

MEMORANDUM OF UNDERSTANDING

BETWEEN

U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

AND

THE AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY

I. Parties

This Memorandum of Understanding (MOU) is made and entered into by and between the United States Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) and the American Association for Access, Equity and Diversity (AAAED), collectively referred to as "the parties."

OFCCP is a civil rights agency within the DOL that protects the rights of workers. OFCCP ensures that federal contractors and subcontractors (hereinafter collectively referred to as "contractors") comply with their legal obligations to provide equal employment opportunity on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, and status as a protected veteran. In addition, contractors are prohibited from discharging or otherwise discriminating against applicants or employees who inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

Founded in 1974 as the American Association for Affirmative Action, AAAED is the longest serving national not-for-profit association of professionals and institutions dedicated to the principles of equal opportunity and diversity. For over four decades, AAAED has provided professional training to its members. Since its founding, AAAED has facilitated and enhanced access, inclusion and equality in employment, economic and educational opportunities by promoting understanding and advocacy of affirmative action and other equal opportunity and related compliance laws. Members that count themselves among AAAED's membership include academic institutions, companies in the private sector, and government entities at the federal, state and local levels.

In addition, AAAED established the Fund for Leadership, Equity, Access and Diversity (The LEAD Fund) to promote inclusive organizations and institutions through research and education on issues related to diversity, social responsibility, human and civil rights. The LEAD Fund complements the work of AAAED by initiating a variety of programs and activities aimed at addressing a range of concerns, including, among other topics, affirmative action, equal opportunity, equity, access, civil rights, and diversity and inclusion in education, employment, business and contracting. As part of its mission, AAAED also facilitates greater communication and substantive dialogue between the contractor community and various federal agencies concerning equal opportunity and affirmative action obligations and practices with members that

share AAAED's mission. Due to its unique role as a facilitator of wide-ranging dialogue between federal agencies and the regulated community, AAAED is well-positioned to address important issues regarding affirmative action and equal opportunity.

II. Authority

OFCCP is responsible for securing compliance by all federal contractors and subcontractors with Executive Order 11246, Section 503 of the Rehabilitation Act (Section 503), Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), Executive Order 13950, and their implementing regulations. This responsibility includes conducting compliance evaluations and complaint investigations, as well as proactively securing compliance with the terms of the contracts entered into by federal agencies and their contractors related to nondiscrimination and affirmative action obligations. *See* 41 CFR §§ 60-1.4, 60-300.5, 60-741.5.

This MOU, like other measures undertaken by OFCCP to educate and support contractor compliance about their contractual nondiscrimination and affirmative action obligations, generally promotes economy and efficiency in federal procurement.

III. Provisions

OFCCP and AAAED recognize the benefits of a non-binding MOU between them.

A collaborative relationship with AAAED will serve as a beneficial resource in advancing the mutual goals of supporting contractor education and training as well as compliance with Executive Order 11246, Section 503, VEVRAA, and Executive Order 13950.

AAAED believes that a documented collaboration with OFCCP will represent an opportunity to coordinate both at the national level and with local AAAED regions to explore common compliance challenges experienced by federal contractors, particularly but not exclusively to academic institutions as well as contractors in the private sector. The coordination between AAAED and OFCCP will encompass working together to minimize and eliminate operational, organizational and attitudinal barriers that impede equal employment opportunity in contractors' workplaces, as well as to develop innovative solutions that will prevent those barriers from resurfacing. The MOU will also emphasize the parties' intent to identify individual contractors who have successfully implemented innovative programs to develop a pipeline of increasingly diverse workers in a rapidly changing workplace.

The dialogue established by the MOU will also enable the parties to promote strategies that better ensure access, equity and diversity as well as nondiscriminatory practices in workplaces consistent with the laws under OFCCP's jurisdiction. OFCCP and AAAED also believe that a public-private collaboration supported by this MOU will allow effective and efficient government procurement by ensuring that contractors make full use of the qualified labor pool in carrying out their federal contractual obligations.

The parties are entering into this MOU to give structure to the scope of the collaboration with each other as part of this memorandum.

As part of this collaboration, OFCCP will commit to the following:

- OFCCP’s national office leadership agrees to meet once annually with the AAAED Board of Directors to review implementation of the MOU and provide relevant information on OFCCP’s regulations and procedures. The annual meeting’s purpose will be two-fold: to discuss compliance challenges experienced by AAAED members and to explore new and innovative means of addressing those challenges. As OFCCP endeavors to do for all stakeholders, OFCCP will also provide AAAED with relevant information on recent public changes to the OFCCP’s regulatory requirements that affect contractors’ obligations.
- OFCCP will agree, to the extent it deems appropriate, practicable, and lawful, to provide input and participate in an annual national AAAED conference. The purpose of OFCCP’s participation will be to provide education that seeks to secure proactive compliance with OFCCP’s laws and regulations while endeavoring to afford the greatest amount of transparency to AAAED’s members. Such transparency will be in the same manner that OFCCP provides to all of its stakeholders through regulatory and sub-regulatory guidance, and will include ensuring contractors are accurately informed of OFCCP’s compliance evaluation process.
- OFCCP will make one or more representatives available for a maximum of two webinars and/or regional meetings annually, as practicality and circumstances dictate. These webinars and/or regional meetings will address compliance challenges and barriers contractors may encounter and educate contractors on what to expect during a compliance evaluation. These representatives may come from the Division of Enforcement, the Division of Policy, the Ombuds Service, or as directed by the OFCCP Director or Deputy Director.
- The dialogue and outreach between OFCCP and AAAED will consist of the same publicly available regulatory and sub-regulatory guidance given to all of OFCCP’s stakeholders and contractors via its help desk, opinion letters, stakeholder messages, town halls, landing page content, and other panels and presentations. The contractor education and compliance assistance provided to AAAED will be limited to publicly available guidance, and will not consist of any information that could reasonably be construed as *ex parte communication* in violation of both ethical agency practice and the Administrative Procedure Act.
- OFCCP will use any meetings or conferences with AAAED to obtain information, advice, and viewpoints from individual attendees. OFCCP does not intend to, and will not, use such meetings or conferences to obtain consensus advice, opinions, or recommendations from the group acting in a collective mode.

As part of this collaboration, AAAED will commit to the following:

- During OFCCP’s participation in AAAED’s annual meeting, AAAED will refrain from requiring OFCCP to reach a consensus on issues and concerns raised by its members, and will use the meeting instead to constructively identify those concerns.

- AAAED will work cooperatively with OFCCP to ensure a productive dialogue on compliance issues of concern to both parties, with the goal of ensuring that its members and contractors generally are presented a variety of views and perspectives.
- AAAED will also proactively inform its Board members and member-contractors of the multitude of events, initiatives, contractor-focused compliance assistance and education, and awards OFCCP offers so as to furnish its member-contractors with an opportunity to provide constructive feedback.
- Where appropriate, AAAED will agree to participate in OFCCP-sponsored contractor outreach and education presentation, and distribute publications of common interest to contractors.

Both parties will commit to the following:

- Create a collaborative relationship connecting local OFCCP offices with AAAED to foster collaboration and connect contractors with compliance assistance and education resources.

IV. Effect of Agreement

- i. Nothing in this MOU limits OFCCP's interpretation or enforcement of its laws and regulations.
- ii. This MOU does not authorize the expenditure or reimbursement of any funds. Nothing in this MOU obligates OFCCP to expend appropriations or enter into any contract or other obligation not explicitly referenced in this agreement.
- iii. This agreement will be performed in full compliance with all applicable laws, including the Privacy Act of 1974, the Freedom of Information Act, and the Federal Records Act.
- iv. This MOU does not intend to create an advisory committee under the Federal Advisory Committee Act (FACA). This MOU must be interpreted and implemented in a manner consistent with this intent.
- v. By entering into this MOU, the parties do not imply an endorsement or promotion by any party of the policies, priorities, or services of the others.
- vi. Nothing in this MOU shall be interpreted as limiting, superseding, or otherwise affecting OFCCP's normal operations and functions.
- vii. This MOU does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
- viii. This MOU contains all of the terms and conditions agreed upon by the parties. None of its terms or conditions, or other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or be legally binding upon the parties. This MOU is not intended to confer any right upon any private person or third party.

V. Resolution of Disagreements

Any disputes arising under this MOU will be resolved informally by discussions between the signatories to this agreement or other officials designated by each party.

VI. Effective Date/Agreement modification and termination

The provisions of this agreement are effective on the date of signature, and the parties can modify the MOU only by mutual consent. This MOU is effective for a three-year period unless extended by mutual agreement, in writing, by the parties. Any party can unilaterally terminate this MOU by providing 30-day written notice to the other parties.

The undersigned hereby agree that this document represents the understanding between them.

CRAIG LEEN Digitally signed by CRAIG LEEN
Date: 2020.10.13 13:58:25
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[Signature]

CRAIG E. LEEN

Director

Office of Federal Contract Compliance Programs

Date Signed:

[Signature]

SHIRLEY J. WILCHER

Executive Director

American Association for Access, Equity and Diversity

Date Signed: *October 8, 2020*