report workforce demographic data.⁷⁹ Under Title VII regulations, private employers subject to Title VII and with 100 or more employees must file EEO-1 reports with the EEOC each year.⁸⁰ E.O. 11246 regulations required certain federal contractors with 50 or more employees to submit EEO-1 reports as well.⁸¹ Contractors submit the reports to the EEOC, and OFCCP obtained contractor data from the EEOC. The EEO-1 was administered in a way that met both agencies' statistical needs.⁸² The EEOC makes aggregated data associated with 56 million employees and 73,000 employers nationwide available on its website.⁸³ This data does not reveal information on individual employers or employees.⁸⁴

To facilitate oversight, legislation should require most federal contractors to submit EEO-1 reports. By focusing on reviewing contractors' EEO-1 data, rather than reviewing written plans for technical compliance, OFCCP could conduct more frequent and efficient audits. Instead of writing reports for compliance purposes, contractors could focus their efforts on adhering to the law and addressing problems before they become the subject of litigation or government enforcement.

Recommendation to update policy: To allow for oversight and promote transparency, (1) require contractors to submit EEO-1 reports, (2) allow OFCCP to publicly disclose summary data and (3) require contractors to regularly publish summary workforce data and make it available to their employees and any union representatives.

Applicability and Exemptions

Set A Meaningful Contract Threshold Amount

E.O. 11246 applied to federal contracts, subcontracts, or federally assisted construction contracts exceeding \$10,000 in one year.⁸⁵ This \$10,000 threshold helped ensure that federal resources were aimed at contractors doing significant business with the government and employing significant numbers of workers. with the government. But because the \$10,000 threshold had not been updated over the years to keep pace with inflation, it became less effective at achieving this goal. In contrast, the thresholds for OFCCP jurisdiction under Section 503 and VEVRAA have been updated pursuant to the 2004 National Defense Authorization Act.⁸⁶ Provisions in this law require the Federal Acquisition Regulation Council (FAR Council) to determine, every five years, whether dollar thresholds under certain federal procurement-related laws should be adjusted for inflation.⁸⁷ Due to these adjustments, as of October 1, 2025, thresholds are currently set to \$50,000 for Section 503 and \$200,000 for VEVRAA.⁸⁸ Legislation should both increase the threshold for requirements under this bill and ensure the threshold is updated regularly.

Recommendation to update policy: To ensure enforcement is focused on contractors that do significant business with the federal government, set the threshold for jurisdiction to \$50,000 and require regular adjustments to the threshold based on inflation.

Cover Federally Assisted Construction Contractors

When the federal government builds a new courthouse or office building, it contracts directly with a prime or general contractor to complete the building. But much, if not most, of the federal government's spending on construction is structured differently. Instead of directly contracting with the builder, the federal government awards grants to the states, and states enter into contracts with the prime contractor. The U.S. Department of Transportation (DOT) uses this funding approach when funding the building or repair of roads, bridges, airports and seaports, and the U.S. Department of Housing and Urban Development uses this approach to build public housing.⁸⁹ E.O. 11246 covered federally assisted construction contracts and subcontracts.

Recommendation to codify previous policy: To cover federal spending on construction projects funded through grants to the states, ensure the legislation's requirements apply to federally assisted construction contracts and subcontracts.

Abandon the Previous Religious Exemption

In 2002, almost forty years after the order was signed, President George W. Bush amended E.O. 11246 to add a religious exemption.⁹⁰ The exemption permits religiously affiliated nonprofit organizations that contract with the government to discriminate in employment on the basis of religion.⁹¹ The addition of this language remains highly controversial. If an organization takes taxpayer funding under a government contract, it should not be allowed to discriminate against qualified job applicants and employees because they cannot meet the contractor's religious litmus test. Doing so flouts the principle that the government cannot support discrimination. In 2020, a Trump administration regulation sought to vastly enlarge the exemption by expanding the kinds of employers that could use the religious exemption – even allowing for-profit corporations to use it – and declared that these contractors could use religion to discriminate against employees based on other protected characteristics, including sex, sexual orientation and gender identity.⁹² Legislation should abandon this harmful exemption.

Recommendation to update policy: To ensure broad coverage, legislation should not exempt religious entities from adhering to non-discrimination requirements under this legislation.

Compliance and Enforcement

Before signing E.O. 11246, President Johnson tasked Vice President Hubert H. Humphrey with conducting a "careful review of the activities of the various Federal agencies involved in the field of civil rights."⁹³ In a memo to President Johnson on the results of this review, Vice President Humphrey recommended that "responsibility should now be vested directly in the Department of Labor."⁹⁴ For nearly 60 years, the Department of Labor, through the Office of Federal Contract Compliance Programs (OFFCP), effectively enforced E.O. 11246 through a distinct enforcement framework designed to promote equal opportunity. In fiscal year 2024, OFCCP settled 33 discrimination cases totaling \$12.1 million in recoveries for 9,679 workers and secured 407 job opportunities.⁹⁵ Another \$10.4 million in salary adjustments reached 3,077 workers through ongoing monitoring of conciliation agreements, bringing total recoveries to \$22.5 million for 12,756 workers.⁹⁶ Despite these outcomes, limited resources and enforcement tools left the agency without full capacity to help workers and to ensure that taxpayer dollars do not support discriminatory employment practices.

Explicitly Authorize OFCCP in Statute

Unlike other Labor Department agencies, there is no explicit statutory language requiring OFCCP to exist, although Congress has repeatedly funded the agency.⁹⁷ Both the current and previous Trump administrations proposed eliminating OFCCP and moving its remaining enforcement responsibility to other Labor Department agencies or the EEOC.⁹⁸

While OFCCP and the EEOC perform complementary work, preserving and protecting OFCCP as a separate agency within the Labor Department remains critical for effective enforcement of requirements of federal contractors.

As discussed below, OFCCP's unique power to proactively review employer compliance with E.O. 11246 allowed the agency to identify discrimination that might have otherwise gone unreported or undiscovered.⁹⁹ OFCCP was uniquely positioned to uncover hiring and pay discrimination as a result of its audit powers, as often employees do not have sufficient information to file a charge of discrimination in these areas. OFCCP also enforced requirements that federal contractors proactively take steps to promote equal opportunity, a responsibility distinct from EEOC's mandate to investigate charges of discrimination and enforce violations of Title VII.¹⁰⁰ Integrating equal opportunity enforcement within the Department of Labor created valuable synergies. For example, OFCCP can leverage data and knowledge from health and safety and wage and hour violations to better focus audits on employers with weak compliance infrastructures. Since the Department of Labor already enforces multiple federal contractor requirements – including prevailing wage and paid sick leave¹⁰¹ – ensuring the Department of Labor is also charged with equal opportunity responsibilities enables systematic information sharing that strengthens enforcement across all labor standards.¹⁰²

OFCCP experience with the federal procurement process and authority to debar violating contractors also ensures the agency is well-suited to help ensure that the billions of taxpayer dollars spent on federal contracts each year were not used to support discrimination.¹⁰³ The EEOC does not have this experience or authority. Legislation should explicitly authorize OFCCP as an agency within the U.S. Department of Labor.

Recommendation: To preserve the agency and prevent its elimination from an anti-worker administration, explicitly authorize the Office of Federal Contract Compliance Programs as an agency at the U.S. Department of Labor.¹⁰⁴

Require Compliance Assistance

Without help, some federal contractors may not fully understand and successfully meet requirements. Compliance assistance, in the form of guidance, training and outreach, helps contractors identify and remove barriers to hiring and advancement for women, workers of color and other historically underrepresented groups. For smaller or new contractors, easily accessible compliance assistance can provide essential guidance and resources that they may lack internally, helping them navigate requirements efficiently. Similarly, providing education and training for employees can help ensure they know and exercise their rights. In fiscal year 2024, OFCCP hosted more than 500 worker rights-focused education and outreach events with nearly 40,000 workers in attendance.¹⁰⁵

Given the agency's limited capacity, granting funds to community-based organizations would help ensure workers understood their rights, including their right to be free from retaliation for raising concerns of discrimination. Federal grants administered by the Department of Labor, including the Susan Harwood Training Grant Program administered by the Occupational Health and Safety Administration¹⁰⁶ and the Fostering Access, Rights and Equity (FARE) grant program administered by the Women's Bureau,¹⁰⁷ are successful models for this approach.

Recommendation to update policy: To promote contractor compliance, (1) require OFCCP to develop and make readily available to contractors and workers, tools, training and other compliance assistance resources and conduct worker and employer outreach and (2) authorize appropriations for grants to community-based organizations to conduct worker outreach and education on their rights as employees working for federal contractors.

Codify Mega-Projects

For large-scale projects, especially those with significant economic impact for local communities, proactive compliance support and monitoring ensures that contractors can build diverse applicant pools early, avoid hiring bottlenecks and maximize community benefits. The Mega Construction Project Program, relaunched in fiscal year 2023, was a successful example of OFCCP's approach to compliance assistance for large contracts.¹⁰⁸ This program targeted large construction projects valued at \$35 million or more that have the potential to make a meaningful economic impact in local communities.¹⁰⁹ OFCCP used neutral criteria for selecting projects.¹¹⁰ OFCCP engaged contractors, subcontractors, training programs, community organizations and worker advocates early in the project to build diverse applicant pools. The program linked contractors with apprenticeship and pre-apprenticeship programs in the local communities impacted by the Mega Construction Projects, helping prepare

underserved, qualified individuals to fill positions when construction begins. By connecting contractors with qualified workers from diverse backgrounds, the program supported access to good jobs while helping employers address hiring challenges and improve employment practices across the construction trades.¹¹¹ Legislation should codify this effective model and also require OFCCP to promote or require other policies, such as project labor agreements, that can have positive impacts on local communities.

Recommendation to codify previous policy: To help ensure construction contracts with significant potential impact on local communities create good jobs for qualified workers of diverse backgrounds, require large-scale projects selected by OFCCP using a neutral criteria to participate in a Mega Construction Project Programs. Under this program, OFCCP should provide contractors with enhanced compliance assistance and partnership facilitation with agencies, community, unions and apprenticeship programs and encourage or require project labor agreements.

Authorize Investigations

Conducting effective and efficient investigations is critical for holding employers accountable and making workers whole. While OFCCP conducted investigations based on complaints and audits, as discussed below, the agency did not have broad authority to conduct investigations. In contrast, the Fair Labor Standards Act provides the Administrator of the Wage and Hour Division (WHD) with broad investigative authority.¹¹² As a result, WHD conducts directed investigations based on the agency's strategic enforcement priorities. OFCCP must also have this type of broad authority to support strategic enforcement.

Since 1970, OFCCP and EEOC had a memorandum of understanding (MOU) that included the referral process for complaints under E.O. 11246 and charges under Title VII. Legislation should continue to ensure that EEOC and OFCCP have a clear procedure that promotes agency coordination.

Recommendation to update policy: To facilitate strategic enforcement, (1) provide the OFCCP with broad authority to conduct investigations and gather data, including entering and inspecting premises, inspecting records and questioning employees, on the conditions and employment practices of any federal contractor under its jurisdiction to determine whether there have been violations and (2) require EEOC and OFCCP to establish procedures to promote coordination and avoid conflict and duplicated efforts.

Extend the Deadline for Filing Complaints

The order authorized the Secretary of Labor to “receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination.”¹¹³ Regulations required complaints to be filed within 180 days of the alleged violation.¹¹⁴ But workers may not immediately recognize potential discrimination harassment and subtle discrimination often accumulates over time, making it harder to immediately identify and file a complaint.¹¹⁵

The 180-day filing deadline – also seen in Title VII, the ADA and the ADEA – is much shorter than the two-year statutes of limitations common in other areas of employment law.¹¹⁶ Fairly recent legislation aimed at strengthening anti-harassment protections in the workplace provide for a four-year statute of limitations.¹¹⁷ According to researchers, “the legislative history and other background materials on the federal anti-discrimination statutes fail to demonstrate any compelling basis for [Title VII’s] shorter statute of limitations,” and the result is “to preclude claims.”¹¹⁸ While there may be an argument that longer filing periods risk compromised witness recollections, which are often relied upon heavily in employment cases, this same concern exists in other types of employment law and should be weighed against the goal of ensuring employment discrimination is adequately addressed.¹¹⁹ Legislation should ensure workers have adequate time to enforce their rights.

Recommendation to update policy: To ensure statute of limitations do not unduly preclude claims, allow complaints to be filed within four years of an alleged violation.

Require Compliance Evaluations

While employment enforcement agencies receive thousands of complaints each year,¹²⁰ many workers never file complaints because they find the complaint process inaccessible, fear retaliation or do not realize their rights have been violated – or that they have rights at all.¹²¹ E.O. 11246 granted the Labor Secretary authority to proactively conduct compliance evaluations to identify discriminatory practices and patterns, including those that individual employees may not be positioned to recognize or challenge.¹²² Under E.O. 11246 regulations, compliance evaluations could include any combination of investigative procedures, including on-site reviews and off-site analyses, to assess a contractor’s employment practices.¹²³ The agency periodically identified a list of contractor establishments for compliance evaluations based on neutral criteria and on its resources and workload.¹²⁴ In addition to post-award evaluations, contractors with awards of \$10 million or more were subject to pre-award compliance evaluations to confirm the contractor’s ability to meet equal opportunity requirements.¹²⁵

From fiscal year 2014 to 2024, OFCCP conducted reviews at contractor sites employing over 10.3 million workers.¹²⁶ During that same period, OFCCP investigations resulted in 250,900 workers obtaining financial relief totaling \$260.8 million, and over 22,600 individuals employed by federal contractors received new job opportunities or salary adjustments.¹²⁷

Legislation should ensure OFCCP continues this vital oversight work, ensuring contracting agencies play a critical role in effective monitoring.

Recommendation to update policy: To ensure active monitoring of contractors for compliance and help ensure contracting agencies do not award contracts to companies unable to meet equal employment requirements, (1) grant OFCCP authority to conduct regular audits of the employment practices of any contractor or subcontractor to determine whether or not they have violated equal employment requirements and require contracting agencies to assist with addressing violations and (2) require contracting agencies to certify that they consulted with OFCCP before awarding a contract and, if there are any known prior violations, provide a justification for the award, including evidence that the company has not only remedied prior issues but also put in place systems to avoid similar issues in the future and (3) require that contractors be subject to pre-award compliance evaluations or a requirement to provide workforce data before a government contract valued at \$10 million or more is awarded to ensure the prospective contractor meets equal employment opportunity obligations.

Grant OFCCP Access to the Courts

When the agency identified violations, it sought voluntary compliance through conciliation.¹²⁸ Where a contractor refused to cooperate or correct violations, OFCCP could initiate formal enforcement proceedings.¹²⁹

Under implementing regulations, OFCCP was empowered to refer unresolved cases to the Solicitor of Labor with recommendations to pursue administrative proceedings before a Department of Labor Administrative Law Judge (ALJ).¹³⁰ In such cases, the Solicitor of Labor was able to “enjoin violations, to seek appropriate relief and to impose appropriate sanctions.”¹³¹ However, recent court rulings highlight the vulnerability of an enforcement framework that depends on administrative proceedings. In *SEC v. Jarkesy*, the Supreme Court held that the Securities and Exchange Commission’s use of in-house administrative proceedings to impose civil penalties violated the Seventh Amendment right to a jury trial.¹³² Given how this decision limits an agency’s authority to seek

remedies in administrative proceedings, judicial proceedings are critical to effective enforcement.

Under the order, OFCCP also had the authority to refer cases to the Department of Justice (DOJ) to consider bringing judicial proceedings.¹³³ Regulations provided the DOJ with the authority to file a civil action in federal district court seeking a temporary restraining order, preliminary or permanent injunction and sanctions and relief (e.g., back pay) “deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the order.”¹³⁴ In practice, however, this referral process provided limited relief.¹³⁵ The Solicitor of Labor could litigate administrative cases before Department of Labor judges but did not have independent authority to bring cases in federal court.¹³⁶ The agency also did not have explicit authority to provide injunctive relief for workers, including for those facing retaliation during investigations or compliance reviews.¹³⁷ As a result, cases requiring swift intervention were often delayed by multiple layers of review. The lack of injunctive authority left workers, particularly those on short-term or project-based contracts, without timely protection from job loss or retaliation. Legislation must ensure the Solicitor can bring cases in federal court.

OFCCP also lacked subpoena authority, making it difficult to compel the production of key documents or witness testimony when contractors refuse to cooperate. This gap weakened investigations and delayed enforcement, particularly in cases involving retaliation or systemic discrimination. Legislation must give the Solicitor this critical enforcement tool.

Recommendation to update policy: To promote robust and timely enforcement of workers’ rights, (1) grant the Solicitor of Labor authority to bring civil suits in federal court, including authority to seek injunctions to stop ongoing violations, compel immediate compliance and protect workers from further harm during active investigations and (2) provide the OFCCP and the Solicitor of Labor with authority to access and subpoena information necessary or appropriate to determine whether there has been a violation.

Grant Workers Access to the Courts

Workers had no private right of action for violations under E.O. 11246.¹³⁸ Enforcement authority rested exclusively with the Department of Labor through OFCCP’s administrative process, which required workers to file complaints directly with the agency.¹³⁹ Where an enforcement agency has limited capacity, shifts its enforcement priorities or abdicates its enforcement responsibilities, a private right of action can ensure workers retain an avenue for enforcing their rights. Other federal anti-

discrimination laws, such as Title VII and the Americans with Disabilities Act, provide workers with a private right of action to file a suit in federal court and seek damages after exhausting remedies.¹⁴⁰ Legislation must ensure workers can make use of the courts to enforce their rights.

Recommendation to update policy: To ensure workers have multiple avenues for enforcement, establish a private right of action for violations, setting the statute of limitations to four years to align with recommendations for deadlines for filing complaints.

Expand Available Remedies

When workers lose out on jobs, promotions and pay due to discrimination, remedies can provide them with the relief that would return them to the economic status that they would have if not for discrimination. While the E.O. 11246 was silent on remedies for workers, its regulations gave OFCCP the authority to recover on behalf of employees remedies that “correct the violations and/or deficiencies identified,” including back pay, salary adjustments and retroactive seniority. For example, per a 2024 conciliation agreement, the OFCCP found Ball Corporation in violation of the order’s non-discrimination provisions, finding statistically significant differences in the hiring rates of Black applicants in certain roles.¹⁴¹ A conciliation agreement directed a settlement account to include \$280,002.24 in back pay for impacted applicants.¹⁴²

OFCCP also sought other forms of equitable relief beyond restatement. For example, where the OFCCP found that Comsaco violated the order by firing an employee who asked about their pay, the conciliation agreement ordered the company to remove any references of disciplinary action or termination from their personnel records and instead list “voluntary separation” as the reason for leaving.¹⁴³

The order and its implementing regulations did not, however, explicitly allow for recovery of compensatory or punitive damages. But, given that discrimination, including harassment, may not be remedied through equitable relief, allowing for compensatory damages for out-of-pocket expenses or emotional harm is a critical form of relief. Similarly, punitive damages punish employers for “malice or reckless” acts of discrimination.¹⁴⁴ Compensatory and punitive damages are recoverable for intentional discrimination in violation of Title VII, but outdated limits on damages based on employer size prevent workers from fully recovering.¹⁴⁵ Legislation should ensure workers can fully recover and hold employers accountable for harm.

Because workers did not have a private right of action against contractor employers, they were not entitled to recover for costs associated with initiating litigation, including attorney's fees and court costs. Title VII allows for prevailing parties to recover for such costs.¹⁴⁶

Recommendation to update policy: To help ensure workers are made whole after discrimination, (1) make violating contractors liable for back pay, front pay, interest, lost benefits, other make whole relief (such as salary adjustments and retroactive seniority), compensatory and punitive damages (without caps), attorney's fees and costs and (2) authorize the agency to seek injunctive relief on behalf of affected workers, including changes to policy and practice and requirements to undergo monitoring.

Expand Available Sanctions

Social and legal research suggests that businesses comply with the law for three main reasons: fear of legal penalties (including economic penalties), concern about the reputational consequences of noncompliance and a sense of moral obligation.¹⁴⁷

Sanctions under the order spoke to reputational and economic consequences by giving the Labor Department the authority to publish a list of contractors who have violated the order and cancel or suspend contracts or bar violating contractors from receiving new contracts.¹⁴⁸ But because the remedy of debarment is so severe, OFCCP rarely used it.¹⁴⁹ An intermediate remedy, such as seeking to withhold interim payments under the contract until a contractor is in compliance, would add to the agency's tools for incentivizing compliance.

Civil monetary penalties are an effective tool "to deter illegal behavior, remove economic benefit gained from violations and sometimes to compensate society for any harm caused."¹⁵⁰ However, in contrast to other employment and labor laws, the order did not allow the Labor Department to levy civil monetary penalties.¹⁵¹ Legislation should provide OFCCP with authority to use this and other robust tools to deter violations.

Recommendation to update policy: To ensure the agency has more enforcement tools, (1) provide OFCCP with authority to publish and maintain a list of violating contractors, (2) provide OFCCP the authority to go to court to withhold interim payments under contracts, to suspend or cancel contracts and to bar companies from contracting with the federal government and (3) provide OFCCP with authority to assess civil monetary penalties against violating contractors and subcontractors.

Require Recordkeeping

Accurate, comprehensive recordkeeping and transparent reporting are fundamental to ensuring employers meet their legal obligations under the law. Record retention is essential for reconstructing timelines of personnel decisions and evaluating potential discrimination or retaliation. Regulations required contractors to maintain personnel and employment records, such as applications, hiring, promotions, terminations and compensation decisions, for two years.¹⁵² As an exception, contractors with fewer than 150 employees or contracts less than \$150,000 were only required to maintain records for a year.¹⁵³ Contractors were also required to retain their AAPs and documentation related to their efforts for a year, enabling OFCCP to assess continued progress and verify whether prior corrective actions have led to measurable change.¹⁵⁴

But short retention periods may make it difficult to assess systemic patterns of inequality over time or across complex corporate structures. And as recommended above, workers should be afforded more time to enforce their rights, necessitating access to records during investigations or litigation. While smaller contractors were only required to keep records for a year, they are likely already required to keep and maintain payroll records for longer under other employment laws.¹⁵⁵ Legislation should require federal contractors to maintain records for a period that aligns with a longer statute of limitations.

Recommendation to update policy: To support effective and efficient compliance evaluations, investigations and litigation, require federal contractors to make and keep employment and personnel records for no less than four years.

Require Notice to Workers

Providing workers with clear notice of their rights promotes fair workplaces and may empower them to exercise their rights. E.O. 11246 required federal contractors to conspicuously display notices informing applicants and employees of their equal employment rights.¹⁵⁶ However, neither workers nor contracting agencies could easily identify which companies were federal contractors or whether these contractors were in compliance. Given that the list of federal contractors constantly changes, OFCCP did not maintain a public database of covered contractors. Contractors were not required to disclose their status as a federal contractor in job postings or on company websites. Legislation should include notice requirements and ensure notice identifies a federal contractor as such.

Recommendation to update policy: To help make workers aware of their rights, require contractors to (1) post, in accessible physical and online locations, notices of workers' rights that clearly state that the employer is a federal contractor and (2) include equal opportunity language in job postings to inform prospective applicants that they will receive consideration for employment without regard to any protected characteristic.

Require Public Access to Enforcement Data

Transparency was another major barrier to effective enforcement of E.O. 11246. While the agency did historically post enforcement data, that data has recently been removed.¹⁵⁷ This lack of transparency shields violators from scrutiny and limits public oversight. Legislation should require public disclosure.

Recommendation to codify previous policy: To promote transparency, require OFCCP to maintain and publicly post enforcement data, including the number of audits performed, the amount of monetary damages recovered on behalf of workers and individual conciliation agreements.

Ensure Adequate Funding for Enforcement

Effective enforcement requires robust staffing levels in the agency's D.C. and field offices. OFCCP staff in field offices respond to workers' complaints and conduct proactive reviews for compliance to help ensure that federal contractors are not illegally discriminating against workers. OFCCP staff also provide compliance assistance to arm contractors with tools and resources to comply with the law and prevent discrimination before it happens.

Low staffing levels leave workers employed by federal contractors more vulnerable to discrimination that could cost them equal pay, a promotion or even a job. In 2024, the agency had about 500 employees working across its national office in D.C., six regional offices and more than 50 district offices across the country.¹⁵⁸ Since E.O. 11246 was revoked, the Trump administration has sought to significantly reduce staffing levels.¹⁵⁹ As of January 30, 2026, the agency reported having 351 employees.¹⁶⁰

Rebuilding the agency will require Congress to significantly increase funding and staffing capacity for the agency. Funding should be robust enough to support regular compliance evaluations. For example, funding could support a compliance evaluation for each federal contractor at least once every three years.

While funding levels are subject to yearly appropriations, other funding approaches may offer some dedicated funding to support the agency’s priority work. For example, under the Fair Labor Standards Act, civil monetary penalties for most violations are redirected towards enforcement.¹⁶¹ Legislation should ensure that additional funds can support the important work of compliance evaluations.

Recommendation to update policy: In addition to robust annual funding, require that civil monetary penalties collected apply towards reimbursement of the costs for conducting compliance evaluations.

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¹ *Commencement Address at Howard University: "To Fulfill These Rights."* | *The American Presidency Project*, <https://www.presidency.ucsb.edu/documents/commencement-address-howard-university-fulfill-these-rights> (last visited May 1, 2026).

² Exec. Order No. 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965).

³ In this brief, the term "contractors" means federal contractors and subcontractors and federally assisted construction contractors and subcontractors unless otherwise noted.

⁴ U.S. Department of Labor, Office of Federal Contract Compliance Programs, FY 2025 Congressional Budget Justification, at 10 (2025), <https://www.dol.gov/sites/dolgov/files/general/budget/2025/CBJ-2025-V2-10.pdf>.

⁵ 42 U.S.C. § 2000e-2(a); *Bostock v. Clayton County*, 590 U.S. 644, 649 (2020).

⁶ Fidan Ana Kurtulus, *The Impact of Affirmative Action on the Employment of Minorities and Women over Three Decades: 1973-2003*, W.E. Upjohn Institute for Employment Research, Working Paper No. 150221 (2015), https://research.upjohn.org/cgi/viewcontent.cgi?article=1238&context=up_workingpapers.

⁷ Fidan Ana Kurtulus, *Affirmative Action and the Occupational Advancements of Minorities and Women During 1973-2003*, 51 *Indus. Rel.* 213, 242 (2012), https://people.umass.edu/fidan/Kurtulus_IR_AA_Occ_April_2012.pdf.

⁸ Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 31, 2025).

⁹ 29 U.S.C. § 793.

¹⁰ 38 U.S.C. § 4212.

¹¹ U.S. Equal Employment Opportunity Commission, *Enforcement and Litigation Statistics*, <https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0> (last visited Apr. 13, 2026).

¹² Kim Parker & Cary Funk, *Gender Discrimination Comes in Many Forms for Today's Working Women*, Pew Research Center (Dec. 14, 2017), [https://www.pewresearch.org/short-reads/2017/12/14/gender-discrimination-comes-in-many-forms-for-todays-working-women/#:~:text=Aboutpercent20four-in-tenpercent20working,\(16percent25percent20versuspercent205percent25\);](https://www.pewresearch.org/short-reads/2017/12/14/gender-discrimination-comes-in-many-forms-for-todays-working-women/#:~:text=Aboutpercent20four-in-tenpercent20working,(16percent25percent20versuspercent205percent25);) Katherine Schaeffer, *Black Workers' Views and Experiences in the U.S. Labor Force Stand Out in Key Ways*, Pew Research Center (Aug. 31, 2023), <https://www.pewresearch.org/short-reads/2023/08/31/black-workers-views-and-experiences-in-the-us-labor-force-stand-out-in-key-ways/>.

¹³ Brad Sears, *Impact of Executive Order Revoking Non-Discrimination Protections for LGBTQ Federal Employees and Employees of Federal Contractors*, Williams Institute, UCLA School of Law (Jan. 2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Federal-ND-Protections-EO-Jan-2025.pdf>.

¹⁴ Valerie Wilson & Samantha Sanders, *Trump Is Making It Easier for Federal Contractors to Discriminate—and It Will be Underwritten by Your Tax Dollars*, *Economic Policy Institute* (Aug. 5, 2025), <https://www.epi.org/blog/trump-is-making-it-easier-for-federal-contractors-to-discriminate-and-it-will-be-underwritten-by-your-tax-dollars/>.

¹⁵ Ariane Hegewisch & Eve Mefferd, *A Future Worth Building: What Tradeswomen Say about the Change They Need in the Construction Industry*, Institute for Women's Policy Research (Nov. 16, 2021), <https://iwpr.org/a-future-worth-building-report/>; Chandra Childers, Ariane Hegewisch & Lark Jackson, *Here to Stay: Black, Latina, and Afro-Latina Women in Construction Trades Apprenticeships and Employment*, Institute for Women's Policy Research & Chicago Women in the Trades (Mar. 2021), https://iwpr.org/wp-content/uploads/2021/03/Here-to-Stay_revision2.pdf; National Center for Construction Education and Research, *In Her Own Words: Improving Project Outcomes* (May 2023), https://www.nccer.org/media/2023/05/WIC-Long-Report-2023_FINAL.pdf.

¹⁶ U.S. Equal Employment Opportunity Commission, *Building for the Future: Advancing Equal Employment Opportunity in the Construction Industry* (May 2023), <https://www.equalrights.org/wp-content/uploads/2025/08/EEOC-Building-for-the-Future-1.pdf>.

¹⁷ Ariane Hegewisch, *Numbers Matter: Women Working in Construction* (August 2025), https://iwpr.org/wp-content/uploads/2025/08/Women-in-Construction-QF_2025.pdf.

¹⁸ Labor organizations in the construction sector have developed pathways that promote equal employment opportunity and access for workers from underrepresented communities into Registered Apprenticeship, the main access point into careers in the skilled trades. These efforts have already yielded some positive results for women and Black workers. See, e.g., Cihan et al., *Diversity, Equity, and Inclusion Initiative in the Construction Trades*, The Institute for Construction Employment Research (Mar. 2022), <https://nabtu.org/wp-content/uploads/2023/01/ICERES-Study-22Diversity-Equity-and-Inclusion-Initiatives-in-the-Construction-Trades22.pdf>; Frank Manzo & Robert Bruno, *The Impact of Pre-Apprenticeship Programs in Illinois: Evidence from the Highway Construction Careers Training Program and the Illinois Works Pre-Apprenticeship Program since 2017*, Illinois Economic Policy Institute & University of Illinois at Urbana-Champaign (Aug. 2025), <https://cwit.org/wp-content/uploads/2025/08/ilepi-pmcr-impact-of-pre-apprenticeship-programs-in-illinois-final.pdf>.

¹⁹ Exec. Order No. 11246, § 202.

²⁰ Exec. Order No. 11375, 32 Fed. Reg. 14303 (Oct. 16, 1967).

²¹ Exec. Order No. 13672, 79 Fed. Reg. 42971 (July 21, 2014).

²² Exec. Order No. 11246, § 202; 42 U.S.C. § 2000e-2; *Bostock v. Clayton County*, 590 U.S. 644, 649 (2020).

²³ For example, Title VII is interpreted to prohibit “discriminating because of the perception or belief that a person is a member of a particular racial, national origin, or religious group whether or not that perception is correct.” U.S. Equal Employment Opportunity Commission, *Employment Discrimination Based on Religion, or Country of Origin* (Oct. 15, 2001), <https://www.eeoc.gov/laws/guidance/employment-discrimination-based-religion-ethnicity-or-country-origin>.

²⁴ 41 C.F.R. § 60-20.2.

²⁵ 41 C.F.R. § 60-20.5, 60-20.7.

²⁶ *Connecticut v. Teal*, 457 U.S. 440, 447 n.8 (1982) (quoting S. Rep. No. 92-415, at 5 (1971)).

²⁷ *Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971).

²⁸ 42 U.S.C. § 2000e-2(k).

²⁹ *Id.*

³⁰ As the implementing regulations explain, the order requires that a contractor not only refrain from making intentionally biased decisions, but also “monitor . . . and examine . . . its employment decisions and compensation systems to evaluate the impact of those systems on women and minorities.” 41 C.F.R. § 60-2.10(a)(2). The regulations also incorporate the 1978 Uniform Guidelines on Employee Selection Procedures, issued by the EEOC and Department of Labor, among other agencies, which provides that “[t]he use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines” 41 C.F.R. §§ 60-3.1, 60-3.3(A). E.O. 11246 regulations explicitly require contractors to ensure policies around pregnancy accommodation and family and medical leave do not have a disparate impact on the basis of sex. 41 C.F.R. § 60-20.5 (c)(2), (d)(3).

³¹ 41 C.F.R. § 60-1.4(a)(1); 41 C.F.R. § 60-2.17; 41 C.F.R. § 60-20.2.

³² See, e.g. *Lam v. Univ. of Hawai‘i*, 40 F.3d 1551, 1562 (9th Cir. 1994) (holding that “[l]ike other subclasses under Title VII, Asian women are subject to a set of stereotypes and assumptions shared neither by Asian men nor by white women. In consequence, they may be targeted for discrimination ‘even in the absence of discrimination against [Asian] men or white women’”).

³³ See, e.g. *Shazor v. Professional Transit Management*, 744 F.3d 948, 958 (6th Cir. 2014) (holding that “[t]hese characteristics do not exist in isolation. African American women are subjected to unique stereotypes that neither African American men nor white women must endure If a female African American plaintiff . . . establishes a sufficient foundation of discrimination, a defendant cannot undermine her prima facie case by showing that [W]hite women and African American men received the same treatment”).

³⁴ See Risa Nagel, *Lam’s Legacy: Mapping Employment Discrimination Doctrine under the Green-light of Intersectionality* (Dec. 2024), <https://www.californialawreview.org/print/employment-discrimination-intersectionality>.

³⁵ National Partnership for Women and Families, *For Second Year, Wage Gap Grows Wider for Women* (press release Sept. 10, 2025), https://nationalpartnership.org/news_post/for-second-year-wage-gap-grows-wider-for-women/; Ariane Hegewisch et al., *Gender Wage Gap Worsens for Second Year in a Row, Institute for Women’s Policy Research* (Sept 2025), <https://iwpr.org/wp-content/uploads/2025/09/National-Wage-Gap-Fact-Sheet-2025.pdf>.

³⁶ U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Earnings Disparities by Race and Ethnicity* (on file with author); also see Gili Malinsky, *The Racial Wage Gap Starts As Early As 16 for Black Workers—And Results In ‘a Lifetime of Consequences,’ Says Experts*, CNBC News (Feb. 15, 2024), <https://www.cnn.com/2024/02/15/racial-wage-gap-starts-as-early-as-16-heres-why.html>.

³⁷ Sara Estep & Haley Norris, *The 2024 LGBTQI+ Wage Gap*, Center for American Progress (Jun. 17, 2025), <https://www.americanprogress.org/article/the-2024-lgbtqi-wage-gap/>.

³⁸ Francine D. Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends, and Explanations*, 55 *J. Econ. Literature* 789, 789-865 (2017), <https://www.aeaweb.org/articles?id=10.1257/jel.20160995>.

³⁹ Exec. Order No. 11246, § 202.

⁴⁰ Shengwei Sun et al., *On the Books, Off the Record: Examining the Effectiveness of Pay Secrecy Laws in the U.S.*, IWPR Policy Brief No. C494, Institute for Women’s Policy Research (Jan. 2021), <https://www.iwpr.org/wp-content/uploads/2021/01/Pay-Secrecy-Policy-Brief-v4.pdf>.

⁴¹ *Id.*

⁴² See, e.g., National Women's Law Center, *Combating Punitive Pay Secrecy Policies* (Feb. 27, 2019), <https://nwl.org/wp-content/uploads/2019/02/Combating-Punitive-Pay-Secrecy-Policies.pdf>.

⁴³ Exec. Order No. 13665, 79 Fed. Reg. 20749 (Apr. 11, 2014). Under the order, protections did "not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information."

⁴⁴ See U.S. Equal Employment Opportunity Commission, *Questions and Answers: Enforcement Guidance on Retaliation and Related Issues* (Aug. 26, 2016), <https://www.eeoc.gov/laws/guidance/questions-and-answers-enforcement-guidance-retaliation-and-related-issues>; U.S. Department of Labor, *Fact Sheet # 77A: Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)* (Dec. 2011), <https://www.dol.gov/agencies/whd/fact-sheets/77a-flsa-prohibiting-retaliation>.

⁴⁵ See National Labor Relations Board, *Your Right to Discuss Wages*, <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights/your-rights-to-discuss-wages> (last visited Apr. 13, 2026).

⁴⁶ See 29 U.S.C. § 157 (protecting only concerted activity, i.e., activity engaged in with or on behalf of other employees for mutual aid or protection).

⁴⁷ 29 U.S.C. § 152.

⁴⁸ Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions, 80 Fed. Reg. 54934 (Sept. 11, 2025); Institute for Women's Policy Research, *Gender and Racial Wage Gaps Worsened in 2023 and Pay Equity Still Decades Away*, IWPR #C527 (Sept. 2024), <https://iwpr.org/wp-content/uploads/2024/09/IWPR-National-Wage-Gap-Fact-Sheet-2024.pdf>; Valerie Wilson & William Darity Jr., *Understanding Black-White Disparities in Labor Market Outcomes Requires Models That Account for Persistent Racial Inequality*, Economic Policy Institute (Mar. 25, 2022), <https://www.epi.org/unequalpower/publications/understanding-black-white-disparities-in-labor-market-outcomes/>.

⁴⁹ Office of Federal Procurement Policy; Federal Acquisition Regulation: Pay Equity and Transparency in Federal Contracting, 89 Fed. Reg. 5843 (Jan. 30, 2024).

⁵⁰ Office of Federal Procurement Policy; Federal Acquisition Regulation: Pay Equity and Transparency in Federal Contracting, 90 Fed. Reg. 1404 (Jan. 8, 2025).

⁵¹ Jeroen Koenraadt et al., *Mandatory Pay Disclosures in Job Postings* (March 17, 2026), <https://ssrn.com/abstract=6431939>.

⁵² National Women's Law Center, *Salary Range Transparency Reduces Gender Gap Gaps 1-2* (Sept. 2022), <https://nwl.org/wp-content/uploads/2022/09/Salary-Transparency-FS-2021-9.20.22.pdf>.

⁵³ See generally Jennifer E. Dannals, et al., *The Dynamics of Gender and Alternatives in Negotiation*, 106 J. Applied Psych. 1655 (2021) (discussing study findings consistent with a "backlash account" of gender differences in negotiation performance); see also Morela Hernandez et al., *Bargaining While Black: The Role of Race in Salary Negotiations*, 104 Am. Psych. Ass'n 581, 582 (2019) ("Our investigation into how racial bias impacts job evaluators' differential expectations, perceptions, and treatment of Black (vs. White) negotiators builds on extant research in this area by identifying the prescriptive nature of stereotype-based application in the devaluation of Black job seekers on the basis of their race").

⁵⁴ NWLC, *supra* note 52, at 1-2.

⁵⁵ See, United States Government Accountability Office, *Gender Pay Differences: The Pay Gap for Federal Workers Has Continued to Narrow, but Better Quality Data on Promotions Are Needed* (Dec. 2020), <https://www.gao.gov/assets/720/711014.pdf>.

⁵⁶ Office of Federal Procurement Policy; Federal Acquisition Regulation: Pay Equity and Transparency in Federal Contracting, 89 Fed. Reg. 5843 (Jan. 30, 2024).

⁵⁷ U.S. Equal Employment Opportunity Commission, *Enforcement and Litigation Statistics*, <https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0> (last visited Apr. 13, 2026); see also U.S. Equal Employment Opportunity Commission, *Retaliation—Making It Personal* (Jan. 15, 2016), <https://www.eeoc.gov/retaliation-making-it-personal> (discussing the prevalence and effects of retaliation on workplace culture and enforcement).

⁵⁸ See generally, Deborah L. Brake, *Retaliation*, 90 Minn. Law. Rev. 18, 36-42 (Oct. 26, 2005), https://www.minnesotalawreview.org/wp-content/uploads/2011/12/Brake_Final.pdf.

⁵⁹ Jennifer M.I. Loh & Abu Saleh, *Lashing Out: Emotional Exhaustion Triggers Retaliatory Incivility in the Workplace* (2022), at 6-10, <https://pmc.ncbi.nlm.nih.gov/articles/PMC8749205/pdf/main.pdf>; United States Public Health Service, *The U.S. Surgeon General's Framework for Workplace Mental Health & Well-Being* (2022), at 9, <https://www.hhs.gov/sites/default/files/workplace-mental-health-well-being.pdf> (identifying work environment factors such as intimidation and lack of psychological safety as contributors to poor mental health outcomes).

⁶⁰ 41 C.F.R. § 60-1.32.

⁶¹ 41 C.F.R. § 60-2.1(b).

⁶² 41 C.F.R. § 60-2.12-16.

⁶³ 41 C.F.R. § 60-2.14(a) - (d).

⁶⁴ 41 C.F.R. § 60-2.16(a) - (c).

⁶⁵ 41 C.F.R. § 60-2.17(c).

⁶⁶ *Id.*

⁶⁷ U.S. Department of Labor, Office of Federal Contract Compliance Program, *US Department of Labor to Open Online Portal April 1 for Federal Contractors, Subcontractors to Certify Affirmative Action Program Compliance* (press release Mar. 25, 2024), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20240325>.

⁶⁸ 41 C.F.R. § 60-4.6.

⁶⁹ 41 C.F.R. § 60-4.3.

⁷⁰ See 41 C.F.R. § 60-2.12(b)-(c) (requiring contractors to create job groups based on similarity in content, wage rates, and opportunities, but leaving the specific grouping to contractor design).

⁷¹ 45 Fed. Reg. 85750 (December 30, 1980), reproduced in Office of Federal Contract Compliance Programs, *Construction Contractors Technical Assistance Guide* (Contraction TAG), Appendix P (Participation Goals for Minorities and Females), at 110, <https://www.dol.gov/sites/dolgov/files/ofccp/ConstructionTAG.pdf>; 43 Fed. Reg. 14888, 14900 (Apr 7, 1978) (adopting 6.9% goal for the period Apr. 1, 1980 until Mar. 31, 1981; 45 Fed. Reg.85750, 85751 (Dec 30 1980) (extending the 6.9 percent goal until further notice). To illustrate how outdated these numbers are: OFCCP's current construction goal for minorities in the Boston economic area is 4.0 percent. But the percentage of African-Americans alone in the construction trades in that area averaged 4.3 percent in the 2014-2018 period; the percentage of Hispanics averaged 13.7 percent; African-Americans, Hispanics, and Asians together averaged 19.8 percent of the construction-trades workforce there. Calculations from U.S. Census Bureau, *American Community Service 2014-2018 5-year Average*, Table: EEO-ALL03W - EEO Occupational Groups by Sex and Race/Ethnicity for Worksite Geography, Total Population By Sex And Race/Ethnicity For Worksite Geography, Selected Geography: Boston-Cambridge-Quincy, MA-NH Metro Area, <https://www.census.gov/acs/www/data/eEO-data/eEO-tables-2018/tableview.php?geotype=msa&msa=31000us14460&filetype=all3w&geoName=Boston-Cambridge-Quincy,MA-NHMetroArea> (These figures do not include people who identify as two or more races).

⁷² See 41 C.F.R. § 60-4.3(a)1d.

⁷³ Similarly, the OFCCP-set goals used the same goal for apprentices and journey workers in each trade, even though there are much fewer minimum qualifications for being an apprentice than for being a journey worker. It is common for the only qualifications for entry into an apprenticeship program to be having a high-school degree or a GED and a driver's license. This meant, the proportions of available female, Hispanic, and non-white racial minority workers who are qualified for an apprenticeship in a trade are likely to be very different – and much higher – than the similar proportions who are qualified to work at the journey level in that trade.

⁷⁴ "Applicant" should be defined broadly consistent with Title VII. OFCCP regulations used a narrow definition of "internet applicant" that allowed contractors to narrow the pool of "qualified applicants." 41 C.F.R. § 60-1.3 (defining "Internet Applicant").

⁷⁵ 41 C.F.R. § 60.140.

⁷⁶ 41 C.F.R. § 60-2.17(c).

⁷⁷ *Id.*

⁷⁸ 41 C.F.R. § 60-4.3(a)(7)(l).

⁷⁹ 31 Fed. Reg. 2833 (1966).

⁸⁰ 29 C.F.R. § 1602.7.

⁸¹ 41 C.F.R. § 60-1.7

⁸² 89 Fed. Reg. 85987 (2024).

⁸³ *EEO-1 (Employer Information Report) Statistics*, U.S. Equal Employment Opportunity Commission, <https://www.eeoc.gov/data/eEO-1-employer-information-report-statistics> (last visited May 5, 2026).

⁸⁴ *Id.*

⁸⁵ 41 C.F.R. § 60-1.5(a)(1).

⁸⁶ 41 U.S.C. § 1908.

⁸⁷ See 41 U.S.C. § 1908; see also U.S. Department of Labor, (2025, November). *Jurisdictional Thresholds and Inflationary Adjustments*, Retrieved 12 December 2025, from <https://www.dol.gov/agencies/ofccp/jurisdictional-thresholds>

⁸⁸ See U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Jurisdictional Thresholds and Inflationary Adjustments*, <https://www.dol.gov/agencies/ofccp/jurisdictional-thresholds>.

⁸⁹ See, U.S. Department of Transportation, *Overview of Funding and Financing at USDOT*, <https://www.transportation.gov/grants/dot-navigator/overview-funding-and-financing-usdot> (last visited May 1, 2026); *Public Housing Program | HUD.Gov / U.S. Department of Housing and Urban Development (HUD)*, <https://www.hud.gov/helping-americans/public-housing> (last visited May 1, 2026).

⁹⁰ Exec. Order No. 13279, 67 Fed. Reg. 77139 (Dec. 12, 2002).

⁹¹ The exemption added in 2002 is parallel to the Title VII exemption. 42 U.S.C. § 2000e-1(a). The exemption should not apply in the context of government contracts. The justification for the Title VII exemption—to maintain the autonomy of religious organizations and independence from the government—disappears when the organizations solicit and accept government contracts, especially because the contracts necessarily involve extensive compliance with contract and other requirements.

⁹² Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, 85 Fed. Reg. 79324 (Dec. 9, 2020). The Trump regulation misapplied Title VII case law and adopted an unreasonably broad interpretation of RFRA to expand the exemption. See Press Release, Rep. Robert C. Scott, *Scott Statement on Trump Administration's Final Rule to Weaken Anti-*

Discrimination Protections in Federal Contracting (Dec. 10, 2020), <https://bobbyscott.house.gov/media-center/press-releases/scott-statement-trump-administrations-final-rule-weaken-anti>; H. Comm. on Educ. & the Workforce Democratic Staff, *Religious Liberty: The History of Religious Liberty in Federal Policy from 1993 to 2022* (Jan. 2023), https://democratsedworkforce.house.gov/imo/media/doc/religious_liberty_the_history_of_religious_liberty_in_federal_policy_from_1993_to_2022.pdf; See also Rescission of Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, 88 Fed. Reg. 12842 (Mar. 1, 2023).

⁹³ Lyndon B. Johnson, *Memorandum on Reassignment of Civil Rights Functions* (Sept. 24, 1965), available at <https://www.presidency.ucsb.edu/documents/memorandum-reassignment-civil-rights-functions>.

⁹⁴ *Id.*

⁹⁵ U.S. Department of Labor, Office of Federal Contract Compliance Programs, *FY 2024 Annual Performance Report*, at 28 (2025), <https://www.dol.gov/sites/dolgov/files/general/budget/2024/FY2024APR.pdf>. These numbers include non-E.O. 11246 cases.

⁹⁶ *Id.*

⁹⁷ Adam K. Edgerton, *The History and Status of the Office of Federal Contract Compliance Programs (OFCCP)*, CRS In Focus No. IF12941 (Mar. 12, 2025), <https://www.congress.gov/crs-product/IF12941>.

⁹⁸ Office of Mgmt. & Budget, *Appendix, Budget of the United States Government, Fiscal Year 2018*, at 749 (2017), <https://www.govinfo.gov/content/pkg/BUDGET-2018-APP/pdf/BUDGET-2018-APP.pdf>; U.S. Department of Labor, Office of Federal Contract Compliance Programs, *FY 2026 Congressional Budget Justification (2025)*, <https://www.dol.gov/sites/dolgov/files/general/budget/2026/CBJ-2026-V2-10.pdf>.

⁹⁹ National Women's Law Center et al., *Eliminating OFCCP Would Harm Working People and Undermine Equal Opportunity*, at 2 (May 2017), <https://nwlc.org/wp-content/uploads/2017/05/OFCCP-Defense.pdf>.

¹⁰⁰ *Id.*

¹⁰¹ U.S. Department of Labor, *Wage and Hour Division – About Us*, <https://www.dol.gov/agencies/whd/about> (last visited May 1, 2026).

¹⁰² NWLC, *supra* note 99, at 2.

¹⁰³ *Id.*

¹⁰⁴ Legislators may opt to rename the agency but for clarity, this brief retains "OFCCP" as the agency's name.

¹⁰⁵ U.S. Department of Labor, Office of Federal Contract Compliance Programs, *FY 2024 Annual Performance Report* at 28 (2025), <https://www.dol.gov/sites/dolgov/files/general/budget/2024/FY2024APR.pdf>.

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¹⁰⁷ U.S. Department of Labor, *News Release: US Department of Labor Announces \$1.4M In Grants To Prevent, Respond To Workplace Gender-Based Violence, Harassment* (Sept. 11, 2024), <https://www.dol.gov/newsroom/releases/wb/wb20240911>.

¹⁰⁸ U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Methodology for Developing the Mega Construction Project Program Designees – FY 2023, Release 1* (Mar. 21, 2023), <https://www.dol.gov/sites/dolgov/files/OFCCP/scheduling/files/FY23R1-MethodologyforMegaConstructionProjectProgramDesignees.pdf>.

¹⁰⁹ U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Methodology for Developing the Mega Construction Project Program Designees – FY 2023, Release 1* (Mar. 21, 2023), <https://www.dol.gov/sites/dolgov/files/OFCCP/scheduling/files/FY23R1-MethodologyforMegaConstructionProjectProgramDesignees.pdf>.

¹¹⁰ U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Methodology for Mega Construction Project Program Designees – FY 2024, Release 2*, <https://www.dol.gov/sites/dolgov/files/OFCCP/scheduling/files/FY24R2-MethodologyforMegaConstructionProjectProgramDesignees.pdf> (last visited April 6, 2026); U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Methodology for Mega Construction Project Program Designees – FY 2024, Release 1*, <https://www.dol.gov/sites/dolgov/files/OFCCP/scheduling/files/FY24R1-MethodologyforMegaConstructionProjectProgramDesignees.pdf> (last visited April 6, 2026).

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¹¹² 29 U.S.C. § 211(a).

¹¹³ Exec. Order No. 11246, § 206(b), 30 Fed. Reg. 12,319, 12,321-22 (Sept. 24, 1965).

¹¹⁴ 41 C.F.R. 60-1.21.

¹¹⁵ Pam Jenoff, *As Equal as Others? Rethinking Access to Discrimination*, 81 U. Cin. L. Rev. 101, 115 (2013), available at <https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1104&context=uclr>

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¹¹⁷ BE HEARD in the Workplace Act, S. 3865, 119th. Cong. (2026).

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¹¹⁹ *Id.*

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¹²² Exec. Order No. 11246, § 206(b), 30 Fed. Reg. 12,319, 12,321-22 (Sept. 24, 1965).

¹²³ 41 C.F.R. § 60-1.20(a).

¹²⁴ 41 C.F.R. § 1.20(a).

¹²⁵ 41 C.F.R. § 60-1.20(d); 41 C.F.R. § 60-1.29.

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¹²⁷ *Id.*

¹²⁸ 41 C.F.R. § 610-1.26.

¹²⁹ 41 C.F.R. § 60-30.5.

¹³⁰ 41 C.F.R. § 60-1.26(b).

¹³¹ *Id.*

¹³² *SEC v. Jarkesy*, 603 U.S. 109, 115 (2024).

¹³³ Exec. Order No. 11246, § 303(b).

¹³⁴ 41 C.F.R. § 60-1.26(b); Office of Federal Contract Compliance Programs, *Federal Contract Compliance Manual*, at 323 (2020) (on file with authors).

¹³⁵ Office of Federal Contract Compliance Programs, *Federal Contract Compliance Manual*, at 323 (2020) (on file with authors).

¹³⁶ *Id.*

¹³⁷ See 41 C.F.R. § 60-1.26(b); see also 41 C.F.R. § 60.126(c) (authorizing OFCCP to refer matters to the Department of Justice at any stage and empowering the Attorney General to seek temporary restraining orders, preliminary or permanent injunctions, back pay, and other judicial remedies).

¹³⁸ 41 C.F.R. § 610-1.26.

¹³⁹ 41 C.F.R. §§ 60-1.21, 60-1.26(b).

¹⁴⁰ 42 U.S.C. § 2000e-5(f)(1); 42 U.S.C. § 12117(a).

¹⁴¹ U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Conciliation Agreement with Ball Container Corp.* (Sept. 27, 2024), https://www.dol.gov/sites/dolgov/files/OFCCP/foia/files/2024-09-27_BallContainer_CA_300677_SE_Redacted.pdf.

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¹⁴⁵ 42 U.S.C. § 1981a(a), (b).

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¹⁴⁷ Robert A. Kagan, Neil Gunningham & Dorothy Thornton, *Fear, Duty, and Regulatory Compliance: Lessons from Three Research Projects*, in *Explaining Compliance: Business Responses to Regulation 37* (Christine Parker & Vibeke Lehmann Nielsen eds., Edward Elgar 2011), <https://www.elgaronline.com/edcollchap/9781848448858.00007.xml>.

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¹⁵² 41 C.F.R. § 60.1.12(a).

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¹⁵⁴ 41 C.F.R. § 60-1.12(a)-(b).

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¹⁵⁶ Exec. Order No. 11246, § 202.

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¹⁶¹ 29 U.S.C. § 216(e)(5).

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, reproductive health and rights, access to quality, affordable health care and policies that help all people meet the dual demands of work and family. More information is available at NationalPartnership.org.

Equal Rights Advocates is committed to improving the lives and defending the rights of women and gender expansive workers and students and others most impacted by inequities. We drive system and policy change, defend rights in courts, and build power among students, workers, and communities across the country.

The 75 Million is a national movement fighting for the 75 million women in America's workforce who power our economy. It promotes their rights, wages, safety, and opportunity at work. It opposes extremist attacks on workplace protections and holds policymakers and corporations accountable for advancing substantive economic justice for women.

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