



CONCILIATION AGREEMENT
BETWEEN
THE U. S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
AND
HOME DEPOT U.S.A., INC.
(HOME DEPOT #0915)
2455 PACES FERRY ROAD
ATLANTA, GEORGIA 30339
OFCCP CASE NO. R00184985

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated Home Depot U.S.A., Inc.'s facility (Home Depot #0915) located at 2445 Springfield Avenue, Vauxhall, NJ 07088 (hereinafter "Home Depot" refers to Home Depot #0915) and found that Home Depot was not in compliance with the Executive Order 11246, as amended ("E.O. 11246") and its implementing regulations at 41 C.F.R. Sections 60-1 – 60-3. OFCCP notified Home Depot of the specific violations found and the corrective actions required in a Notice of Violation issued on February 23, 2015, which is amended by this Agreement wherein Violation 2 is hereby rescinded. In the interest of resolving the violation without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Home Depot enter this Conciliation Agreement (Agreement) and agree to all the terms stated below.

PART II. GENERAL TERMS AND CONDITIONS

1. In exchange for Home Depot's fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246 based on the alleged violation described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the alleged violation described in Part III if Home Depot violates this Agreement.
2. This Agreement does not constitute an admission by Home Depot of any violation of E.O. 11246, Section 503, VEVRAA, or other laws, nor has there been an adjudicated finding that Home Depot violated any laws.
3. Home Depot agrees that OFCCP may review its compliance with this Agreement, as outlined in Part IV of this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Home Depot

will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.

4. Home Depot has notified OFCCP that it currently has no federal contract of \$50,000 or more and asserts that going forward it is exempt from the written affirmative action program (AAP) requirements of E.O. 11246. Home Depot agrees that if it becomes a federal contractor in the future who holds a contract of \$50,000 or more, it will be required to maintain a written AAP and fully comply with the requirements of E.O. 11246.
5. Home Depot promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding related to the enforcement of this Agreement.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
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 Regional Director of the Northeast Region (the "Effective Date") unless the Director of OFCCP indicates otherwise within 45 calendar days of the date the Regional Director signs the Agreement.
10. This Agreement will expire sixty (60) days after Home Depot submits its final report required in Part III.1.C. and/or Part IV below, unless OFCCP notifies Home Depot in writing prior to the expiration date that Home Depot has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Home Depot has met all of its obligations under the Agreement.
11. If Home Depot violates this Agreement,
 - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
 - 1) If OFCCP believes that Home Depot violated any term of the Agreement while it was in effect, OFCCP will send Home Depot a written notice stating the alleged violations and summarizing any supporting evidence.
 - 2) Home Depot will have 15 days from receipt of such notice to demonstrate in writing that it has not violated the Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

- 3) If Home Depot 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.
 - 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- B. Home Depot 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.

PART III. SPECIFIC VIOLATION AND REMEDY

1. HIRING DISCRIMINATION

A. OFCCP found that Home Depot is not in compliance with the nondiscrimination requirements of the equal opportunity clause of E.O. 11246 § 202 and 41 C.F.R. § 60-1.4(a)(1). OFCCP's analysis of Home Depot's hiring process and selection procedures revealed that during the period of October 1, 2011 through September 30, 2012 and October 1, 2012 through March 31, 2013, Home Depot discriminated against male applicants for Cashier positions. OFCCP found that there was a statistically significant disparity in the hiring of males for Cashier positions based on gender.

B. OFCCP's analysis of the applicant and hiring data demonstrates that Home Depot's selection process had an adverse impact on the hiring of male applicants for Cashier positions. Specifically, for the Cashier job title, OFCCP found that during the period October 1, 2011 through March 31, 2013, from a qualified pool of (b) male applicants, Home Depot extended an offer to and/or hired 7e males (7e) for Cashier positions. During the same period, from a qualified pool of 7e female applicants, Home Depot extended an offer to and/or hired 7e females (7e) for Cashier positions. This disparity in hiring rates adverse to male applicants is statistically significant at the level of 7e standard deviations with a shortfall of 6 male hires.

OFCCP's review of Home Depot's policies, procedures, file records, and interview results failed to provide a business necessity or job related reason that explains the non-selection of these applicants.

Accordingly, OFCCP finds that Home Depot discriminated against 57 qualified male applicants not hired into Cashier positions because of their gender.

C. REMEDY FOR AFFECTED CLASS

- 1) Notice. Within sixty (60) days of the Effective Date of this Agreement, Home Depot must notify the 53¹ male applicants listed in Attachment A (hereinafter "List") of the

¹ For purposes of determining the number of affected class members, OFCCP removed 7e of the male applicants as duplicates because they applied under Requisitions in both the prior and current year review periods.

terms of this Agreement by overnight mail² to each individual in the affected class the Notice to Affected Class (Attachment B, "Notice"), Information Verification Form (Attachment C), Release of Claims under Executive Order 11246 (Attachment D, "Release"), IRS Form W-9, and a postage paid return envelope. Within fifteen (15) days after the response deadline, Home Depot will notify OFCCP of class members whose letters were returned as undeliverable and provide copies of the undeliverable envelopes or notices of non-delivery. In addition, within thirty (30) days after expiration of the response deadline set out in the initial Information Verification Form, Home Depot will provide OFCCP with a list of class members who did not return a signed Information Verification Form, Release, and IRS Form W-9. OFCCP will then attempt to obtain and provide updated addresses to Home Depot within fifteen (15) days of receiving the lists from Home Depot. Home Depot agrees to overnight mail a second Notice, Information Verification Form, Release, IRS Form W-9, and postage paid return envelope to all individuals for whom updated addresses were obtained within fifteen (15) days of receiving the updated addresses.

- 2) Eligibility. All class members on the List who sign and return to Home Depot a postmarked Information Verification Form, Release, and IRS Form W-9 within thirty (30) days of the postmarked date on the envelope containing the first or second Notice, Information Verification Form, Release, and IRS Form W-9 ("Eligible Class Members") will receive a share of the monetary settlement under this Agreement. If an individual's Information Verification Form, Release, or IRS Form W-9 is postmarked thirty-one (31) days or later after the postmarked date on the envelope containing the first or second Notice, Information Verification Form, Release, and IRS Form W-9, he will no longer be entitled to a payment under this Agreement.

If no second mailing is required under this Agreement, Home Depot will provide OFCCP with a list of names of the Eligible Class Members within fifteen (15) days after the response deadline set out in the Information Verification Form. If, however, Home Depot makes a second mailing of the Notice, Information Verification Form, Release, and IRS Form W-9, then it will provide OFCCP with a list of names of the Eligible Class Members within fifteen (15) days after the response deadline set out in the second Information Verification Form.

Within ten (10) days after receiving the list, OFCCP will approve the final list of Eligible Class Members or discuss with Home Depot any issues necessary to finalize the list, such as the inclusion or exclusion of certain individuals.

All Eligible Class Members are entitled to their share of the monetary settlement.

- 3) Monetary Settlement. Home Depot agrees to distribute \$85,064.72 (\$56,678.57 in back pay and \$2,205.18 in interest; and in lieu of 3 job offers, front pay of \$26,180.97), less

² The parties recognize that "overnight mail" or "mail" can be accomplished through the United States Postal Service or through a private carrier, such as the United Parcel Service, that tracks the delivery of mailings.

³ Home Depot has been given credit for the subsequent selection of three individuals on the List into positions senior to Cashier.

legal deductions required by law (such as federal, state and/or local taxes and the Eligible Class Members' share of FICA taxes), in equal shares among the Eligible Class Members on the final approved list. Such payment will constitute full and final settlement of all financial claims related to the violations in the Notice of Violation. Home Depot will pay the Internal Revenue Service ("IRS") the employer's share of social security withholdings and will mail each Eligible Class Member an IRS W-2 Form reporting the portion of the payment representing back pay and front pay and an IRS Form 1099 for the portion of the payment representing interest. These IRS forms will be mailed at the end of the year. Home Depot will disburse the monetary settlement within fifteen (15) days after OFCCP approves the final list of Eligible Class Members.

Within fifteen (15) days of Home Depot's receipt of a returned check that was undeliverable to an Eligible Class Member, Home Depot will notify OFCCP of this fact via e-mail to Compliance Officer 7e [REDACTED] at 7e [REDACTED]@dol.gov. OFCCP will attempt to locate the Eligible Class Member, and if OFCCP obtains an alternate address within fifteen (15) days from Home Depot's notification, Home Depot will re-mail the check within fifteen (15) days of receiving an alternate or corrected address. Any check will be void if it remains uncashed one-hundred-twenty (120) days after the initial date the check was mailed to the Eligible Class Member. With respect to any uncashed funds, Home Depot will make a second distribution to all Eligible Class Members who cashed their first check. Home Depot will pay the Internal Revenue Service ("IRS") the employer's share of social security withholdings and will mail each Eligible Class Member an IRS W-2 Form reporting the portion of the payment representing back pay and front pay and an IRS Form 1099 for three percent (3%) of the payment representing interest. If the total amount of uncashed funds would result in a payment of less than \$25.00 to each Eligible Class Member who cashed the first disbursement check, Home Depot will use those uncashed funds to provide training in equal employment opportunity to its personnel.

Ex 7C

D. NON-MONETARY REMEDIES

Home Depot will ensure that all applicants are afforded equal employment opportunities.

PART IV. REPORTS REQUIRED

Home Depot must submit the documents described in Part III (except where otherwise stated) and below to:

Pranita A. Raghavan
District Director
OFCCP New Jersey District Office
Diamond Head Building, 200 Sheffield Street, Suite 102
Mountainside, NJ 07092

Home Depot U.S.A., Inc. (Home Depot #0915), Vauxhall, NJ
Conciliation Agreement
(R00184985)

- A. Within **one-hundred-five (105)** days of the Effective Date of this Agreement, Home Depot must submit a declaration to the OFCCP attesting to the initial mailing of the Notice, Information Verification Form, Release, and IRS Form W-9 to the class members on the List.
- B. If applicable, within **one-hundred-fifty (150)** days of the Effective Date of this Agreement, Home Depot must submit a declaration to the OFCCP attesting to the second mailing of the Notice, Information Verification Form, Release, and IRS Form W-9 to class members for whom OFCCP has located updated addresses.
- C. Within **one-hundred-fifty (150)** days from when the last check (including any re-mailed checks) was mailed to an Eligible Class Member, Home Depot must submit a declaration to the OFCCP, attesting to the specific monetary relief provided to each Eligible Class Member on the final approved list, copies of all cancelled checks, and how the remaining monies (if any) were disbursed, including: a) the total amount that remained, b) to whom the monies were disbursed, c) the amount given to each person, and d) proof of mailing of the additional money.

Home Depot will retain all documents used to prepare the required reports until this Agreement expires.

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PART V. SIGNATURES

This Conciliation Agreement is hereby executed by and between the OFCCP and Home Depot U.S.A., Inc.

6 & 7c

Barbara Pennington
Sr. Director Employment Practices &
Associate Relations
Home Depot U.S.A., Inc.

Date: 8-6-15

6 & 7c

Diana Sen
Regional Director
OFCCP – Northeast Region

Date: 8/10/2015

6 & 7c

Pranita A. Raghavan
District Director
New Jersey District Office
OFCCP – Northeast Region

Date: 8/10/15

6 & 7c

Toxi Roane
Assistant District Director
New Jersey District Office
OFCCP – Northeast Region

Date: 8/10/15

7e

Compliance Officer
New Jersey District Office
OFCCP – Northeast Region

Date: 8/10/15

Home Depot U.S.A., Inc. (Home Depot #0915), Vauxhall, NJ
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ATTACHMENT A

LIST OF CLASS MEMBERS

Male Applicants:

6 & 7c

ATTACHMENT B

NOTICE TO AFFECTED CLASS

Dear [NAME]:

Home Depot U.S.A., Inc. ("Home Depot") and the Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") have entered into a Conciliation Agreement ("Agreement") to remedy the alleged violations of Executive Order 11246 ("E.O. 11246") that OFCCP found during a compliance review of Home Depot's Vauxhall, New Jersey store. Following OFCCP's analysis of Home Depot's hiring process and selection procedures, OFCCP alleged that during the period of October 1, 2011 through March 31, 2013 ("review period"), Home Depot discriminated against male applicants for Cashier positions at the Vauxhall, New Jersey store. OFCCP alleged that there was a disparity in the hiring of Cashier based on gender.

Home Depot has not admitted to any violation of E.O. 11246, and there has not been any adjudicated finding that Home Depot violated any laws. OFCCP and Home Depot entered into the Agreement to resolve the matter without resorting to further legal proceedings. You have been identified as an individual who applied for a Cashier during the review period, but was not hired at the Vauxhall, New Jersey store.

As part of this Agreement, you are eligible to receive a distribution of at least \$1,604.99 less lawful payroll deductions. Under the terms of this Agreement it may take up to seven months from the date of this letter before you receive your distribution. **In order to be eligible for a payment, you must complete, sign, and return the enclosed Information Verification Form and Release of Claims under Executive Order 11246 ("Release of Claims"), and IRS Form W-9.** You should complete and mail back the forms as soon as possible; the envelope *must* be postmarked to the address below no later than 30 days after the date this Notice was mailed out (postmarked) for you to be entitled to participate in this settlement:

Attn: Barbara Pennington
Sr. Director Employment Practices & Associate Relations
Home Depot U.S.A., Inc.
2455 Paces Ferry Road, Building C-21
Atlanta, GA 30339

You may use the enclosed postage-paid return envelope to return the completed and signed Information Verification Form, Release of Claims, and IRS Form W-9.

If you have any questions you may call me at (770) 384-4897 or OFCCP Compliance Officer **6 & 7c**. Your call will be returned as soon as possible.

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO HOME DEPOT WITHIN 30 DAYS OF THE DATE THE ENVELOPE CONTAINING THIS NOTICE WAS POSTMARKED, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT.

Sincerely,

Barbara Pennington
Sr. Director Employment Practices & Associate Relations
Home Depot U.S.A., Inc.

Enclosures: Information Verification Form, Release of Claims, and IRS Form W-9

Home Depot U.S.A., Inc. (Home Depot #0915), Vauxhall, NJ
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ATTACHMENT C

INFORMATION VERIFICATION FORM

You must complete this form in order to be eligible for the monetary payment under the terms of the Conciliation Agreement ("Agreement") between Home Depot U.S.A., Inc. ("Home Depot") and the Department of Labor's Office of Federal Contract Compliance Programs. Please print legibly, except for the signature.

Name: _____

Address: _____

Telephone Nos.: Home _____ Cell _____ Work _____

Notify Home Depot at the address below if your address or phone number changes within the next six months.

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

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

Male ☐ Female ☐

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENT TO THE ADDRESS BELOW WITHIN 30 DAYS OF THE DATE THE ENVELOPE CONTAINING THIS NOTICE WAS POSTMARKED, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT.

Attn: Barbara Pennington
Sr. Director Employment Practices & Associate Relations
Home Depot U.S.A., Inc.
2455 Paces Ferry Road, Building C-21
Atlanta, GA 30339

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

Signature

Date

Home Depot U.S.A., Inc. (Home Depot #0915), Vauxhall, NJ
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ATTACHMENT D

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for Home Depot U.S.A., Inc. ("Home Depot") paying you money, you agree that you will not file any lawsuit against Home Depot for allegedly violating Executive Order 11246 in connection with its selection procedures for applicants for Cashier positions. It also says that Home Depot does not admit it violated any laws. 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 the payment of at least \$1,604.99 (less deductions required by law) by Home Depot to me, which I agree is acceptable, I _____ agree to the following:
print name

I.

I hereby waive, release and forever discharge Home Depot, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to my non-selection for employment as a Cashier on the basis of my gender at any time through the effective date of this Release.

II.

I understand that Home Depot denies that it treated me unlawfully or unfairly in any way and that Home Depot 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 the matter without further legal proceedings in the compliance review initiated by OFCCP. I further agree that the payment of the aforesaid sum by Home Depot to me is not to be construed as an admission of any liability by Home Depot.

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 or do not return it to Home Depot WITHIN 30 DAYS OF THE DATE THE ENVELOPE CONTAINING THIS RELEASE WAS POSTMARKED, I will not be entitled to receive any payment (less deductions required by law) from Home Depot.

IN WITNESS WHEREOF, I have signed this document on this _____ day of _____, 2015.

Signature