

EARLY RESOLUTION CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

and

US FOODS, INC.

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs ("OFCCP") is currently evaluating the US Foods, Inc. ("US Foods") establishments located at 2850 Selma Highway, Montgomery, AL and 7950 Spence Road, Fairburn, GA. OFCCP is alleging that US Foods was not in compliance with Executive Order 11246 as amended ("E.O. 11246" or "Executive Order"), and its implementing regulations at 41 Code of Federal Regulations (CFR) Parts 60-1 through 60-3 at its Montgomery location. In the interest of resolving the violations without engaging in enforcement proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and US Foods enter into this Early Resolution Conciliation Agreement ("Agreement"), and the parties agree to all the terms therein. The attachments to this Agreement are deemed incorporated into this Agreement.

PART II. GENERAL TERMS AND CONDITIONS

1. In exchange for US Foods' fulfillment of all obligations of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246, based on the violations described in more detail in Part IV below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part IV if US Foods violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations, including during the exemption period described in Part III if OFCCP deems that US Foods is in breach of the Agreement. In exchange for US Foods' fulfillment of all obligations of the Agreement, OFCCP further agrees not to initiate any new audits at the establishments included in Attachment A ("Covered Facilities") until after US Foods submits the final progress report described in Part VII of this Agreement and OFCCP confirms to US Foods that it has fully complied with the terms of this Agreement, or five years from the Effective Date of this Agreement, whichever is later.
2. US Foods agrees that OFCCP may review its 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 US Foods' compliance. US Foods will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents required.

3. This Agreement does not constitute an admission by US Foods of any violation of or noncompliance with E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended ("Section 503"), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA") and their implementing regulations at 41 C.F.R. Part 60, nor has there been an adjudicated finding that US Foods violated E.O. 11246, Section 503, VEVRAA and their implementing regulations at 41 C.F.R. Part 60.
4. US Foods understands that nothing in this Agreement relieves US Foods of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations at 41 CFR 60, and other applicable equal employment opportunity laws.
5. US Foods 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.
6. OFCCP and US Foods ("the parties") understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, 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.
8. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement becomes effective on the day it is signed by the acting Southeast Regional Director (the "Effective Date").
10. This Agreement will expire sixty (60) days after US Foods submits the final progress report required in Part VII below, unless OFCCP notifies US Foods in writing prior to the expiration date that US Foods has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date OFCCP determines

US Foods has met all of its obligations under the Agreement, or for at least five years, whichever is later (referred to herein as the “scheduling exemption period”).

11. Each party shall bear its own fees and expenses with respect to this matter.
12. If US Foods violates this Conciliation Agreement.
 - A. The procedures set forth at 41 CFR 60-1.34 will govern:
 - i. OFCCP will send US Foods a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. US Foods will have 15 days from receipt of such notice to demonstrate in writing that it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If US Foods 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 for those establishments with an open review at the time of this Agreement.
 - iv. In the event of a breach of this Agreement by US Foods, 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 agreed to in the Agreement.
 - B. US Foods may be subject to the sanctions set forth in Section 209 of the Executive Order, and/or other appropriate relief for violation of this Agreement.
13. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the Office of Federal Contract Compliance Programs, and cannot be used as evidence that US Foods is not in compliance with any applicable federal, state, or local laws, including but not limited to E.O. 11246, Section 503, and VEVRAA. US Foods and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
14. 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 either party’s policies, practices, or positions 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.

15. All references to "days" in this Agreement, including references in the Timeline in Attachment D, 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.
16. This agreement is between OFCCP and US Foods (as collectively defined above) and does not confer any rights or benefits to any other parties, other than any successor to, parent of, or subsidiary of US Foods.

PART III. SPECIAL TERMS AND CONDITIONS

1. US Foods agrees to an in-depth review of the facilities listed on Attachment A to ensure non-discriminatory selection practices. If violations similar to those identified in Part IV of this Agreement are identified, US Foods agrees to implement corrective actions at all of its establishments where violations were found, consistent with the remedy provisions of this Agreement.
2. The five-year scheduling exemption is limited to regularly scheduled compliance evaluations and OFCCP retains the right to investigate complaints of discrimination at establishments covered by the Agreement under E.O. 11246, Section 503, and VEVRAA. This exemption applies to the locations listed on Attachment A only.
3. If US Foods violates the terms of the Agreement, OFCCP reserves the right to bring an enforcement action under 41 CFR 60-1.34 and the five-year scheduling exemption will be void.
4. This Agreement will not relieve US Foods from its annual ongoing OFCCP requirements of equal employment opportunity through affirmative action and non-discrimination across its entire workforce, including the monitoring of an up-to-date AAP and personnel activity.
5. This Agreement between US Foods and OFCCP does not provide US Foods with any grant of immunity or protection from its requirement to comply with Executive Order 11246.
6. This Agreement between US Foods and OFCCP may be modified upon the written consent of the parties, and such consent will not be unreasonably withheld.

7. This Agreement is between OFCCP and US Foods (as collectively defined above) and does not confer any rights or benefits to any other parties, other than any successor to, parent of, or subsidiary of US Foods or OFCCP. In case of a disagreement over the implementation of this Agreement, the parties agree to negotiate in good faith prior to OFCCP instituting any enforcement proceedings

PART IV. ALLEGED DISCRIMINATION VIOLATIONS

1. Sex Discrimination in Hiring

Montgomery, AL: OFCCP alleges that US Foods discriminated against female applicants for Selector, Night (Full-time) positions in violation of E.O. 11246 and its implementing regulations at 41 CFR 60-1.4(a)(1). Specifically, OFCCP found statistically significant differences in the hiring rates of female applicants for Selector, Night (Full-time) positions when compared to similarly qualified male applicants during the January 1, 2018 through June 30, 2019 time period, resulting in a shortfall of 6 female hires. OFCCP found that US Foods did not hire any of the 40 female applicants for the Selector, Night (Full-time) position.

2. Race Discrimination in Hiring

Montgomery, AL: OFCCP alleges that US Foods discriminated against Black applicants for Delivery Driver positions in violation of E.O. 11246 and its implementing regulations at 41 CFR 60-1.4(a)(1). Specifically, OFCCP found statistically significant differences in the hiring rates of Black applicants for Delivery Driver positions when compared to similarly qualified White applicants during the January 1, 2018 through June 30, 2019 time period, resulting in a shortfall of 8 Black hires.

PART V. FINANCIAL and NONFINANCIAL REMEDY

1. Settlement Fund

- A. **Specific Settlement Fund Amounts.** The total Settlement Fund amount includes \$167,125.00 in back pay and \$7,875.00 in interest to resolve specific violations set forth above, as follows:
 - i. **Finding 1 (Selector, Night, Full Time):** \$64,074.73 in back pay and \$3,019.23 in interest
 - ii. **Finding 2 (Delivery Driver):** \$103,050.27 in back pay and \$4,855.77 in interest

The Settlement Fund is a negotiated amount that represents estimated back pay and accrued interest. US Foods' share of statutory contributions and taxes on the portion representing back pay (such as FICA, FUTA, and federal, state and/or local taxes) is not part of the Settlement Fund.

2. Notice Process

- A. **OFCCP and US Foods Obligations under the Notice Process.** The notice process set forth in this Agreement is intended to provide Affected Applicants identified as having been affected by the selection practices at issue, a meaningful opportunity to understand their rights and obligations and act on them in a timely manner. As specified in Attachment D ("Timeline") and as otherwise necessary to fulfill this Agreement, US Foods and OFCCP will confer by phone and/or by email on the notice process to determine how best to carry out the Notice provisions of this Agreement and to decide whether any activity, deadline, or document should be modified. OFCCP and US Foods agree not to withhold consent to reasonable modifications proposed by either party.
- B. **Notice Documents.** US Foods will distribute the Notice Documents in Attachment C to the Affected Applicants identified in Attachment B, as specified in the Timeline. The Notice Documents include the Notice, Interest Form, and the Release Form. The Notice Documents will make clear the information about the settlement is being provided by or on behalf of the U.S. Department of Labor.
- C. **Timeline.** Attachment D sets forth the agreed Timeline for Notice and for the parties' other obligations under this Agreement. The parties will confer on any reasonable modifications to the Timeline proposed by either party.
- D. **Distribution of Mail Notice to Affected Applicants.** Pursuant to the dates set forth in the Timeline, US Foods will notify the Applicants listed in Attachment B ("Affected Applicants") of the terms of this Agreement by first-class mail. US Foods will provide the Notice, Interest Form, and the Release Form (included in Attachments C-1, C-2, and C-3); and a postage paid return envelope. If an envelope from the initial mail notice is returned with a forwarding address, US Foods will re-mail the Notice Documents within five (5) days of receipt of the forwarding address.

Based on the response to the initial mail notice, the parties will confer by the date set forth in the Timeline to assess the results of the initial mail notice and to ensure that the second mail notice maximizes the potential response rate. US Foods will conduct a second mailing of the documents described above for Affected Applicants with valid addresses who fail to respond to the first mail notice.

- E. **Notice Deadline.** The final deadline for any Affected Applicant to respond to the Notice is set forth in the Timeline. The parties will prominently display this deadline on all materials they distribute in paper or online form regarding this Agreement, and explain that failure to respond by this deadline will result in a forfeiture of any relief provided by this Agreement.
- F. **Eligibility.** All Affected Applicants (listed on Attachment B) who sign and return the Interest and Release forms to US Foods by the deadline set forth in the notice documents (“Eligible Applicants”) will be eligible for a payment. If an Affected Applicant receives but does not return the Release and Interest Forms to US Foods within the prescribed deadline, the Affected Applicant will no longer be entitled to any relief pursuant to this Agreement.

By the date indicated in the Timeline, US Foods will provide OFCCP with a list of the Eligible Applicants. OFCCP will approve the final list of Eligible Applicants (“Final List”) and/or discuss with US Foods any issues necessary to finalize the list, such as the inclusion or exclusion of certain individuals. Either party may identify potentially eligible Affected Applicants who may have been erroneously excluded from the original or any subsequent list. OFCCP shall make the final determinations of eligibility but will make every effort to negotiate in good faith to resolve any dispute about the Final List. US Foods will provide to OFCCP any information necessary to determine the Final List. All Eligible Applicants on the Final List are entitled to their share of the monetary settlement regardless of whether they are currently interested in employment with US Foods.

- G. **Exchange of Information Regarding Affected Applicants.** US Foods and OFCCP will timely exchange information regarding Affected Applicants, including updated contact information and the results of any technical assistance provided.
- H. **US Foods’ Expenses.** US Foods will pay all expenses associated with carrying out its duties pursuant to this Section, from funds separate and apart from the amount designated in this Agreement for the Settlement Fund.

3. Allocation

- A. **Total Amount to be Allocated.** The back pay and interest amounts of the Settlement Fund will be distributed among the Eligible Applicants on the Final List in equal shares for the position to which they applied (Selector, Night or Delivery Driver). Individual shares will include appropriate deductions for each individual’s share of payroll deductions required by law on the portion representing back pay only (such as federal, state and/or local taxes and the employers and Eligible Applicants’ share of FICA and FUTA taxes).

- B. Payments to Eligible Applicants.** US Foods will distribute the individual shares, with applicable withholdings required by law on the portion representing back pay only, to each Eligible Applicant on the Final List. OFCCP will receive timely documentation of all payments made and any payments returned undelivered or any checks not cashed, as set forth on the Timeline. By the date indicated in the Timeline, US Foods will notify OFCCP of the receipt of a check to an Eligible Applicant that was returned as undeliverable. US Foods will notify OFCCP via e-mail sent to Assistant District Director Katie Course at Ex (6), Ex (7)(C)@dol.gov. Pursuant to the date specified in the Timeline, OFCCP will attempt to locate the Eligible Applicant, and if OFCCP obtains an alternate address in the designated time period, OFCCP will advise US Foods of the address and US Foods will re-mail the check to an alternate or corrected address. Any check that remains uncashed 180 days after the initial date the check was mailed to the Eligible Applicant will be void. With respect to any uncashed funds, US Foods will make a second distribution, in equal shares, to all Eligible Applicants who cashed their first check, if the distribution exceeds \$30 for each Eligible Applicant. US Foods will mail the second distribution to such Eligible Applicants by the date specified in the Timeline. If the uncashed funds do not exceed \$30 for each Eligible Applicant, US Foods will use remaining amount towards staff training on its OFCCP obligations.
- C. Tax Payments, Forms and Reporting.** US Foods will pay US Foods' share of social security withholdings, and any other tax payments required by law from additional funds separate from the Settlement Fund. US Foods shall mail to each Eligible Applicant an IRS Form W-2 for that portion of the payment representing back pay and an IRS Form 1099 for that portion of the payment representing interest. These IRS forms will be provided to the Eligible Applicants in the time required by law. No Eligible Applicants will be required to complete a W-4 or W-9 in order to receive payments under this settlement.
- D. Documentation of Payments.** By the deadline set forth in the Timeline, US Foods will provide OFCCP with electronic documentation of all payments to Eligible Applicants, including the amounts paid, the date payment was sent, the date the check was cashed, and any uncashed or returned checks. In the event of a second distribution, US Foods will provide a similar documentation on the second distribution.

4. Nonmonetary Relief

- A. Job Opportunities.** As vacancies occur in Montgomery, AL for the Selector, Night (Full-time) and Delivery Driver positions, US Foods shall make bona fide job offers to Eligible Applicants who have expressed interest in employment and are not employed by US Foods at the time of the job offer until six (6) females are hired into the Selector, Night (Full-time) position and eight (8) Blacks are hired into the Delivery Driver position, or the list of interested Eligible Applicants for the position is exhausted, whichever comes first.

Eligible Applicants will have priority over all other candidates for hire into Selector, Night (Full-time) and Delivery Driver positions. As vacancies occur in the Selector, Night (Full-time) and Delivery Driver positions, US Foods shall contact the Eligible Applicants with a conditional written job offer in the order they submitted their Interest Forms, or, if the Forms were received on the same day, in the order of their original application date. Eligible Applicants who receive a conditional offer must successfully pass a background check and drug screen and must accept the conditions of the job according to the job posting and description.

The report-to-work date for Eligible Applicants hired pursuant to this Agreement shall be no later than fourteen (14) days after the date the written job offer is accepted. The Eligible Applicant must report to work on the day designated or provide US Foods notice of good cause for their absence on or before that date. If good cause is provided, the Eligible Applicant must report to work within five (5) days of the original designated start date. Otherwise, US Foods may withdraw the job offer and shall be under no obligation to hire the Eligible Applicant under this Agreement, but remains obligated to hire Eligible Applicants until six (6) Selector, Night (Full-time) positions and eight (8) Delivery Driver positions are filled or the list of Eligible Applicants for the position is exhausted, whichever comes first.

US Foods agrees to pay Eligible Applicants hired under this provision at least the current entry-level wage for the position hired into, and provide all regular and on-the-job training. All hired Eligible Applicants shall receive retroactive seniority in the position hired into to the date of their original application for job retention purposes only, to the extent that seniority is a factor in layoff decisions.

- B. **Recordkeeping.** Pursuant to 41 C.F.R. § 60-1.12, US Foods will ensure its managers properly document the results of hiring decisions made pursuant to the revised hiring policies and procedures, and properly maintain all records on the revised policies and procedures including any associated underlying data and information such as HRIS (Human Resources and Information System) and payroll data, job applications, applicant and hire data, disposition codes, and personnel records, and any other records or data used to generate the required reports. US Foods will provide documentation of the job offers and hires to OFCCP, including job offers made, reasons for rejection, and terminations of Eligible Applicants hired during the monitoring period as set forth below.

PART VI. ADDITIONAL RELIEF PER EARLY RESOLUTION CONCILIATION AGREEMENT

1. The Agreement will be in effect for a five-year period beginning on the Effective Date of the Agreement.

2. To proactively facilitate compliance with Executive Order 11246, US Foods will take the steps described below to enhance its compliance with Executive Order 11246 in the selection process for Selectors and Delivery Drivers at the Covered Facilities to ensure nondiscriminatory selection practices.
3. As part of an ERCA in the Southeast that included facilities in Lexington, SC; Port Orange, FL; Tampa, FL; Fort Mill, SC; Zebulon, NC; and Manassas, VA, US Foods previously engaged a Human Resources Consultant ("Consultant") for the purpose of evaluating the policies and procedures related to the hiring process for the Selector job title. The Consultant thoroughly evaluated the hiring process for the Selector job title, conducted site visits and made recommendations on how to improve the hiring process to increase the number of female hires in the Selector job title. The Consultant presented his findings and recommendations to OFCCP and OFCCP's Southeast Regional Director approved the recommendations.
4. US Foods will implement the same recommendations regarding the Selector positions from the prior ERCA at the Covered Facilities within one hundred and eighty (180) days. Further, selection officials at the Covered Facilities will review the Consultant's report from the prior ERCA for the purpose of identifying any best practices that can also apply to the Delivery Driver hiring process. US Foods will implement these recommendations, as they apply to the Delivery Driver hiring process, along with any other modifications to the hiring process for the Delivery Driver position identified by US Foods, within one hundred and eighty (180) days. Should implementation of the recommendations (or segments thereof) for either position require more than one hundred and eighty (180) days, US Foods and OFCCP will work together in good faith to establish reasonable timelines for implementation.
5. US Foods will conduct a training program to be presented to all individuals involved in the Selector or Delivery Driver hiring process (i.e., recruiting, screening, interviewing, selection, rejection, and hiring) at US Foods Covered Facilities. Individuals attending this training will include, at a minimum, all human resources recruiters, managers, and directors; and supervisors involved in the Selector or Delivery Driver hiring process. The training program will include instruction on the Consultant's recommendations that US Foods agrees to implement. The training will be mandatory for the personnel identified above, and any employees who are not able to attend the training will be required to listen to a recording of the training.
6. US Foods, in consultation with the Consultant and/or additional resources, will monitor the implementation of and results achieved from the revised Selector and Delivery Driver hiring process, and will provide reports to OFCCP, as described in the Timeline. The reports will indicate whether the revised hiring process has been fully implemented and whether the individuals involved in the revised hiring process are following the revised

policies and procedures. The monitoring reports will also confirm that mid-year monitoring was conducted by US Foods and include the recommendations, if any, made by the consultant to alter or change the revised hiring process, its implementation, or training, to ensure a nondiscriminatory hiring process.

7. US Foods will conduct adverse impact analyses of Selector and Delivery Driver hiring at each of the Covered Facilities consistent with the requirements of 41 CFR 60-3.4 and 3.15 on at least a semi-annual basis. If US Foods finds statistically significant disparities in hiring Selectors or Delivery Drivers at any facility, US Foods shall investigate the cause of the disparities and take appropriate action, such as providing refresher training or making additional changes to the hiring process. US Foods will implement remedies to correct any statistically significant disparities in hiring and report to OFCCP on actions taken, as provided in the Timeline.
8. Pursuant to the Timeline, US Foods and OFCCP will annually discuss US Foods' progress in implementing the adopted recommendations, discuss concerns, and continue to chart a path toward a mutually-beneficial partnership. The parties will jointly agree on the timing, location (including telephonic), and structure of the meeting to facilitate maximum exchange of ideas. Should the parties deem a meeting unnecessary, it can be waived by mutual agreement. Moreover, in recognition of the time necessary to fully implement the Consultant's recommendations, provide training to hiring managers and human resources staff, monitor the revised hiring process, and make additional changes or refinements to the revised hiring process that may be warranted, OFCCP agrees not to conduct compliance evaluations of the Covered Facilities for the five-year period, other than to investigate complaints filed by applicants or employees under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act, and VEVRAA.

PART VII. REPORTS REQUIRED DURING OFCCP MONITORING PERIOD

1. **Recordkeeping.** US Foods agrees to retain all records relevant to the violations cited in Part IV above and the reports submitted in compliance with Paragraph 3.B, below. These records include underlying data and information such as HRIS and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. US Foods will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Confidentiality.** US Foods 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 US Foods provides in accordance with this Agreement are customarily kept private or closely-held, and US Foods believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, US Foods will provide such

reports to OFCCP marked as "Confidential." In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

3. Contractor Reports.

A. Schedule and Instructions. US Foods will submit the documents and reports described below via email to Katie Course at **Ex (6), Ex (7)(C)**@dol.gov. The coverage period and due dates for the reports are outlined in the Attached Timeline.

B. Content of Reports. US Foods will submit the following in the progress reports for the Covered Facilities, as applicable:

- i. Documentation of monetary payments to all Eligible Applicants as specified in Part V. The documentation must include the names of the Eligible Applicants who were paid, and, for each Eligible Applicant, the number and the amount of the check and the date the check cleared the bank. US Foods must provide OFCCP with copies of all canceled checks upon request;
- ii. Documentation of specific job offers and hiring activity for Eligible Applicants who were offered positions as Selectors or Delivery Drivers in accordance with this Agreement, including name, date of offer, date the offer was accepted or rejected, date of hire, start date (if other than date of hire), job title hired into and rate of pay, and proof of retroactive seniority;
- iii. For Eligible Applicants who were considered for employment but were not hired, US Foods will provide the reason for non-placement along with all relevant documentation (e.g., documentation that the Eligible Applicant declined the offer);
- iv. Documentation of Eligible Applicants who were hired and later terminated during the life of this Agreement and the reason for the termination; and
- v. The total number of applicants and hires and the breakdown by gender of applicants and hires for Selector positions and the breakdown by race of applicants and hires for Delivery Driver positions during the reporting period, including all temporary, part time, and seasonal workers who were referred to and/or assigned to work at US Foods by a staffing firm or employment agency.

C. Affirmative Action Programs. US Foods will submit its Affirmative Action Plan narratives for E.O. 11246, Section 503 and VEVRAA Affirmative Action Plans at the Covered Facilities based on the schedule included in the Attached Timeline (Attachment D).

- D. Reports on Modifications to Personnel Practices.** In each progress report, US Foods will report on all modifications of personnel practices made to date pursuant to the Agreement and provide documentation of its compliance with the remedy provisions of this Agreement. If any of the relevant documents such as job postings or policies have not been modified since being provided during a prior reporting period, a statement to that effect is sufficient.

TERMINATION DATE: This Agreement will terminate pursuant to the terms in Part II, Paragraph 10.

Attachments

- A. List of Covered Establishments and Positions
- B. List of Affected Applicants
- C. Notice Documents
 - C-1 Notice
 - C-2 Information Verification and Employment Interest Form
 - C-3 Release Form
- D. Timeline

PART VIII. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and US Foods, Inc. (Montgomery, AL; Fairburn, GA; and Oklahoma City, OK).

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

Andrew Johnstone
Associate General Counsel -
Litigation, Employment & Risk Management
US Foods, Inc.

DATE: 3 / 11 / 21

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

Melissa L. Speer
Acting Regional Director- Southeast
Office of Federal Contract Compliance Programs

DATE: 3/12/2021

Attachment A: List of Covered Establishments and Positions

US Foods Incorporated Montgomery
2850 Selma Highway
Montgomery, Alabama 36108-5036
Positions: Delivery Driver and Selector

US Foods Incorporated Atlanta
7950 Spence Road
Fairburn, Georgia 30213-2907
Positions: Delivery Driver and Selector

US Foods Incorporated Oklahoma City
10211 North I-35 Service Road
Oklahoma City, Oklahoma 73131
Positions: Delivery Driver and Selector

Attachment B: List of Affected Applicants

Selector, Night (Full-time)

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Delivery Driver

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Attachment C1: Notice

We are writing to provide information about a legal settlement between the U.S. Department of Labor and US Foods, Inc. ("US Foods") that may benefit you. This settlement involves allegations of hiring discrimination and our records show that you may be one of the applicants covered by the settlement. If you take the steps described in this Notice by the deadline below, you may be eligible for a payment of back wages and/or a job with US Foods.

ARE YOU AFFECTED?

Female applicants who applied and were not selected for Selector, Night full-time positions at US Foods, 2850 Selma Highway, Montgomery, AL between January 1, 2018 through June 30, 2019 are covered by this settlement.

OR

Black applicants who applied and were not selected for Delivery Driver positions at US Foods, 2850 Selma Highway, Montgomery, AL between January 1, 2018 through June 30, 2019 are covered by this settlement.

WHAT IS THIS SETTLEMENT ABOUT?

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) conducted a review of US Foods' selection practices during January 1, 2018 through June 30, 2019. OFCCP is the government agency responsible for enforcing the nondiscrimination and equal employment opportunity through affirmative action requirements that apply to federal contractors. OFCCP alleges that US Foods discriminated against Female applicants in hiring for Selector, Night full-time positions and Black applicants in hiring for Delivery Driver positions. US Foods denies those claims. Ultimately, OFCCP and US Foods have agreed to resolve the issue through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement between US Foods and OFCCP. By entering into the Conciliation Agreement, US Foods has not admitted nor has there been any adjudicated finding that US Foods violated any laws when you were not hired for the position for which you applied.

As a result, affected applicants may be eligible for back pay and job offers.

WHAT DOES THIS MEAN FOR YOU?

Because you applied for employment during the relevant time frame, and were not selected, this settlement may provide you with some specific benefits:

- (1) **You may be eligible to receive a payment of at least \$1,677.34** (before adjustments for taxes and payroll contributions) for Selector applicants or \$1,185.78 (before adjustments for taxes and payroll contributions) for Delivery Driver applicants. This amount represents your share of back wages and other payments US Foods is making to settle the matter. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions.
- (2) **You may be eligible for a job offer.** US Foods will be making job offers to some of the individuals receiving this notification. It is not guaranteed that you will receive a job offer. If you are interested in a job with US Foods, please express your interest on the enclosed Interest Form. To be hired, you must complete an electronic employment application, successfully pass a background check and drug screen, and accept the conditions of the job according to the job posting and description.

To get these benefits, you will need to release or agree to give up certain legal claims, and sign the enclosed Information Verification and Employment Interest Form and Release of Claims Under Executive Order 11246 (“Release”).

WHAT IS YOUR NEXT STEP?

You should read this Notice and the enclosed Information and Release forms.

Please do not ignore these forms or throw them away. Otherwise, you could miss an opportunity to receive money and a job from US Foods.

To be eligible for a payment and/or a job opportunity, you must complete, sign, and return **both** the following enclosed forms, (1) the Information Verification and Employment Interest Form and (2) the Release to:

[Name and address for return of forms or instructions/email for electronic submission]

DEADLINE: The forms must be received by [INSERT specific date for First or Second Notice deadline date in Attachment D]

You may receive some or all of these benefits only if these forms confirm that you are one of the individuals covered by the settlement. After correct completion and submission of these forms, a final decision will be made about your eligibility.

If you fail to return both of the required forms by the deadline above, or if your forms do not verify your eligibility, you will not be eligible to receive any money, consideration for job opportunities or any other benefits that are available to you by the settlement.

HOW CAN YOU GET MORE INFORMATION?

If you have any questions, you may contact Compliance Officer **Ex (6), Ex (7)(E)** via email at **Ex (6), Ex (7)(C)**@dol.gov. You can also visit the U.S. Department of Labor web site about this case at www.dol.gov/olc/patrol.

Attachment C-2: Information Verification and Employment Interest Form

Information Verification and Employment Interest Form

You must complete this form in order to be eligible for the monetary payment and/or employment opportunities under the terms of the Conciliation Agreement (“Agreement”) between US Foods and the U.S. Department of Labor’s Office of Federal Contract Compliance Programs. Please print legibly, except for the signature.

Name: _____

Address: _____

Telephone Numbers:

Home _____ Cell _____ Work _____

Email Address: _____

Notify US Foods at the address below if your address or phone number changes within the next twelve (12) months.

INSERT
CLAIMS ADMINISTRATOR
ADDRESS

Your full **9- digit** Social Security Number (to be used for tax purposes only): _____ - _____ - _____

For purposes of this settlement, it is necessary to verify your gender:

Female Male

For purposes of this settlement, it is necessary to verify your race:

Caucasian African American/Black Hispanic Asian American Indian/Alaska Native

Please indicate below whether you are currently interested in employment in the position you previously applied for with US Foods and if you have previously worked for US Foods. If you complete, sign, and return this Information Verification and Employment Interest Form, you remain eligible for the monetary payment whether or not you are interested in employment at this time.

-] Yes, I applied for and am still interested in employment in a Selector, Night (full-time) position
-] Yes, I applied for and am still interested in employment in a Delivery Driver position
-] No, I am not currently interested in employment with US Foods in a Selector, Night (full-time) or Delivery Driver position
-] I am currently employed by US Foods

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE CLAIMS ADMINISTRATOR BY [DATE], YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT OR BE TO BE CONSIDERED FOR A JOB OFFER UNDER THE TERMS OF THIS AGREEMENT.

I, _____, certify the above is true and correct.
(Print name)

Signature Date

Attachment C-3: Release Form

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY FROM THE SETTLEMENT.

This Release of Claims under Executive Order 11246 ("Release") is a legal document. The document states that in return for US Foods, Inc. ("US Foods") paying you money, you agree that you will not file any lawsuit against US Foods for alleged hiring discrimination under Executive Order 11246. It also says that US Foods does not admit it violated any laws enforced by OFCCP. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money.

In consideration of a payment of at least \$1,677.34 (before adjustments for taxes and payroll contributions) for Selector applicants or \$1,185.78 (before adjustments for taxes and payroll contributions) for Delivery Driver applicants by US Foods, Inc. to me, which I agree is acceptable, I (print name) _____ agree to the following:

I.

By signing this Release, I agree that I have been made whole for any claim that could have been brought under Executive Order 11246 relating to US Foods' hiring practices through the Effective Date of this Release. I hereby release US Foods, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its shareholders, owners, directors, officers, employees, agents, and assigns from any claim for additional make whole relief obtained through any action based on or involving US Foods' hiring practices through the Effective Date of this Release that could have been brought under Executive Order 11246. Here, make whole relief is defined as the total earnings lost, and includes: salary or wages, overtime, premium pay and shift differentials, incentive pay, raises, bonuses, lost sales commissions, cost-of-living increases, tips, medical and life insurance, fringe benefits, pensions, stock options, and awards.

II.

I understand that US Foods does not agree that it treated me unlawfully or unfairly in any way and that US Foods entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment described above to resolve alleged disparities in hiring and to resolve the matter without further legal proceedings in the compliance review initiated by OFCCP related to the facility covered by the

Conciliation Agreement. I further agree that the payment of the aforesaid sum by US Foods to me is not to be construed as an admission of any liability by US Foods.

III.

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 and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

IV.

I understand that if I do not sign this Release and return it to US Foods by the deadline listed on the Claim Form, I will not be entitled to receive any payment (less deductions required by law).

IN WITNESS WHEREOF, I have signed this document of my own free will.

Signature: _____ Date: _____

Printed Name: _____

Attachment D: Timeline

Notice and Settlement Distribution Timeline

	Company Name: US Foods Effective Date of Conciliation Agreement:		3/12/2021
	ACTION REQUIRED	Number of Days since Effective Date	Due Date
	A. Class Member List		
1	Within thirty (30) days after the Effective Date, US Foods will send copies of all of the Notice Documents, including a postage-paid return envelope, by first class mail to the best available mailing address for each Affected Applicant.	30	04/11/2021
2	If envelopes from the initial mail notice are returned with forwarding addresses, US Foods will re-mail the Notice Documents within five (5) days of receipt of the forwarding address.	-	TBD
3	Within seventy (70) days after the Effective Date, US Foods will send OFCCP a list of the Class Members who did not respond to the first Notice Documents, and notifies OFCCP of any deficiencies in submitted forms (missing signatures, etc.)	70	05/21/2021
4	Within ten (10) days of receiving the list from US Foods, OFCCP will search for updated information and provide it to US Foods, so US Foods can make the second mailing of the Notice Documents.	80	05/31/2021
5	A second mail notice will be sent not later than fifteen (15) calendar days to Affected Applicants for whom OFCCP found updated addresses who failed to respond to the first mail notice.	95	06/15/2021

6	Within one hundred twenty five (125) days of the Effective Date, all Class Members must return both the Interest Form and executed Release in order to participate in the settlement; OFCCP forwards any corrected forms for those who submitted initial forms that included deficiencies (e.g. missing signatures, missing SSN).	125	07/15/2021
7	Within fifteen (15) days of the latest response date, US Foods will provide OFCCP with a list of the Eligible Class Members who timely returned a completed Interest Form and executed Release.	140	07/30/2021
8	Within one hundred fifty days (150) of the Effective Date, the parties will establish the Final List and OFCCP will provide US Foods a list of the payment amounts for each Eligible Class Member on the Final List.	150	08/09/2021
	B. Monetary Relief	Number of Days since effective date	
9	Within forty-five (45) days after the parties establish the final list of Eligible Class Members, US Foods will issue checks to each Eligible Class Member in the stated amount.	195	09/23/2021
10	US Foods will provide timely documentation of all payments made and any payments returned undelivered, within 30 days of check distribution	225	10/23/2021
11	OFCCP attempts to contact individuals with returned checks, and provides best available contact information for returned checks	235	11/02/2021
12	US Foods reissues checks to addresses provided by OFCCP	245	11/12/2021
13	US Foods will provide timely documentation of all payments made and any payments returned undelivered or any checks not cashed, within 75 days of check distribution	270	12/07/2021
14	OFCCP attempts to contact individuals with returned and uncashed checks, and provides contact information for returned checks and uncashed checks that were not received	285	12/22/2021

15	US Foods reissues checks to individuals OFCCP was able to contact	300	01/06/2022
16	US Foods will provide timely documentation of all payments made and any payments returned undelivered or any checks not cashed, within 120 days of check distribution	315	01/21/2022
17	OFCCP attempts to contact individuals with returned and uncashed checks, and provides current contact information for returned checks and uncashed checks that were not received	330	02/05/2022
18	US Foods reissues checks to individuals OFCCP was able to contact	345	02/20/2022
19	Any check that remains uncashed more than 180 days after the initial date mailed to the Eligible Class Member shall be void.	375	03/22/2022
20	US Foods will provide OFCCP with copies of cancelled checks or electronic documentation of all payments to Eligible Class Members, including the amounts paid, the date payment was sent, the date payment was received or the check cashed, and any uncashed or returned checks.	390	04/06/2022
21	With respect to any uncashed funds, US Foods will make a second distribution to all Eligible Class Members who cashed their first check if the per person distribution is \$30 or more. If a second distribution is inapplicable, US Foods will provide documentation that any uncashed funds went to staff training on EEO obligations	420	05/06/2022
22	In the event of a second distribution, US Foods will provide a similar documentation on the second distribution (see Item 20)	615	11/17/2022

Timeline for Nonmonetary Relief

See Sections VI and VII for required contents of Reports.

Activity	
US Foods implements Consultant's recommendations	9/8/2021

Progress Report #1 (See requirements in Sections VI and VII. Includes AAP narrative and hiring data for Montgomery, AL facility, and enhanced compliance report) Covered Period: 12 months from Effective Date	5/11/2022 (which is 60 days after covered period)
Progress Report #2 (See requirements in Sections VI and VII. Includes AAP narrative and hiring data for Fairburn, GA facility and enhanced compliance report) Covered Period: Successive 12 month period	5/11/2023 (which is 60 days after covered period)
Progress Report #3 (See requirements in Sections VI and VII. Includes AAP narrative and hiring data for Oklahoma City, OK facility and Montgomery, AL facility, and enhanced compliance report) Covered Period: Successive 12 month period	5/11/2024 (which is 60 days after covered period)