

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
University of Southern Mississippi
118 College Drive, Box 5111
Hattiesburg, Mississippi 39046

PART I: General Provisions

1. This Agreement is between the U.S. Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”) and University of Southern Mississippi (“USM”).
2. The violations identified in this Agreement were found during a compliance evaluation of USM which began on November 27, 2017 and a Notice of Violation that was issued on April 19, 2019. OFCCP alleges that USM has violated Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) 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 USM of any violation of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (38 U.S.C. 4212) and the implementing regulations.
4. The provisions of this Agreement will become part of USM’s Affirmative Action Plans (AAPs). Subject of the performance by USM of all promises and representations contained herein and in its AAPs, all named violations in regard to the compliance of USM with all OFCCP programs will be deemed resolved. However, USM 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. USM agrees that OFCCP may review compliance with this Agreement. As part of this 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 USM’s compliance. USM shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve USM from the obligation to comply with the requirements of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), their implementing regulations, or any other equal employment statute or executive order or its implementing regulations.

7. USM 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 proceedings under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).
8. If at any time in the future, OFCCP believes that USM has violated any portion of this Agreement during the term of this Agreement, USM will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide USM with 15 calendar days from receipt of the notification to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

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.

Where OFCCP believes that USM 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.

Liability for violation of this Agreement may subject USM to sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.66 and/or 41 CFR 60-741.66 and/or other appropriate relief

PART II: Specific Provisions

1. **VIOLATION:** During the prior AAP review period of January 1, 2016 through December 31, 2017, USM failed to preserve personnel and employment records for a period of not less than two years from the date of: (a) the making of the record; or (b) the personnel action involved, whichever occurred later. Specifically, USM failed to preserve complete and accurate records pertaining to promotions in violation of 41 CFR § 60-1.12(a) and (d), 41 CFR § 60-300.80(a) and 41 CFR § 60-741.80(a).

REMEDY: USM will preserve all personnel or employment records it makes or keeps in either electronic or hard copy format for all job groups, including but not limited to promotion, for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. Where a compliance evaluation has been initiated, USM will preserve all personnel or employment records until OFCCP makes a final disposition in the matter even if such preservation is beyond the two-year period. USM will provide copies of all promotional employment records to OFCCP upon request.

2. **VIOLATION:** During the prior AAP review period of January 1, 2016 through December 31, 2017, USM failed to maintain, and have available for inspection, records or other information that disclose the impact which USM's selection procedures have upon employment opportunities of applicants and/or Internet applicants by identifiable race, or ethnic group set forth in 41 CFR 60-3.4B, in order to determine compliance with the Uniform Guidelines on Employee Selection Procedures. 41 CFR § 60-3.4 and 41 CFR § 60-3.15A (2).

REMEDY: USM will perform adverse impact determinations for its employment procedures at least annually. Where the total selection process for a job has adverse impact against a group or groups of applicants and/or Internet applicants by identifiable, race, or ethnic group listed in 41 CFR 60-3.4B, USM will maintain, and have available for inspection, records or other information showing which components have an adverse impact. Where the total selection process for a particular job has had an adverse impact in any year but no longer has an adverse impact, USM will maintain and have available the aforementioned information and continue to collect such information for at least two years after the adverse impact has been eliminated.

Part III: Reporting

1. USM agrees to retain records pertinent to the violations cited in Part II above, and to the reports submitted in compliance with Paragraph 2, below. These records shall include data and information underlying the required reports, specifically, but not limited to, all applications and personnel records. The records will be retained until the expiration of this Agreement or consistent with regulatory requirements, whichever is later.
2. USM will submit **two reports** as stated below to the following:

(7)(C), (7)(E)
Compliance Officer
OFCCP, 100 West Capitol Street
McCoy Federal Building, Suite 762
Jackson, Mississippi 39269

The **first report** shall be due on November 29, 2019 and shall cover the period May 1, 2019 through October 31, 2019.

The **second report** shall be due on May 31, 2020 and shall cover the period November 1, 2019 through April 30, 2020. The report shall consist of the following:

Pursuant to Remedy 1: Data on USM's employment activity for each job group or job title, for the period covered by the progress report, to include the following: Total number of promotions, to include the number of African-American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, White, and the number of female and male promotions from each job group. For each job group or job title promotions for whom race and/or sex is not known, should be included in the data submitted.

Pursuant to Remedy 2: Copies of impact ratio analyses on the promotions conducted for the reporting period specified above. If adverse impact exists as that time is defined and described in 41 CFR 60-3.4D, USM will provide the results of its review and/or examination of each individual component in the promotion process for each job group or job title. Documentation will also include a detailed description of any actions taken by USM to address the impact found in its review.

TERMINATION DATE: This Agreement will expire 90 days after OFCCP receives the reports required in Part III above or on the date that the District Director gives notice to USM that has satisfied its reporting requirements, whichever occurs earlier, unless OFCCP notifies USM in writing prior to the end of the 90-day period that USM has not satisfied its reporting requirements pursuant to this Agreement.

INTEGRATION CLAUSE: This Agreement represents the full Agreement between USM and OFCCP and this Agreement supersedes any other agreements, oral or written. In signing this Agreement, neither USM 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 University of Southern Mississippi personally warrants that he is fully authorized to do so, and that University of Southern Mississippi has entered into this Conciliation Agreement voluntarily and with full knowledge of the effect thereof and that execution of this Agreement is fully binding on University of Southern Mississippi. This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and University of Southern Mississippi.

(6), (7)(C)

Dr. Rodney Bennett
President
University of Southern Mississippi
118 College Drive, Box 5111
Hattiesburg, Mississippi 39046

DATE: 4-22-19

(6), (7)(C), (7)(E)

Compliance Officer - Birmingham
Office of Federal Contract Compliance
Programs

DATE: 4/26/19

(6), (7)(C)

Katie C. Course
Assistant District Director - Jackson
Office of Federal Contract Compliance
Programs

DATE: 05-02-19

(6), (7)(C)

Alvin Q. Mitchell
District Director - Birmingham
Office of Federal Contract Compliance
Programs

DATE: 05-02-19

ATTACHMENT

Small Business Regulatory Enforcement Fairness Act (SBREFA) Notice

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Small Business Administration (SBA) established a National Small Business Ombudsman to receive comments from small businesses about federal agency enforcement actions. If your company is a small business as defined by the SBA, you may file a comment with the Ombudsman by visiting the Ombudsman Web page www.sba.gov/ombudsman, calling 1-888-734-3247, or by faxing your comment to 202-481-5719. You may also contact the Ombudsman by mail at the address below:

Office of the National Ombudsman
U.S. Small Business Administration
409 3rd Street, NW
MC2120
Washington, DC 20416-0005

Small businesses should not fear retaliation for comments regarding enforcement actions by OFCCP. However, the filing of a comment by a small business does not affect OFCCP's authority to enforce or otherwise seek contractor compliance with the laws and regulations it enforces, and filing a complaint is not a substitute for such compliance.