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September 2, 2025

Catherine L. Eschbach
Director
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Rule: Rescission of Executive Order 11246 Implementing Regulations
(RIN 1250-AA17)

Dear Ms. Eschbach:

I write to oppose the proposed rule to rescind the implementing regulations for Executive Order 11246 (EO 11246), as it weakens critical civil rights protections that benefit workers and applicants who are engaged in or seeking work that is funded by federal contracts, approximately 20 percent of the American workforce.¹ Taken together with President Trump's rescission of EO 11246² and the proposed elimination of the Office of Federal Contract Compliance Programs³ (OFCCP), the office charged with implementing EO 11246, the proposed rule, "Rescission of Executive Order 11246 Implementing Regulations" (proposed rule), will further dismantle and undermine civil rights that protect American workers.⁴ I urge you to withdraw the Proposed Rule Rescinding the EO 11246 Regulations and work to urge President Trump to restore EO 11246⁵ to protect federal contract workers from discrimination.

History of EO 11246: The Birth of Fair Employment Practices

Each year, the federal government spends hundreds of billions of taxpayers' dollars on federal contracts.⁶ In Fiscal Year (FY) 2024 alone, the federal government spent over \$755 billion on contracts.⁷ There has been longstanding recognition that the government should ensure that employment opportunities created by tax dollars are fair and not tainted by discriminatory practices. On June 25, 1941, with the U.S. poised to go to war, President Franklin D. Roosevelt signed Executive Order 8802 (EO 8802) in response to A. Philip Randolph and other civil rights leaders who sought fair employment practices for Black workers in our nation's defense industry.⁸ This marked the first time ever that presidential action was taken to prohibit employment discrimination by private employers operating federal contracts and served as the

birth of fair employment practices in the United States. That order initially only covered contractors from discriminating in certain defense-related programs. Over the years, the order was expanded to bar illegal employment discrimination in all federal contracts, most notably in 1965 when President Lyndon B. Johnson issued EO 11246. It established a core principle of federal programs that, for the last 84 years, Presidents and Congresses of both parties adopted and expanded upon to prohibit discrimination in federally supported contracts. This history underscores this proposed rule's drastic departure from norm and purpose.

Under EO 11246, the OFCCP was charged with the critical role of ensuring that workers are protected from discrimination in taxpayer-funded contracts—preventing approximately one-fifth of the entire U.S. labor force from being subjected to unlawful discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin.⁹ In addition to OFCCP's obligation to enforce anti-discrimination provisions under EO 11246, OFCCP is also charged with protecting federal contract workers against discrimination on the basis of disability and veteran's status under Section 503 of the *Rehabilitation Act of 1973*¹⁰ (Section 503) and the *Vietnam Era Veterans' Readjustment Assistance Act*¹¹ (VEVRAA), respectively. Collectively, EO 11246, Section 503, and VEVRAA have ensured that employers that receive the privilege of contracting with the federal government do not use taxpayer dollars to unlawfully discriminate against workers and are held accountable for violations. In its enforcement of EO 11246, Section 503, and VEVRAA, OFCCP obtained over \$260 million over the past decade for 250,900 workers who faced discrimination on the job by federal contractors.¹² During that same time period, over 22,000 workers received new job opportunities or salary adjustments.¹³ A review of OFCCP data shows that racial discrimination against African-Americans, arguably the impetus for EO 8802, is still pervasive in federal contracting with Black workers, particularly Black women, who are the primary monetary beneficiaries of OFCCP's work.¹⁴ In Fiscal Year 2024, OFCCP recovered \$22.5 million for affected workers through compliance evaluations—nearly a quarter of its annual budget.¹⁵

The First Trump Administration's Support for EO 11246 & OFCCP

The efforts by the second Trump Administration to roll back protections under EO 11246, including this proposed rule, are in stark contrast to the first Trump Administration's support for EO 11246 and the work of OFCCP to address discrimination against federal contract workers. In 2017, the White House issued a statement stating that President Trump was committed to protecting "employees from anti-LGBTQ workplace discrimination while working for federal contractors," indicating that President Obama's additions to EO 11246 protections would "remain intact at the direction of President Donald J. Trump."¹⁶ During the entirety of the first Trump Administration, EO 11246 remained the law of the land. In 2019, then-OFCCP Director Craig Leen testified that OFCCP's efforts to both work with contractors and take enforcement actions against bad actors have "reduced discrimination and furthered OFCCP's mission--ensuring contractors' comprehensive and proactive compliance with civil rights requirements and the rule of law."¹⁷ On October 19, 2020, a U.S. Department of Labor (the Department or DOL) press release claimed that OFCCP "had its most productive history during the Trump Administration," setting a record of recoveries of \$40.6 million for FY 2019.¹⁸ Director Leen praised the "extraordinary success in accomplishing its critical mission of enforcing affirmative

action and nondiscrimination obligations in employment.”¹⁹ This proposed rule represents a 180-degree turn by this Administration from its previous support of OFCCP and EO 11246.

Affirmative Action: An Important Tool to Effectuate Equal Opportunity for Federal Contract Workers

EO 11246 is a core civil rights directive that also required federal contractors to take affirmative action to promote equal opportunity.²⁰ These policies opened the door to qualified workers by requiring contractors to establish (affirmative) policies and practices (action) to ensure all applicants and employees receive an equal opportunity in recruitment, advancement, and terms of employment. The regulations implementing EO 11246 require contractors meeting certain monetary thresholds to create an affirmative action plan, but it is important to understand what these plans include, and what they expressly do not.

An affirmative action plan may include conducting job analyses, examining the available labor pool, developing placement goals, and evaluating how its employment compares to available labor pool.²¹ The regulations for EO 11246 expressly prohibit the use of quotas and discrimination on any protected characteristic, thus barring supplanting of “merit selection principles.”²² Rather, the purpose of affirmative action policies is to facilitate the identification and removal of discriminatory barriers to equal employment opportunity, such as biases against hiring or promoting non-white individuals. There is ample evidence that discrimination still exists and that affirmative action policies are still needed; for example a 2023 study published by the National Bureau of Economic Research noted that there is “substantial evidence of labor-market racial inequities in wages, employment, and mobility.”²³ The same 2023 study found that Black workers continue to be disproportionately concentrated in lower-wage professions when compared to their white peers who have the same level as education, and they earn 20% less than their similarly educated white peers.²⁴ Rather than incentivizing discrimination, affirmative action programs are an important tool to combat these existing inequities and effectuate merit based equal employment opportunity.

The Trump Administration’s proposition that diversity, equity, inclusion, and accessibility threaten a ‘merit-based’ society is a fundamental misunderstanding of EO 11246 and OFCCP’s work, including its affirmative action responsibility.²⁵ EO 11246 and other anti-discrimination laws ensure that workers are hired because of their merit. Affirmative action initiatives complement anti-discrimination requirements to ensure that an individual’s merit is not overlooked because of an employer’s discriminatory and unfair employment practices.

Misapplication of Supreme Court Rulings

The Administration claims the proposed rule is necessary as the existing regulations will be “vulnerable” to legal challenge in light of recent court rulings.²⁶ The Department incorrectly applies two narrow Supreme Court cases, *Students for Fair Admissions v. Harvard* (SFFA)²⁷ and *Ames v. Ohio Department of Youth Services* (Ames)²⁸, to justify removal of affirmative action programs under EO 11246 for federal contract workers. This Administration’s

interpretation of the narrow holding in the SFFA case in the proposed rule is a clear misapplication of the holding in this case.²⁹

To begin with, the Administration falsely equates affirmative action planning and demographic benchmarking with the race-conscious selection preferences that the Supreme Court invalidated in SFFA. SFFA was narrowly focused on race-conscious admissions in higher education.³⁰ The proposed rule acknowledges that the current regulations “expressly prohibit using placement goals as quotas or set asides” and that “no part of EO 11246’s regulatory scheme permits or requires illegal discrimination.”³¹ The regulations establish goals, and there is no clear indication that the Court in SFFA intended for their narrow holding to extend to race-conscious outreach or broader anti-discrimination efforts outside the bounds of education. The proposed rule further justifies the removal of affirmative action provisions speculating that they “may have induced and incentivized [contractors] to consider characteristics like race and sex” to avoid enforcement actions by OFCCP. This speculation is offered without evidence of even a single instance of such discrimination. Such speculation is especially dubious given that affirmative action requirements for federal contractors have existed for over six decades, in one form or another.³²

Similarly, the proposed rule incorrectly invokes *Ames v. Ohio Department of Youth Services* as evidence that DOL’s current affirmative action tools are unconstitutional. Simply put, the decision focused on burden-shifting standards in individual employment disputes in one judicial circuit.³³ The Court did not rule on the legality of proactive outreach, affirmative action plans, or utilization goals for federal contractors.

The Trump Administration’s reliance on SFFA and *Ames* throughout the proposed rule is misplaced. Such cases do not invalidate the anti-discrimination framework in EO 11246’s implementing regulations or even address their policy objectives. Rather, SFFA and *Ames* confirm that federal agencies must draw careful distinctions between unlawful preferences and lawful efforts to ensure equal opportunity for federal contract workers.

The Rescission of EO 11246 Will Leave Federal Contract Workers Vulnerable to Discrimination

While federal contractors are still subject to laws requiring fair employment practices under Title VII of the Civil Rights Act (Title VII)³⁴, the rescission of EO 11246 and the proposed removal of its regulations will harm federal contract workers in several areas. First, the rescission creates gaps in coverage of anti-discrimination requirements for federal contract workers. Title VII prohibits employment discrimination based on protected characteristics by employers who have 15 or more employees.³⁵ In contrast, EO 11246’s anti-discrimination requirements applied to employers who have federal contracts or subcontracts totaling more than \$10,000. Thus, with the rescission of EO 11246, federal contract workers who work for small employers will not have any recourse against discrimination when working on taxpayer funded contracts.³⁶

The rescission also removes critical proactive enforcement mechanisms to address discriminatory barriers for federal contract workers. Through its enforcement of EO 11246, OFCCP had specific authorities that allowed it to identify and address patterns of discrimination

that are not always evident to individual workers. Enforcement under Title VII is more limited and requires individual workers to file complaints of discrimination to the Equal Employment Opportunity Commission (EEOC). In contrast, OFCCP both responds to individual complaints of discrimination and carries out compliance evaluations to assess workplace practices by contractors. Through its compliance reviews process, OFCCP could proactively identify, investigate, and remedy patterns of discrimination. Moreover, the removal of affirmative action requirements for federal contractors removes yet another proactive tool to create fair employment conditions that effectuate equal employment opportunity for federal contract workers. Additionally, the rescission also leaves workers more vulnerable to unfair pay practices. EO 11246 directed contractors to take affirmative action to ensure workers received fair treatment, including as it pertains to compensation, without regard to an employee's protected characteristics.³⁷ Accordingly, OFCCP's reviews of contractor employment practices included proactive examination of their compensation systems.

The first Trump Administration acknowledged the problem of pay discrimination in federal contracts, taking the position that OFCCP would focus on systemic compensation cases as part of its work to enforce EO 11246.³⁸ In FY 2024, OFCCP reported recovering \$10.4 million in salary adjustments for over 3,000 workers.³⁹ Both EO 11246 and the work of OFCCP are critical to ensuring federal contract workers receive equal pay for their work and to address federal contractors' discriminatory compensation practices.

The proposed rule rescinding the EO 11246 regulations is the latest in a disturbing pattern of the Trump Administration's hostility towards the federal government's role in protecting civil rights, and it is an abdication of the responsibility of the executive branch of the federal government to ensure equal opportunity for federal contract workers. For these reasons, I ask the Department to withdraw this harmful proposal and restore EO 11246.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Ranking Member

¹ Rescission of Executive Order 11246 Implementing Regulations, 90 Fed. Reg. 28472 (July 1, 2025) (to be codified at 41 CFR Parts 60-1, 60-2, 60-3, 60-4, 60-20, 60-30, 60-40, 60-50, and 60-999) [hereinafter Proposed Rule Rescinding EO 11246 Regulations].

² Exec. Order No. 14,173, 90 Fed. Reg. 8633, 8634 (Jan. 31, 2025) (rescinding Exec. Order No. 11,246, 30 Fed. Reg. 12319, 12319 (Sept. 28, 1965)).

³ Office of Federal Contract Compliance Programs, U.S. Dep't of Lab., FY 2026 Congressional Budget Justification, <https://www.dol.gov/sites/dolgov/files/general/budget/2026/CBJ-2026-V2-10.pdf>

⁴ *100 ways Trump has hurt workers in his first 100 days*, Economic Policy Institute, <https://www.epi.org/publication/100-days-100-ways-trump-hurt-workers/> (last visited Aug. 8, 2025).

⁵ Exec. Order No. 11,246, 30 Fed. Reg. 12319 (Sept. 28, 1965) (Equal Employment Opportunity).

⁶ Rebecca Klar, *Trump's Blow to Tiny But Powerful Contractor Watchdog: Explained*, Bloomberg Law (Jan. 29, 2025), <https://news.bloomberglaw.com/daily-labor-report/trumps-blow-to-tiny-but-powerful-contractor-watchdog-explained>.

⁷ *A Snapshot of Government-Wide Contracting for FY 2024*, U.S. Gov't Accountability Office, <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2024-interactive-dashboard> (last visited Aug. 8, 2025).

⁸ Exec. Order No. 8802, 6 Fed. Reg. 3109 (June 27, 1941) (prohibiting discrimination in the defense industry based on race, creed, color or national origin).

⁹ Exec. Order No. 11246, 30 Fed. Reg. 12319 (Sept. 28, 1965) (banning discrimination in Federal employment based on race, creed, color, or national origin); Exec. Order No. 11478, 34 Fed. Reg. 12985, (Aug. 12, 1969) (banning discrimination in Federal employment based on race, color, religion, sex, or national origin); Exec. Order No. 13672, 79 Fed. Reg. 42971, (July 23, 2014) (adding sexual orientation and gender identity to the listed of protected categories under EO 11246).

¹⁰ 29 U.S.C. § 793

¹¹ 38 U.S.C.S. § 2021 et seq.

¹² Rebecca Klar, *Trump's Blow to Tiny But Powerful Contractor Watchdog: Explained*, Bloomberg Law (Jan. 29, 2025), <https://news.bloomberglaw.com/daily-labor-report/trumps-blow-to-tiny-but-powerful-contractor-watchdog-explained>.

¹³ Valerie Wilson and 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/>.

¹⁴ Valerie Wilson and 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 U.S. Dep't of Lab., DOL 2024 Annual Performance Report (2024), <https://www.dol.gov/sites/dolgov/files/general/budget/2024/FY2024APR.pdf>.

¹⁶ Press Release, Trump White House Archives, President Donald J. Trump Will Continue to Enforce Executive Order Protecting the Rights of the LGBTQ Community in the Workplace, <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-will-continue-enforce-executive-order-protecting-rights-lgbtq-community-workplace/> (last visited Aug. 8, 2025).

¹⁷ *Examining the Policies and Priorities of the Equal Employment Opportunity (EEOC) and The Office of Federal Contract Compliance Programs (OFCCP) Before the Subcommittee on Civil Rights and Human Services of the H. Comm. On Educ. & Labor*, 116th Cong. (2019) (Statement of Craig E. Leen, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor).

¹⁸ Press Release, U.S. Dep't of Labor, U.S. Department of Labor Announces Best Year for Compliance Assistance by Office of Federal Contract Compliance (Oct. 19, 2020), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20201019-0>.

¹⁹ *Id.*

²⁰ Exec. Order No. 11,246, 30 Fed. Reg. 12319 (Sept. 28, 1965) (Equal Employment Opportunity).

²¹ 41 C.F.R. §§ 60-2.10-2.15; 41 C.F.R. §§ 60-4.4- 60-4.6.

²² 41 C.F.R. § 60-2.16(e).

²³ Ashley Jardina et al., *The Limits of Educational Attainment in Mitigating Occupational Segregation Between Black and White Workers*, National Bureau of Economic Research (Aug. 2023), https://www.nber.org/system/files/working_papers/w31641/w31641.pdf.

²⁴ *Id.*

²⁵ Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025) (Ending Illegal Discrimination and Restoring Merit-Based Opportunity).

²⁶ Proposed Rule Rescinding EO 11246 Regulations, *supra* note 1, at 28474 and 28475

²⁷ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

²⁸ *Ames v. Ohio Department of Youth Services*, 605 U.S. ____ (2025).

²⁹ *The Economic Imperative to Ensure Equal Opportunity: Guidance for Employers, Businesses, and Funders*, NAACP Legal Defense Fund (2024), <https://www.naacpldf.org/wp-content/uploads/2024-02-01-Aff-Axn-Economic-Guidance-2.pdf> (“While opponents of civil rights may challenge these programs in their ongoing attempt to change the law, the SFFA decision did not upset prior court rulings upholding the legality of diversity statements,

anti-bias trainings, targeted recruiting, and aspirational diversity goals...Affirmative action programs in private employment also remain lawful following the SFFA decision.”)

³⁰ *Students for Fair Admissions* 600 U.S. 181, at 213 n.4 (stating clearly the opinion in this case was so narrow that it did not implicate the use of race in admissions at U.S. service academies); *Id.* at 230 (“At the same time, as all parties agree, nothing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”)

³¹ Proposed Rule Rescinding EO 11246 Regulations, *supra* note 1, at 28475.

³² See *supra* text accompanying notes 6-15.

³³ Proposed Rule Rescinding EO 11246 Regulations, *supra* note 1, at 28475.

³⁴ See *Executive Order 10925—Establishing the President’s Committee on Equal Employment Opportunity*, Mar. 6, 1961, The American Presidency Project, <https://www.presidency.ucsb.edu/documents/executive-order-10925-establishing-the-presidents-committee-equal-employment-opportunity> (last visited Aug. 8, 2025) (requiring federal contractors to “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.”)

³⁵ *Supra* note 1, at 28477.

³⁶ See e.g., “There is no generally applicable federal law that prohibits race, color, sex, religious, or national origin discrimination by small employers... Some federal contractors may also be covered by narrower federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 (Title VI) (prohibiting race, color, and national origin discrimination in federally funded programs) and Title IX of the Education Amendments of 1972 (Title IX) (prohibiting sex discrimination in federally funded education programs). Federal contractors are not automatically covered by these laws; in many instances, participating in federal contracting does not mean that a contractor is covered by Title VI and Title IX. Similarly, employment discrimination is rarely covered by these laws: it is only covered by Title VI in narrow factual circumstances, and courts are divided over whether Title IX applies to employment discrimination. With the rescission of EO 11246, employees of some smaller federal contractors may be protected only by the antidiscrimination provisions required by EO 14173 and no other federal antidiscrimination law.” ABIGAIL A. GRABER & DAVID H. CARPENTER, CONG. RESEARCH SERV., LSB11268, *RECISSION OF EXECUTIVE ORDER 11246, “EQUAL EMPLOYMENT OPPORTUNITY”: LEGAL IMPLICATIONS* (2025).

³⁷ Exec. Order No. 11,246, 30 Fed. Reg. 12319 (Sept. 28, 1965) (Equal Employment Opportunity).

³⁸ The first Trump Administration noted that thirty-six percent of the discrimination settlements in FY 2017 involved systemic pay discrimination. Office of Federal Contract Compliance Programs, U.S. Dep’t of Lab., 2019 Congressional Budget Justification, p. 16, <https://www.dol.gov/sites/dolgov/files/general/budget/2019/CBJ-2019-V2-10.pdf>

³⁹ U.S. Dep’t of Lab., DOL FY 2024 Annual Performance (2024), <https://www.dol.gov/sites/dolgov/files/general/budget/2024/FY2024APR.pdf>.