

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
and
HealthStream, Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the HealthStream, Inc. (HealthStream) corporate headquarters located at 209 10th Ave South, Ste 450, Nashville, Tennessee, beginning on July 30, 2019. OFCCP found that HealthStream failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA) and their respective implementing regulations at 41 CFR Sections 60-1, 60-2, 60-3, 60-300, and 60-741.

OFCCP notified HealthStream of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on January 11, 2021.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient consideration described in this document, OFCCP and HealthStream enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

II. General Terms and Conditions

1. In exchange for HealthStream's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violation(s) alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if HealthStream violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review HealthStream's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. HealthStream will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents OFCCP requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves HealthStream of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. HealthStream agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This Agreement constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
7. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after HealthStream submits its final progress report required in Section IV, below, unless OFCCP notifies HealthStream in writing before the expiration date that HealthStream has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that HealthStream has met all of its obligations under the Agreement.
10. If HealthStream violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34, 41 C.F.R. 60-300.63, and/or 41 C.F.R. 60-741.63 will govern:
 - i. OFCCP will send HealthStream a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. The HealthStream shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If HealthStream is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
 - iv. In the event of a breach of this Agreement by the HealthStream, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms in the Agreement.

- b. HealthStream may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, 41 C.F.R. 60-741.66, or 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
- 11. HealthStream does not admit any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
- 12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- 13. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
- 14. Each party shall bear its own fees and expenses with respect to this matter.
- 15. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation, or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
- 16. All references to "days" in this Agreement are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

III. Violations and Remedies

- 1. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, HealthStream failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-1.12(a) and (e). Specifically, HealthStream failed to keep personnel or employment records when it changed its human resources information system.(HRIS).

CORRECTIVE ACTION: HealthStream will keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-1.12(a) and (e), and will keep and preserve those records for a period of not less than two years from the date of the making of the record or the personnel action, whichever occurs later. However, if HealthStream has a total workforce of 150 or fewer employees or does not have a government contract of at least \$150,000, the minimum record retention period shall be one year from the making of the record or the personnel action, whichever occurs later, as permitted by 41 CFR 60-1.12(a).

- 2. **VIOLATION:** HealthStream failed to develop and maintain a written E.O. 11246 AAP, as required by 41 CFR 60-1.40.

CORRECTIVE ACTION: On December 18, 2019, HealthStream provided OFCCP with a written E.O. 11246 AAP. As long as it remains a covered federal contractor, HealthStream will continue to update and maintain a written E.O. 11246 AAP, as required by 41 CFR 60-1.40.

3. **VIOLATION:** HealthStream failed to submit an acceptable job group analysis as described in 41 CFR 60-2.12. Specifically, the job group analysis failed to combine job titles with similar content, wage rates, and opportunities.

CORRECTIVE ACTION: HealthStream will develop and include in the AAP a job group analysis that combines job titles at the establishment with similar content, wage rates, and opportunities, as required by 41 CFR 60-2.10(b)(1)(ii) and 60-2.12.

4. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, HealthStream failed to maintain and have available for inspection records or other information that discloses the impact its tests and other selection procedures had on employment opportunities of persons by identifiable race, sex, or ethnic group, in violation of 41 CFR 60-3.4A.

CORRECTIVE ACTION: HealthStream will collect, maintain, and have available for inspection records or other information that discloses the impact its tests and other selection procedures has on employment opportunities of persons by identifiable race, sex, or ethnic group. When the total selection process for a job has an adverse impact, the individual components of the selection process should be evaluated for adverse impact.

5. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, HealthStream failed to prepare and maintain an affirmative action program (AAP) for protected veterans and individuals with disabilities at each establishment, in violation of 41 CFR 60-300.40(b) and 41 CFR 60-741.40(b). Accordingly, HealthStream failed to comply with any of its AAP obligations set forth in Subpart C of the regulations, 41 CFR 60-300.40-45 and 41 CFR 60-741.40-45.

CORRECTIVE ACTION: On December 18, 2019, HealthStream provided OFCCP with AAPs for protected veterans and individuals with disabilities. As long as it remains a covered federal contractor, HealthStream will continue to develop and maintain affirmative action programs (AAPs) for protected veterans and individuals with disabilities at each establishment. The AAPs shall set forth HealthStream's policies and procedures in accordance with 41 CFR 300.40-45 and 41 CFR 60-741.40-45. These AAPs may be combined or kept separate. HealthStream will review and update annually its AAPs pursuant to 41 CFR 60-300.40(c) and 41 CFR 60-741.40(c), and will comply with all obligations set forth in Subpart C of the regulations, 41 CFR 60-300.40-45 and 41 CFR 60-741.40-45.

6. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, HealthStream failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-300.80(a) and 41 CFR 60-741.80(a). Specifically, HealthStream failed to keep personnel or employment records when it changed its human resources information system (HRIS).

CORRECTIVE ACTION: HealthStream will keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-300.80(a) and 41 CFR 60-741.80(a), and will keep and preserve those records specified in 41 CFR 60-300.80(b) and 41 CFR 60-741.80(b) for a period of three years from the date of the making of the record.

7. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, HealthStream failed to annually review the effectiveness of the outreach and recruitment efforts it took over the previous twelve months to identify and recruit qualified protected veterans and individuals with disabilities, as required by 41 CFR 60-300.44(f)(3) and 41 CFR 60-741.44(f)(3).

CORRECTIVE ACTION: HealthStream will annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f)(3) and 41 CFR 60-741.44(f)(3). Documentation of this review will include at a minimum the criteria used to evaluate the effectiveness of each effort and HealthStream's conclusion as to whether each effort was effective. Among these criteria will be the data collected pursuant to 60-300.44(k) and 60-741.44(k) for the current year and the two most recent previous years. If HealthStream concludes that the totality of its efforts were not effective in identifying and recruiting qualified protected veterans and individuals with disabilities, it will identify and implement alternative efforts such as those listed in 41 CFR 60-300.44(f)(1) or (f)(2) and 41 CFR 60-741.44(f)(1) or (f)(2).

IV. OFCCP Monitoring Period

1. **Recordkeeping.** HealthStream agrees to retain all records relevant to the violation(s) cited in Section III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. HealthStream will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.**
 - a. **Schedule and Instructions:** HealthStream agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

Progress Report 1: Due Monday, August 2, 2021.

Progress Report 2: Due on Tuesday, February 15, 2022, covering the period of July 1, 2021 through December 31, 2021.

Progress Report 3: Due on Wednesday, February 15, 2023, covering the period of January 1, 2022 through December 31, 2022.

HealthStream will submit reports to: **Ex (6), Ex (7)(C)** @dol.gov; **Ex (6), Ex (7)(C)** @dol.gov; and **Ex (6), Ex (7)(C)** @dol.gov.

HealthStream and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports HealthStream provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and the HealthStream believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, HealthStream will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will promptly notify HealthStream of the FOIA request and provide HealthStream an opportunity to object to disclosure. OFCCP will withhold disclosure of such reports to the maximum extent allowable by law.

- b. Corrective Actions for Violations 2, 3, 5, and 7: In progress reports 1 and 3, HealthStream will provide OFCCP with copies of its current year AAPs for E. O. 11246, Section 503, and VEVRAA.
 - c. Corrective Actions for Violations 1, 4, and 6: In progress reports 2 and 3, HealthStream will provide OFCCP with personnel activity data summarized by race/ethnicity, gender, and job group. Personnel activity data will include external applicants, hires, internal applicants, placements, and total terminations.
3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts HealthStream's final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify HealthStream in writing within sixty (60) days of the date of the final progress report that HealthStream has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies HealthStream within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines HealthStream has met all of its obligations under the Agreement.

V. SIGNATURES

The person signing this Agreement on behalf of HealthStream personally warrants that he or she is fully authorized to do so, that HealthStream has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on HealthStream.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and HealthStream Inc., 209 10th Ave South, Ste 450, Nashville, Tennessee.

Ex (6), Ex (7)(C)

Robert A. Frist, Jr. (Jan 20, 2021 11:14 CST)

Robert Frist, Jr.
CEO
HealthStream, Inc.

DATE: Jan 20, 2021

Ex (6), Ex (7)(C)

Ex (6), Ex (7)(E)

Compliance Officer
OFCCP

DATE: 01/21/2021

Ex (6), Ex (7)(C)

Jacqueline Ortiz-Baerga
Assistant District Director
OFCCP

DATE: 01/21/2021

Ex (6), Ex (7)(C)

E. Michelle Hernandez
District Director
OFCCP

DATE: 01/21/2021