

U.S. Department of Labor

Office of Federal Contract Compliance Programs
New York
26 Federal Plaza Room 36-116
New York, NY 10278
(212) 264-7742 (Office)
(212) 264-8166 (Fax)



CONCILIATION AGREEMENT
BETWEEN
U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
AND
MARCUM, LLP (formerly FRIEDMAN, LLP)
703 THIRD AVENUE, 11th FLOOR
NEW YORK, NY 10017
OFCCP CASE NO. R00303048

PART I: GENERAL PROVISIONS

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Marcum, LLP¹ (hereinafter Marcum), located at 703 3rd Avenue, 11th Floor, New York, NY 10017.
2. The violations identified in this Agreement were found during a compliance review of Friedman, LLP's (hereinafter Friedman) One Liberty Plaza, 166 Broadway, 21st Floor, New York, New York location, which began on April 26, 2021, and were specified in a Notice of Violations (NOV) issued on April 14, 2022. OFCCP alleges that Marcum has violated the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (38 U.S.C. 4212) (VEVRAA) and implementing regulations at 41 CFR Chapter 60 due to the specific violations cited in Part II below.
3. This Agreement does not constitute an admission by Marcum of any violation of VEVRAA and the implementing regulations.
4. The provisions of this Agreement will become part of Marcum's Affirmative Action Program (AAP). Subject to the performance by Marcum of all promises and representations contained herein, all named violations in regard to the compliance of Marcum with all OFCCP programs will be deemed resolved. However, Marcum 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. Marcum 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 Marcum's compliance. Marcum shall permit access to its premises during normal business hours for these purposes.

¹ Marcum acquired Friedman on September 1, 2022.

OFCCP – Northeast Region

6. Nothing herein is intended to relieve Marcum from the obligation to comply with the requirements of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, VEVRAA, as amended, and implementing regulations, or any other equal employment statute or executive order or its implementing regulations.
7. Marcum 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 files a complaint, or who participates in any manner in any proceeding under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and VEVRAA, as amended.
8. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director for OFCCP, unless the Regional Director or Deputy Assistant Secretary of OFCCP indicates otherwise within 45 days of the District Director's signature of this Agreement.
9. If, at any time in the future, OFCCP believes that Marcum has violated any portion of this Agreement during the term of this Agreement, Marcum will be promptly notified of the fact in writing. This notification shall include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Marcum with 15 days from receipt of the notification to respond in writing except where OFCCP alleges that such delay would result in irreparable injury.
10. 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.
11. Where OFCCP believes that Marcum 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.
12. Liability for violation of this Agreement may subject Marcum to sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.66, 41 CFR 60-741.66, and/or other appropriate relief.

PART II: SPECIFIC PROVISIONS

1. **VIOLATION:** During the period February 15, 2021 through February 14, 2022, Marcum failed to document and maintain the required data pertaining to applicants and hires, in violation of 41 CFR 60-300.44(k).

REMEDY: Marcum will document the following computations or comparisons pertaining to applicants and hires, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60-300.44(k): (1) The number of applicants who self-identified as protected veterans, or who are otherwise known to be protected veterans; (2) The total number of job openings and total number of jobs filled; (3) The total number of applicants for all jobs; (4) The number of protected veteran applicants hired; and (5) The total number of applicants

OFCCP – Northeast Region

hired.

2. **VIOLATION:** During the period February 15, 2021 through February 14, 2022, Marcum failed to include the equal opportunity clause for VEVRAA in its subcontracts and/or purchase orders, either directly or by reference, in the prescribed manner, in violation of 41 CFR 60-300.5(a)-(d).

REMEDY: Marcum must include or reference the provisions of the equal opportunity clause in its subcontracts and purchase orders, as required by 41 CFR 60-300.5(a)-(d). If Marcum incorporates the equal opportunity clause in its subcontracts and purchase orders by reference, rather than by restating the clause verbatim, it must incorporate the clause in the manner prescribed by 41 CFR 60-300.5(d).

3. **VIOLATION:** Marcum's VEVRAA AAP failed to include all the required contents, as required by 41 CFR 60-300.44. Specifically, Marcum's AAP failed to include the training element described in 41 CFR 60-300.44(j).

REMEDY: Marcum must include the training element described in 41 CFR 60-300.44(j) in its VEVRAA AAP, as required by 41 CFR 60-300.44.

4. **VIOLATION:** During the period February 15, 2021 through February 14, 2022, Marcum failed to ensure that its personnel processes provided for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who were known protected veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available; failed to ensure that when a protected veteran was considered for employment opportunities, that it relied only on that portion of the individual's military record, including his or her discharge papers, relevant to the requirements of the opportunity in issue; failed to ensure that its personnel processes did not stereotype protected veterans in a manner which limits their access to all jobs for which they are qualified; failed to periodically review its personnel processes and make any necessary modifications to ensure that the obligations were carried out; and failed to include a description of the review and any necessary modifications to personnel processes or development of new processes in its AAP, as required by 41 CFR 60-300.44(b).

REMEDY: Marcum must ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known protected veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available; ensure that when a protected veteran is considered for employment opportunities, that it relies only on the portion of the individual's military record, including his or her discharge papers, relevant to the requirements of the opportunity in issue; ensure that its personnel processes do not stereotype protected veterans in a manner which limits their access to all jobs for which they are qualified; periodically review its personnel processes and make any necessary modifications to ensure that the obligations were carried out; and include a description of the review and any necessary modifications to personnel processes or development of new processes in its AAP, as required by 41 CFR 60-300.44(b).

OFCCP – Northeast Region

5. **VIOLATION:** During the period February 15, 2021 through February 14, 2022, Marcum failed to review all physical and mental job qualifications standards to ensure that, to the extent qualification standards tend to screen out qualified disabled veterans, they are job-related for the position in question and are consistent with business necessity, as required by 41 CFR 60-300.44(c)(1).

REMEDY: Marcum must review of all physical and mental job qualifications standards to ensure that, to the extent qualification standards tend to screen out qualified disabled veterans, they are job-related for the position in question and are consistent with business necessity, as required by 41 CFR 60-300.44(c)(1).

6. **VIOLATION:** During the period February 15, 2021 through February 14, 2022, Marcum failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified protected veterans, document these activities, assess their effectiveness, and document its review, in violation of 41 CFR 60-300.44(f).

REMEDY: Marcum must undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified protected veterans, such as those described at 41 CFR 60-300.44(f)(2). Marcum must annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f)(3). Marcum must document all activities it undertakes to comply with this section, in accordance with 41 CFR 60-300.44(f)(4).

7. **VIOLATION:** During the period February 15, 2021 through February 14, 2022, Marcum failed to design and implement an audit and reporting system, as required by 41 CFR 60-300.44(h)(1). Specifically, Marcum failed to measure the effectiveness of its affirmative action program; indicate any need for remedial action; determine the degree to which Marcum's objectives have been attained; determine whether known protected veterans have had the opportunity to participate in all company sponsored educational, training, recreational and social activities; measure Marcum's compliance with the affirmative action program's specific obligations; and document the actions taken to comply with the obligations of 41 CFR 60-300.44(h)(1)(i) through (v).

REMEDY: Marcum must design and implement an audit and reporting system, as required by 41 CFR 60-300.44(h)(1). Specifically, Marcum must design and implement an audit and reporting system that measures the effectiveness of its affirmative action program; indicates any need for remedial action; determines the degree to which Marcum's objectives have been attained; determines whether known individuals with disabilities have had the opportunity to participate in all company sponsored educational, training, recreational and social activities; measures Marcum's compliance with the affirmative action program's specific obligations; and documents the actions taken to comply with these obligations.

8. **VIOLATION:** During the period February 15, 2021 through February 14, 2022, Marcum failed to document the hiring benchmark it established and failed to maintain hiring benchmark records for three years, as required in 41 CFR 60-300.45(c).

OFCCP – Northeast Region

REMEDY: Marcum must establish a hiring benchmark for each of its establishments, on an annual basis, using one of the two methods prescribed in 41 CFR 60-300.45(b). Marcum must document its hiring benchmark, and, if Marcum sets its benchmark using the five-factor approach described in 41 CFR 60-300.45(b)(2), it must also document each factor that it considered in establishing its benchmark and the relative significance it accorded to each one. Marcum must retain these records for three years, as required by 41 CFR 60-300.45(c).

FUTURE CONDUCT: Marcum will not repeat the above violations.

PART III: REPORTING: In order for OFCCP to monitor Marcum's progress toward fulfilling the provisions of this Agreement, Marcum will submit one report. The first report shall be due December 31, 2023, and will cover the period beginning November 1, 2022 through October 31, 2023. Marcum will send the progress report to:

**District Director
U.S. Department of Labor
Office of Federal Contract Compliance Programs
26 Federal Plaza, Room 36-116
New York, NY 10278**

(b) (6), (b) (7)(C) dol.gov

Marcum and OFCCP have a common interest in the information being provided in the progress report pursuant to this Agreement. To the extent the progress report Marcum provides in accordance with this Agreement contains any trade secrets, commercial and/or financial in nature, and customarily kept private or closely held information, and Marcum believes should remain confidential under Exemption 4 of the FOIA Act, in the event of a FOIA request, Marcum will provide such report to OFCCP marked as "confidential." In the event of a FOIA request, OFCCP will promptly notify Marcum of the FOIA request and provide Marcum an opportunity to object to such disclosure. OFCCP will withhold disclosure of such report to the maximum extent possible.

The Report shall contain the following:

Pursuant to Remedy 1:

Documentation describing how Marcum tracks and maintains the following computations or comparisons pertaining to applicants and hires:

- The number of applicants who self-identified as protected veterans, or who are otherwise known to be protected veterans;
- The total number of job openings and total number of jobs filled;
- The total number of applicants for all jobs;
- The number of protected veteran applicants hired; and
- The total number of applicants hired.

OFCCP – Northeast Region

Pursuant to Remedy 2: Documentation showing that Marcum has included the equal opportunity clause for VEVRAA in its subcontracts and/or purchase orders, either directly or by reference.

Pursuant to Remedy 3: Documentation showing that all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes have been trained to ensure that the commitments in the contractor's affirmative action program are implemented.

Pursuant to Remedy 4: Documentation showing that Marcum has conducted periodic reviews of its personnel processes and has made any necessary modifications to ensure that its obligations are carried out, including a description of the review and any necessary modifications to personnel processes or development of new processes.

Pursuant to Remedy 5: Documentation showing that Marcum has conducted a review of all physical and mental job qualification standards to ensure that the qualifications standards do not screen out qualified disabled veterans.

Pursuant to Remedy 6: Documentation of Marcum's outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified protected veterans. Examples of outreach and recruitment activities can be found at 41 CFR 60-300.44(f)(2). Marcum will also provide documentation of its annual review and assessment of the effectiveness of its outreach and recruitment activities, both for each individual activity and its total efforts, whether problems were identified in its efforts, and actions taken to correct the problems identified in its efforts.

Pursuant to Remedy 7: Documentation of Marcum's development and implementation of an audit and reporting system that measures the effectiveness of its affirmative action programs.

Pursuant to Remedy 8: Documentation showing that Marcum established a veteran hiring benchmark for each of Marcum's establishments. If Marcum sets its benchmark using the five-factor approach, Marcum will provide documentation of each factor that it considered in establishing its benchmark and the relative significance it accorded to each one.

Marcum will retain all records pertinent to the violations resolved by this Conciliation Agreement and the reports submitted under it (including the underlying data/information upon which the reports are based) until the expiration date of this Conciliation Agreement or consistent with regulatory timeframes, whichever is later.

PART IV: CLOSE OF MONITORING AND TERMINATION OF AGREEMENT. This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Marcum's progress report as set forth in Part III above. If OFCCP fails to notify Marcum in writing within sixty (60) days of the date of the final progress report that Marcum 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 Marcum within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Marcum has met all of its obligations under the Agreement.

OFCCP – Northeast Region

INTEGRATION CLAUSE: This Agreement represents the full Agreement between Marcum and OFCCP, and this Agreement supersedes any other agreements, oral or written. In signing this Agreement, neither Marcum nor 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.

PART IV: SIGNATURES

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

(b) (6), (b) (7)(C)

General Counsel
Marcum, LLP
New York, NY 10017

DATE: 2/6/2023

(b) (6), (b) (7)(C)

New York District Office
OFCCP – Northeast Region

DATE: _____

(b) (6), (b) (7)(C)

Adam Harris
Assistant District Director
New York District Office
OFCCP – Northeast Region

DATE: _____

(b) (6), (b) (7)(C)

Rubayyi Salaam
District Director
New York District Office
OFCCP – Northeast Region

DATE: _____