

Conciliation Agreement
Between the United States Department of Labor
Office of Federal Contract Compliance Programs
And
Butterball, LLC
One Butterball Lane
P.O. Box 2389
Garner, North Carolina 27529

PART I: General Provisions

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Butterball, LLC (hereinafter Butterball).
2. The violations identified in this Agreement were found during a compliance evaluation of Butterball's establishment located at 1628 Garner Chapel Road, Mount Olive, North Carolina, which began on May 7, 2009, and they were specified in a Notice of Violation issued June 2, 2011. OFCCP alleges that Butterball has violated Executive Order 11246, as amended, and its implementing regulations 41 CFR Chapter 60, due to the specific violations cited in Part II below.
3. This Agreement does not constitute an admission by Butterball of any violation of Executive Order 11246, as amended, and its implementing regulations.
4. The provisions of this Agreement will become part of Butterball's Affirmative Action Program (AAP). Subject to the performance by Butterball of all promises and representations contained herein and in its AAP, all named violations in regard to the compliance of Butterball with all OFCCP programs will be deemed resolved. However, Butterball is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.
5. Butterball agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to Butterball's compliance. Butterball shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve Butterball from the obligation to comply with the requirements of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and their implementing regulations, or any other equal employment statute or executive order or its implementing regulations.
7. Butterball agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, or who

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files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).

8. This Agreement will be deemed to have been accepted by the Government on the date of signature by the Regional Director for OFCCP (hereinafter Effective Date), unless the Director, OFCCP, indicates otherwise within 45 days of the Regional Director's signature on this Agreement.
9. If, at any time in the future, OFCCP believes that Butterball has violated any portion of this Agreement during the term of this Agreement, Butterball will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Butterball with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

Enforcement proceedings for violation of this Agreement may be initiated at any time after the 15-day period has elapsed (or sooner, if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes that Butterball has violated this Conciliation Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violations resolved by this Agreement.

Liability for violation of this Agreement may subject Butterball to sanctions set forth in Section 209 of the Executive Order and/or other appropriate relief.

PART II: Specific Provisions

1. **VIOLATION:** Personnel documents provided by Butterball for the period January 1, 2008 through December 31, 2008 revealed that Butterball failed to afford qualified female hires placement and compensation opportunities equal to those afforded similarly situated men when filling higher paying 8A Laborer job group from a common pool of applicants for Laborer and Operative jobs. Specifically, during the period indicated, Butterball placed (b) (5) men in the higher paying 8A Laborer job group positions; but (b) (5) females in the higher paying 8A Laborer job group positions.

Females were disproportionately channeled away from the higher paying 8A Laborer job group positions and placed into lower paying positions. This placement practice resulted in disparate treatment against a class of females. Accordingly, OFCCP finds that Butterball discriminated against 453 qualified female hires ("Class Members") by not placing them into higher paying 8A Laborer job group positions because of their gender in violation of 41 CFR 60-1.4(a)(1).

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REMEDY: Butterball will attempt to locate the 453 Class Members whose names are listed in Attachment A to this Agreement. Within 30 days of the signing of this Agreement by the Regional Director, OFCCP, Butterball will contact the Class Members in Attachment A by “Certified Mail, Return Receipt Requested”, by regular mail, and by hand delivery to current employees using Attachment B, “Notice to Class Members,” Attachment C, “Placement Interest Form,” and Attachment D, “Release of Claims under the Executive Order”.

Class Members will have 60 days from the Effective Date to mail or send to Butterball their completed “Placement Interest Form,” and the “Release of Claims under the Executive Order”. Butterball will notify OFCCP, Charlotte District Office, in writing, of all Class Members it has not located and of all the Class Members it has located within 90 days of the Effective Date.

OFCCP will attempt to locate Class Members not located by Butterball. Within 120 days of the Effective Date, OFCCP will provide Butterball, in writing, a list of addresses OFCCP has obtained for Class Members not located by Butterball. Within 150 days of the Effective Date, Butterball will send notice to the Class Members located by OFCCP to notify them of their status as Class Members and to determine their interest in assignment to 8A Laborer job group positions, using Attachments B, C and D, as described above. If a Class Member is not located and/or does not return the signed and completed “Placement Interest Form” and “Release of Claims under the Executive Order” within 180 days after the Effective Date, that Class Member will no longer be entitled to any relief pursuant to this Agreement.

Butterball will make written offers of placement in 8A Laborer job group positions to Class Members listed on Attachment A at the current rate of pay for such positions until 40 Class Members have accepted or until Attachment A is exhausted, whichever occurs first. Butterball will make offers of placement in the order that the “Placement Interest Form” and the “Release of Claims under the Executive Order” are returned which indicate interest in placement. Class Members must agree upon a placement date no more than 14 days from the date of receiving the written offer of placement. Butterball will make all placements as positions become available, but within 210 days of the Effective Date”. All placement decisions, including offers made and documentation of reasons for rejecting any Class Member who timely indicated an interest in placement will be available for review by OFCCP.

Butterball will provide Class Members placed into higher paying 8A Laborer positions and not currently employed with Butterball with retroactive seniority by adjusting the company service date of such Class Members to the earlier of June 1, 2008 or the actual hire date; Butterball will use this seniority date to determine such Class Members’ eligibility for vacation, vacation pay, when selecting employees for layoff in order of seniority and other employment actions where the seniority date is used

Butterball will disburse \$57,478.18 in back pay and \$7,521.82 in interest totaling \$65,000.00 to all Class Members who timely execute and return the “Placement Interest

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Form” and “Release of Claims under the Executive Order.” The money will be divided equally among the located Class Members and paid to each Class Member in two lump sums; the first lump sum will be comprised of back pay and the second lump sum will be interest. Each Class Member’s share of this payment will be reduced by withholding for federal income tax, state, and/or local income tax, and the Class Member’s share of FICA. Each Class Member shall receive an IRS Form W-2 for her share of the back pay and benefits and an IRS Form 1099 for her share of the interest amount. Disbursement of money will not be contingent upon acceptance by a class member of Butterball’s placement offer.

Butterball will distribute the monetary settlement to the Class Members no sooner than 45 days and no later than 210 days after the Effective Date. Butterball will complete the process of monetary disbursement and will provide OFCCP with evidence of Class Member placements and the disbursements, copies of pay slips showing legal deductions and copies of cancelled checks or other documentation verifying payment, as indicated in Part III of this Agreement

No later than 215 days after the Effective Date Butterball will provide OFCCP with a list of Class Members who have not yet cashed their respective checks. OFCCP will attempt to locate these Class Members and will notify Butterball within 245 days after the Effective Date of any additional Class Members located who have not cashed their checks. Butterball will mail a second set of checks to these Class Members within 275 days of the Effective Date. Any check to a Class Member that remains un-cashed 305 days after the Effective Date shall be void. Butterball will use any unclaimed settlement funds to provide EEO training to managers at its Mt. Olive facility.

Butterball will not retaliate, harass, or engage in any form of reprisal or other adverse action against any Class Member based on or in relation to the terms or provisions of this Agreement.

Butterball will provide training on its equal employment opportunity programs for all employees involved in Butterball’s application/selection and hiring processes. Butterball will notify OFCCP of its training plan within 60 days and complete the training within 180 days from the date the Regional Director, OFCCP, signs this Agreement.

On the date this Agreement has been fully executed by the Regional Director, OFCCP, Butterball will immediately modify its placement/selection procedures for all candidates for Job Group 8A positions to ensure that this violation ceases. In addition, Butterball will review, at least annually, and revise, as needed, its placement/selection procedures to ensure that this violation does not recur.

2. **VIOLATION:** Butterball failed to maintain and have available for inspection records or other information that would disclose the impact which Butterball’s selection procedures have upon employment opportunities of applicants and hires identifiable by gender, race, or ethnic group set forth in 41 CFR 60-3.4B in order to determine compliance with the

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Uniform Guidelines on Employee Selection Procedures. 41 CFR 60-3.4 and 41 CFR 60-3.15A (2).

REMEDY: Butterball will maintain applicant tracking records with gender, race, and ethnic information essential for performing adverse impact determinations. Where the total selection process for a job has adverse impact against groups of applicants and/or Internet applicants identifiable by race, gender, or ethnic group listed in 41 CFR 60-3.4B, Butterball will maintain and have available for inspection records or other information showing which components have an adverse impact. Where the total selection process for a particular job has had an adverse impact in any year but no longer has an adverse impact, Butterball will maintain and have available the aforementioned information and continue to collect such information for at least two years after the adverse impact has been eliminated.

3. **VIOLATION:** Butterball failed to demonstrate good faith efforts to expand employment opportunities for minorities in Craftworkers Job Group 6A, females in Team Leaders/Trainers Job Group 7A and females in Laborer Job Group 8A. Specifically, Butterball failed to make good faith efforts to recruit minority applicants for vacancies in its Craftworkers Job Group 6A, females in Team Leaders/Trainers Job Group 7A and females in Laborer Job Group 8A. 41 CFR 60-2.17(c).

REMEDY: Butterball will develop and execute action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR 60-2.17 (b) and designed to attain established goals and objectives.

FUTURE CONDUCT: Butterball will not repeat the above violations.

PART III: Reporting

Butterball shall submit three reports as stated below to District Director-Charlotte, United States Department of Labor, Office of Federal Contract Compliance Programs, 3800 Arco Corporate Drive, Suite 465, Charlotte, North Carolina 28273

The **first report** shall be due 90 days after the date on which the Regional Director, OFCCP signs this Agreement. The first report will contain the following information:

1. Documentation of attempts to contact all Class Members in Attachment A, including the current disposition of each Class Member whom Butterball attempted to contact;
2. Copies of all Attachments C and D signed and returned by Class Members, as well as copies of those envelopes returned as undeliverable; and

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3. Documentation of Butterball's EEO training plan for all employees involved in Butterball's application/selection and hiring processes.

The **second report** shall be due 315 days after the date on which the Regional Director, OFCCP signs this Agreement. The second report will contain the following information:

1. Documentation of attempts to contact those Class Members in Attachment A not initially located and for whom OFCCP provided Butterball with addresses, including the current disposition of each Class Member contacted and copies of the notification letters sent;
2. Copies of Attachments C and D signed and returned by each Class Members not initially located and for whom OFCCP provided Butterball with addresses, as well as copies of those envelopes returned as undeliverable;
3. Documentation of monies disbursed to each Class Member who signed and returned Attachments C and D, including copies of the canceled checks and pay slips or other documentation verifying payment, showing legal deductions and the gross amount of each of the two lump sums: (a) the first lump sum comprising back pay and benefits; and (b) the second lump sum comprising interest;
4. A list of all Class Members who did not cash their respective settlement checks issued by Butterball;
5. Documentation that Butterball reviewed and corrected its applicant selection procedures, including the description of any modification made, if needed, to ensure that Violation 1 of Part II of this Agreement ceased and will not recur; and
6. Documentation of training that Butterball provided on its equal employment opportunity programs for all employees involved in Butterball's application/selection and hiring processes, including the date(s) of training, description of training to include agenda and training materials, cost of training, and names and titles of recipients.

The **third report** will cover the 12-month period after the date of which the Regional Director, OFCCP, signs this Agreement and shall be mailed 60 days after the close of that 12-month period. The third report will contain the following information:

1. For 8A Laborer job group positions during the reporting period: (a) the total number of female and male 8A applicants, (b) the total number of placements, broken down by gender; (c) the results of Butterball's analysis as to whether its total selection process has an adverse effect by gender, as defined in 41 CFR 60-3.4D; and (d) records or other information showing which components of the selection process have an adverse impact in accordance with 41 CFR 3.15A (2);
2. If the total selection process has an adverse impact, as defined in 41 CFR 60-3.4D: (a) the results of Butterball's evaluation of the individual components of the selection process for adverse impact; and (b) the actions taken and any planned actions by Butterball, where

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action is appropriate, after determining that any component of the selection process has an adverse impact by gender;

3. List of applicants for 8A Laborer Job Group covering the period indicated above. The report will include, at a minimum, the following: applicant name, gender, date of application, hired or not hired, date of hire, and reason not hired, where appropriate; and
4. A description of the process Butterball utilized to assess efforts to afford equal employment opportunities to minorities and females, including the degree to which equal employment and organizational objectives are attained. If the process results in identified and unmet utilization goals, include an account of good faith efforts made to remove identified barriers, expand employment opportunities, and produce measurable results, as specified in the implementing regulations at 41 CFR 60-2.17(b), (c) and (d).

TERMINATION DATE:

This Agreement will expire 90 days after OFCCP receives the third and final report required in Part III above or on the date that the District Director gives notice to Butterball that Butterball has satisfied its reporting requirements, whichever occurs earlier, unless OFCCP notifies Butterball in writing prior to the end of the 90-day period that Butterball has not satisfied its reporting requirements pursuant to this Agreement.

INTEGRATION CLAUSE: This Agreement represents the full Agreement between Butterball and the OFCCP pertaining to the Compliance Evaluation of Butterball and this Agreement supersedes any other agreements, oral or written. In signing this Agreement, neither Butterball nor the OFCCP relies upon any promise, representation of fact or law, or other inducement that is not expressed in this Agreement. This Agreement may be modified only by written agreement of the Parties affected and may not be modified by any oral agreement.

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PART IV: Signatures

The person signing this Conciliation Agreement on behalf of Butterball, LLC personally warrants that he is fully authorized to do so, that Butterball, LLC has entered into this Conciliation Agreement voluntarily and with full knowledge of the effect thereof, and that execution of this Agreement is fully binding on Butterball, LLC. This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Butterball, LLC.

DATE: 2/1/13

(6), (7)(C)

Rod K. Brenneman
President & Chief Executive Officer
Butterball, LLC
One Butterball Lane
Garner, North Carolina 27529
LEGAL REVIEW: [Signature]

DATE: 2/8/13

(6), (7)(C)

Jacqueline Singh
Acting Assistant District Director—Raleigh
Office of Federal Contract Compliance
Programs

DATE: 2/12/2013

(6), (7)(C)

Pamela Quinn
District Director—Charlotte
Office of Federal Contract Compliance
Programs

Date: 2/19/2013

(6), (7)(C)

Evelyn Teague
Regional Director—Southeast
Office of Federal Contract Compliance
Programs

QUALIFIED CLASS MEMBERS



QUALIFIED CLASS MEMBERS

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QUALIFIED CLASS MEMBERS

(b), (7)(C)

NOTICE TO CLASS MEMBERS

[Date]

Butterball, LLC (hereinafter Butterball) and the United States Department of Labor's Office of Federal Contract Compliance Programs have entered into a Conciliation Agreement to resolve alleged disparities in placing applicants into 8A Laborer job group positions during the period January 1, 2008 through December 31, 2008. You were identified as a candidate for such a position during that period.

As a part of this Agreement, you are eligible for a distribution of no less than \$143.48, subject to all lawful payroll deductions. Under the terms of this Agreement, you may receive the award after the process of locating eligible candidates has been completed in approximately seven months from the date of this letter. To be able to participate in this settlement, you must complete, sign and, no later than 30 days after the date shown above on this Notice, return to the following address in the enclosed postage-paid self-addressed envelope **BOTH** of the documents sent with this Notice: the (1) Placement Interest Verification Form and (2) Release of Claims under the Executive Order:

**List Contact Information Here
To be determined**

In addition to the monetary payment, Butterball will be making placements into 8A Laborer job group positions to some individuals who are receiving this Notice. It is not certain that you will receive such a job offer. However, if you are interested in being placed into the 8A Laborer job group by Butterball please indicate so on the enclosed "Placement Interest Verification Form."

If you fail to respond within the 30-day period you will not be entitled to receive any monetary distribution and you will not be considered for placement into the 8A Laborer job group under this Agreement. You are eligible for a monetary distribution even if you are not currently interested in employment with Butterball.

By entering into this Agreement, Butterball has not admitted nor has there been any adjudicated finding that Butterball violated any laws.

If you have any questions, you may contact _____ at (919) 255-7919. If you do not reach _____ immediately, your call will be returned as soon as possible.

Sincerely,

Rod K. Brenneman
President & Chief Executive Officer
Butterball, LLC

Enclosures: Placement Interest Verification Form
Release of Claims under the Executive Order

PLACEMENT INTEREST VERIFICATION FORM

[Date]

You must complete all sections of this form and the "Release of Claims under the Executive Order" in order to be eligible for the monetary distribution and/or placement opportunities under the terms of the Conciliation Agreement between Butterball, LLC (hereinafter Butterball), and the United States Department of Labor's Office of Federal Contract Compliance Programs (hereinafter OFCCP). Please print legibly and sign your name where indicated.

Name: _____

I confirm that the address on the cover letter is correct.

The address on the cover letter is not correct. My correct address and telephone number are:

Address: _____

Telephone Number: _____

Notify Butterball at the address below if your address changes within the next 12 months.

Your Social Security Number is required for tax purposes: _____ - _____ - _____

Please check whether you are currently interested in an 8A Laborer job group position by Butterball. If you complete and return the "Placement Interest Verification Form," you are eligible for the monetary distribution, whether or not you are interested at this time in placement in an 8A Laborer job group position by Butterball.

Yes, I am interested in being placed in a job group 8A Laborer position by Butterball.

No, I am not interested in being placed in a job group 8A Laborer position by Butterball.

You must complete all sections of this form or it will be disregarded and you will not be eligible to participate in the settlement between Butterball and OFCCP. Mail this completed form and the signed "Release of Claims under the Executive Order" in the enclosed envelope within 30 days of the date shown on the top of this form to the following address:

**List Contact Information Here
To be determined**

"I certify that the information I have provided above is true and correct."

Signature

Date

RELEASE OF CLAIMS UNDER THE EXECUTIVE ORDER

In consideration of the payment to me of at least \$143.48 (minus deductions required by law) by Butterball, LLC (hereinafter Butterball) which I agree is acceptable, and also in consideration of the Conciliation Agreement between Butterball and the Office of Federal Contract Compliance Programs (hereinafter OFCCP), I _____ agree to the following:

I.

I understand that the amount of \$143.48 set forth above is the minimum gross amount of my portion of the monetary settlement between OFCCP and Butterball, and that the actual payment to me will be reduced, in part, to account for legally required payroll deductions such as income tax withholding and Social Security contributions. I understand that this payment will be reflected on an Internal Revenue Service Form W-2 and a Form 1099 at the end of the calendar year in which the payment is made. Monies reported on the Form 1099 will not be reduced for taxes or other payroll deductions and I understand that I may owe income taxes on the amounts reported to me on the Form 1099.

II.

In exchange for the monetary amount set forth above, I hereby waive, release and forever discharge Butterball, its predecessors, related entities, subsidiaries, and organizations, and its and their directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to my placement or nonplacement into job group 8A Laborer prior to the effective date of the Release.

III.

I understand that Butterball denies that it treated me unlawfully or unfairly in any way and that Butterball entered into the above-referenced Conciliation Agreement with OFCCP in the spirit of conciliation and to bring closure to the compliance evaluation initiated by OFCCP on May 7, 2009. I further agree that the payment of the aforesaid sum by Butterball to me is not to be construed as an admission of any liability by Butterball.

IV.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors. I further declare that I have decided of my own free will to sign this Release.

V.

I understand that if I do not sign this Release and return it and the "Placement Interest Verification Form" to Butterball at the address shown below by mail or by other delivery method within 30 days of the date at the top of the "Placement Interest Verification Form," I will not be entitled to receive any of the financial or other relief provided in the Conciliation Agreement.

**List Contact Information Here
To be determined**

IN WITNESS WHEREOF, I have set my hand to this _____ day of _____, _____.
Day Month Year

Signature