

U.S. Department of Labor

Office of Administrative Law Judges
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Newport News, VA 23606

(757) 591-5140
(757) 591-5150 (FAX)



Issue Date: 18 August 2020

Case No.: 2019-OFC-00002

In the Matter of:

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, U.S.
DEPARTMENT OF LABOR,
Plaintiff,

v.

TEACHERS INSURANCE & ANNUITY ASSOCIATION (TIAA),
Defendant.

DECISION AND ORDER
APPROVING CONSENT FINDINGS

This matter arises under Executive Order 11246 (30 Fed. Reg. 12319), as amended, and the regulations pursuant to 41 C.F.R. Chapter 60. The court has jurisdiction in this matter under Sections 208 and 209 of the Executive Order and 41 C.F.R. § 60-1.26 and 41 C.F.R. Part 60-30. Per 41 C.F.R. §§ 60-1.26 and 60-30.1, the proceedings will be held in a manner consistent with the procedural rules set forth in federal regulations at 41 C.F.R. Part 60-30, the Federal Rules of Civil Procedure, and 29 C.F.R. Part 18, Subpart A (29 C.F.R. §18.10 to §18.95).

On August 14, 2020, the Parties filed Consent Findings and requested that the court issue an Order approving the full and final resolution of this action raised by the OFCCP in a Notice of Violation issued September 26, 2016 and the subsequent Administrative Complaint filed on August 30, 2019. The Consent Findings were signed by both Parties.

The Parties agreed that the Consent Order constitutes full and final settlement and resolution of all issues and claims. The Parties agreed that the Consent Order shall constitute the final administrative order in this case and shall have the same force and effect as an order made after a full hearing and final review by the court. The Parties agreed to waive all further procedural steps between themselves before the Office of Administrative Law Judges. The Parties agreed to waive any right to contest the validity of the findings or any Ordered entered.

The terms of the settlement agreed to by the Parties, and set forth in the Consent Decree, are approved. The Parties' submission is deemed to be a settlement with Consent Findings pursuant to 29 CFR 18.71.

Upon review of the record, the Consent Findings are approved. The agreement constitutes full and final resolution of this matter.

ORDER

IT IS ORDERED that:

1. The Consent Findings are approved;
2. The Consent Decree entered into by the Parties constitutes a complete and final settlement of OFCCP's Administrative Complaint filed August 30, 2019;
3. This Order shall have the same force and effect as an Order made after a full hearing;
4. Any further procedural steps before this Office are hereby waived;
5. All rights to challenge or contest the validity of this Order are hereby waived;
6. Each party shall bear its own fees, costs, and expenses incurred in connection with the instant proceeding;
7. The Office of Administrative Law Judges shall retain jurisdiction of this case for a period of until 30 days after TIAA satisfies its obligations described in the Consent Decree, whichever is later. At that time, this enforcement action shall be dismissed with prejudice.

The court requests that this Order be served on the following parties by email: (1) Charna Hollingsworth-Malone, Esq., counsel for the Plaintiff OFCCP, (2) Gary R. Siniscalco, Esq. and Christopher B. Wilkinson, Esq., counsels for the Defendant TIAA, and (3) USDOL OFCCP, Washington, D.C.

DO NOT E-MAIL OR RESPOND TO THE SENDER'S E-MAIL ADDRESS.

E-MAILS SENT TO THE NEWPORT NEWS OFFICE OF ADMINISTRATIVE LAW JUDGES' E-MAIL ADDRESS (OALJ-NewportNews@DOL.GOV) WILL ONLY BE ACCEPTED DURING THE COVID-19 PANDEMIC.

SO ORDERED.

Dana Rosen
Administrative Law Judge

DR/mjw
Newport News, Virginia

SERVICE SHEET

Case Name: **OFCCP_-_ATLANTA_GA_v_TEACHERS_INSURANCE_A_**

Case Number: **2019OFC00002**

Document Title: **DECISION AND ORDER APPROVING CONSENT FINDINGS**

I hereby certify that a copy of the above-referenced document was sent to the following this 18th day of August, 2020:

Malinda J. Wright
Legal Assistant

Office of Federal Contract Compliance Programs
U. S. Department of Labor
Room C-3325, FPB
200 Constitution Ave., N.W.
WASHINGTON DC 20210

{Hard Copy - Regular Mail}

Atlanta Regional Solicitor
m-atl.fedcourt@dol.gov
Regional Solicitor

U. S. Department of Labor
Sam Nunn Federal Center
Room 7T10
61 Forsyth Street, S.W.
ATLANTA GA 30303

{Electronic - Regular Email}

U. S. Department of Labor
Office of the Solicitor
Room S-2002, FPB
200 Constitution Ave., N.W.
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Christopher B Wilkinson, Esq.
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{Electronic - Regular Email}

CASE NO.: 2019-OFC-00002

IN THE MATTER OF

**OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR,**

Plaintiff

v.

TEACHERS INSURANCE & ANNUITY ASSOCIATION,

Defendants

CONSENT DECREE AND ORDER

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor (“OFCCP”) and Defendant Teachers Insurance & Annuity Association (“TIAA”) have negotiated and executed this Consent Decree and Order. The parties agree, pursuant to 41 C.F.R. 60-30.13, to the entry of this Consent Decree and Order (“Decree”). This Decree constitutes a complete and final settlement of OFCCP’s Administrative Complaint, Case No. 2019-OFC-00002, filed on August 30, 2019 (“Administrative Complaint”).

I. JURISDICTION AND PROCEDURAL HISTORY

1. This proceeding is authorized by Sections 208 and 209 of Executive Order 11246 (“E.O. 11246” or “the Executive Order”), as amended, and its implementing regulations at 41 C.F.R. Part 60-1, *et. seq.* and 41 C.F.R. Part 60-30.

2. Defendant TIAA operates the relevant establishment at 8500 Andrew Carnegie Boulevard, Charlotte, North Carolina 28262.

3. TIAA has, and at all relevant times has had, 50 or more employees and one or more federal contracts with a value in excess of \$50,000.00.

4. TIAA has been a federal government contractor within the meaning of E.O. 11246, as amended, and is now, and at all relevant times has been, subject to the contractual obligations imposed on federal contractors by E.O. 11246 and its implementing regulations.

5. The issues resolved by this Decree were initially identified during OFCCP's compliance evaluation. OFCCP notified TIAA of the compliance evaluation of its Charlotte establishment by scheduling letters dated on February 21, 2014, and February 22, 2014. OFCCP notified TIAA of the specific alleged violations and the corrective actions required in a Notice of Violations ("NOV") issued on September 26, 2016, and in a Notice to Show Cause on February 16, 2017.

6. OFCCP filed its Administrative Complaint alleging that TIAA has violated the Executive Order, the regulations promulgated thereunder, and TIAA's contractual obligations to the Federal Government, by discriminating in compensation against females employed in the Project Management Office and Recordkeeping job functions at TIAA's establishment in Charlotte, North Carolina since at least May 31, 2013, and continuing thereafter.

7. TIAA denies that it has violated E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended ("Section 503"), the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA") or any other laws. This Decree does not constitute an admission by TIAA of any violation of E.O. 11246, Section 503, VEVRAA or any other laws that could result in an enforcement action by OFCCP. Nor has there been any court finding that TIAA violated any laws that could result in an enforcement action by OFCCP.

II. GENERAL PROVISIONS

8. This Decree constitutes full and final settlement and resolution of all issues, actions, causes of action and claims arising out of OFCCP's Administrative Complaint. This Decree shall be binding upon the parties as to all issues, actions, causes of action and claims that were brought or could have been brought within the scope of OFCCP's Administrative Complaint.

9. Subject to the performance by TIAA of all duties and obligations contained in this Decree, all alleged deficiencies identified in OFCCP's Administrative Complaint shall be deemed fully resolved.

10. Nothing herein is intended to relieve TIAA from compliance with the requirements of Executive Order 11246 and/or 41 C.F.R. Chapter 60. Compliance with this Decree shall constitute compliance only with respect to those issues which are within the scope of this Decree.

11. The Effective Date of this Decree shall be the date on which this Decree is signed by the Administrative Law Judge.

12. The parties agree the OFCCP neither alleged nor determined retaliatory treatment by any individuals, but TIAA affirms that there will be no retaliation of any kind against any beneficiary of this Decree, or against any person who has provided information or assistance, or who files a complaint or participates in any manner in any proceeding against TIAA under the Executive Order. TIAA also agrees to abide by all applicable laws regarding retaliation against any beneficiary of this Decree, or against any person who either has provided information or assistance to OFCCP (or its agents, servants, or employees) during the course of this litigation.

13. Each party agrees to pay its own fees, costs, and other expenses incurred at any stage of these proceedings.

14. All references to “days” in this Decree are to calendar days. If any deadline for an obligation to be performed falls on a weekend or federal holiday, the deadline shall be extended to the next business day.

15. Due to the COVID-19 pandemic-related issues, all time frames specified in this agreement may be extended at the joint request of the parties.

16. Neither this Decree, nor any part of the negotiations that occurred in connection with this Decree, constitute admissible evidence with respect to any OFCCP or TIAA policy, practice or position 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 Decree

III. SPECIFIC PROVISIONS

17. For purposes of this Decree, the Affected Class Members are 63 Female Class Members who were employed in the Project Management Office (Exempt) job function on May 31, 2013, and 202 Female Class Members who were employed in the Recordkeeping Services job function on May 31, 2013, (together, referred to as the “Covered Groups”). These Class Members are identified in Attachment A to this Decree. OFCCP agrees that Attachment A will be kept confidential to the extent covered by 5 U.S.C. § 552(b). Except as to those employees (and/or former employees) listed in Attachment A (and any employees who may be subject to salary adjustments pursuant to Section III.C below), no other employees (and/or former employees) shall be eligible for any payments or other benefits under this part of this Decree.

A. Notification

18. TIAA may direct and oversee a designated administrator to execute its obligations in this subsection (Paragraphs 18 through 27), so each reference to “TIAA” in Paragraphs 18

through 27 is meant to include TIAA and/or its designee. Within sixty (60) days of the Effective Date, TIAA will notify all Class Members of the terms of this Decree by mailing a first-class letter to each such Class Member (“Initial Mailing”). TIAA will notify OFCCP of the postmark date of the first-class letter within five (5) days of the mailing. The mailing must include: the Notice to Affected Class Members (Attachment B, “Notice”), the Information Verification Form (Attachment C, “Verification Form”), the Release of Claims under Executive Order 11246 Form (Attachment D, “Release”), and a postage paid, self-addressed, return envelope. Each Class Member (or his or her legal representative in the event he or she is deceased) shall be given sixty (60) days from the postmark date of the Notice to respond by returning the completed Verification Form and Release to TIAA by mail or email. Any response postmarked or electronically date stamped in email by the sixtieth day following the postmark date of the Notice shall be considered to have been submitted within the sixty (60) day period.

19. Within thirty (30) days of its receipt of the last completed Verification Form and Release submitted within the sixty (60) day period, TIAA shall provide OFCCP with the following:

- a. Via overnight mail and/or email, copies of all completed Verification Forms and Releases returned to TIAA within the sixty (60) day period and the envelopes bearing a postmark date and emailed responses;
- b. Via overnight mail and/or email, copies of all completed Verification Forms and Releases returned to TIAA after expiration of the sixty (60) day period and the envelopes bearing a postmark date and emailed responses; and
- c. Via overnight mail and/or email, a list of any Class Members who did not respond at all to the Notice or whose Verification Forms and Releases were returned to TIAA as undeliverable, during the sixty (60) day period, as well as evidence showing the documents were returned as undeliverable. TIAA shall include the last known address and other last known contact information for any such Class Members.

20. Upon receipt of the list of any Class Members who did not respond at all to the Notice or whose Verification Form and Release was returned to TIAA as undeliverable, as set forth in Paragraph 19, OFCCP shall attempt to verify the current addresses of the Class Members who are identified on the list. Within thirty (30) days of its receipt of such list, OFCCP shall provide TIAA, via email, a list of those Class Members identified on TIAA's list for whom OFCCP was able to verify current addresses.

21. Within thirty (30) days of receiving OFCCP's list, TIAA will mail to each Class Member for whom OFCCP was able to verify a current address, copies of the Notice, Verification Form and Release, and a postage-paid, self-addressed return envelope ("Second Mailing"). Each such Class Member (or their legal representative if they are deceased) shall be given sixty (60) days from the postmark date of the second Notice to respond by returning the completed Verification Form and Release to TIAA by mail or email. Any response postmarked or electronically date stamped by the sixtieth day following the postmark date of the Notice shall be considered to have been submitted within the sixty (60) day period.

22. Upon receipt of the last completed Verification Form and Release submitted within the sixty (60) day period in response to the Second Mailing, TIAA will compile a list of all Class Members who have submitted completed Verification Forms and Releases in accordance with the instructions in the Notice and within the sixty (60) day period in response to either the Initial Mailing or the Second Mailing. This list shall constitute the "Final List." TIAA may choose to include on the Final List any Class Member who returned a completed Verification Form and Release after the sixty (60) day period expired, but it is under no obligation to do so.

23. Within fifteen (15) days of its receipt of the last completed Verification Form and Release submitted within the sixty (60) day period in response to the Second Mailing, TIAA shall

submit to OFCCP, via overnight mail and/or email, the Final List and copies of all completed Verification Forms and Releases not previously submitted to OFCCP.

24. If OFCCP believes any Class Member should be included on the Final List but is not, it shall notify TIAA in writing, via email, and identify any such Class Member within fifteen (15) days of its receipt of the Final List. In such written notification, OFCCP shall provide TIAA the reasons why it believes any Class Member should be included on the Final List. The parties will make every effort and negotiate in good faith to resolve any dispute between them about inclusion or exclusion of any Class Member on the Final List. Any Class Members whom the parties agree will be added to the Final List pursuant to this paragraph will be added no later than thirty-five (35) days after OFCCP's receipt of the Final List. Notwithstanding efforts to agree, OFCCP shall have the final determination of who shall be on the Final List.

25. The individuals on the Final List, including any amendments made to the Final List pursuant to Paragraph 24 above, shall be referred to as Eligible Class Members and shall be entitled to a monetary recovery.

26. Class Members who do not respond to the Notice at all shall not be entitled to any relief described herein. Class Members who complete the Verification Form and Release but return them to TIAA after the sixty (60) day period has expired shall be entitled to relief described herein if the parties agree to include their names on the Final List pursuant to Paragraph 24 above.

27. OFCCP and TIAA agree that TIAA shall have no further liability for back pay, interest, or any other relief under this Decree to any Class Member identified on the Final List who cannot be located within the timeframes enumerated above or who does not complete and submit a completed Claim Form and executed Release within the timeframe outlined in this

Decree.

B. Monetary Settlement

28. In settlement of all claims for back pay and interest to the Eligible Class Members, TIAA agrees to pay to the Eligible Class Members a total of \$1,000,000 inclusive of back pay and interest pursuant to Sections III.A and III.B (the “Back Pay Amount”), and \$500,000 for any appropriate adjustments to pay pursuant to Sections III.B and III.C (the “Adjustment Amount”).

29. Within sixty (60) days after the Effective Date, TIAA will deposit the Back Pay Amount into an interest-bearing account at an FDIC-insured banking institution (the “Settlement Fund”). TIAA will notify OFCCP no later than ten (10) days after this action is complete and will provide appropriate documentation to OFCCP at that time, said documentation to include the name and address of the FDIC-insured banking institution, the account number, the date of deposit, the deposit amount, and bank records showing the deposit amount. In addition, upon written request, TIAA will provide OFCCP, within twenty (20) days of receiving such a request, with copies of bank records showing the current balance of the account, a list of transactions, and the amount of accrued interest on the account.

30. The Back Pay Amount that TIAA will deposit into the Settlement Fund pursuant to Paragraph 29, plus additional interest that accrues on such amount, and, if necessary, the re-allocated funds after the salary adjustments described in Paragraph 47, represent the total negotiated amount and accrued interest due under this Decree owed to the Eligible Class Members.

31. The Adjustment Amount, plus additional interest that accrues on such amount, represents the total negotiated amount that is allocated to be used to make a one-time salary adjustment for current employees in the two Covered Groups following the first compensation analysis as discussed in Section III.C. If the results of the compensation analysis do not require

adjustments of at least \$500,000 according to TIAA's review and discretion, the remaining amount shall be reallocated to the Back Pay Amount for distribution among Eligible Class Members, as referenced in Paragraph 30.

32. Within sixty (60) days of the parties' agreement as to the identity of the Eligible Class Members, OFCCP will recalculate the total back pay and interest amount owed each Class Member on Attachment A ("Recalculated Attachment A") and send this information to TIAA. Included will be each Eligible Class member's minimum gross payment and proportionate percentage of the Settlement that the Eligible Class Member will receive pursuant to this Decree ("Proportionate Percentage").

33. Within thirty (30) days of receiving the list from OFCCP showing the gross payments and Proportionate Percentages (the "Initial Payment Date"), TIAA will take the following actions:

- a. Pay each Eligible Class Member who is employed by TIAA as of the Initial Payment Date the gross amount listed in the Recalculated Attachment A by check if TIAA retains a third-party administrator or in the manner in which such Eligible Class Member is normally paid their regular salary (*e.g.*, direct deposit, check, *etc.*). Said payment shall be subject to all lawful deductions as set forth in Paragraph 34 below; and
- b. Mail a check to all other Eligible Class Members in the respective amounts, subject to all lawful deductions, as set forth in Paragraph 34, below.

34. TIAA shall make all deductions required by law (*e.g.*, federal, state, and/or local taxes and FICA) and shall pay to the Internal Revenue Service the employer's share of Medicare and Social Security withholdings in addition to the funds designated as back pay and paid to each Eligible Class Member. At such time as TIAA provides its current employees with Federal Internal Revenue Service ("IRS") Form W-2s, TIAA shall also mail a Form W-2 to each Eligible Class Member who is not employed by TIAA. For any portion designated as interest, TIAA will not make any statutory contributions or deductions and will issue an IRS Form W-1099 at the

same time it issues the IRS Form W-2.

35. Within sixty (60) days of making the payments as set forth in Paragraph 33, above, TIAA will provide OFCCP with:

- a. Payroll stubs or the equivalent verifying that it has paid Eligible Class Members who are employed by TIAA, pursuant to Paragraph 33, above;
- b. Proof that payments to Eligible Class Members have been cashed; and
- c. Documentation of all other undeliverable payments and all checks returned as undeliverable at the end of each subsequent thirty (30)-day period during which any such cancelled and/or returned checks are received, up to 180 days after the date of mailing checks to Eligible Class Members as set forth in Paragraph 33.

36. OFCCP will have thirty (30) days from receipt of any checks returned as undeliverable to an Eligible Class Member to locate the specific Eligible Class Member and to inform TIAA of a corrected address so that the check may be re-mailed. TIAA will re-mail the check by first-class mail within fifteen (15) days of receiving from OFCCP the corrected address.

37. Any check sent to an Eligible Class Member that remains uncashed 180 days after the date on which the check was initially mailed to the Eligible Class Member, as described above in Paragraph 33, the date on which the check was mailed to the Eligible Class Member for the second time pursuant to the process described in Paragraph 36 above, or the date upon which the check re-mailed to the Eligible Class Member is returned as undeliverable after the process described in Paragraph 36 above has been completed, whichever is later, shall be void.

38. OFCCP will recalculate the total back pay and interest amount owed each Eligible Class Member from whom checks have not been returned, reapportioning the uncashed funds pursuant to the process and timeframe described to perform the Recalculated Attachment A in Paragraph 32.

39. TIAA will then make a second distribution of any uncashed funds from the Back

Pay Amount pursuant to the process and timeframe described to make Initial Payments in Paragraphs 33 through 37. If any checks from such second distribution remain uncashed 180 days after the date on which the check was initially mailed to the Eligible Class Member, the date on which the check was mailed to the Eligible Class Member for the second time pursuant to this Paragraph, or the date upon which the check mailed to the Eligible Class Member is returned as undeliverable after the process described in Paragraph 36 above has been completed, whichever is later, shall be void. TIAA will deposit the monies of any such uncashed checks (from the second distribution) with state offices of unclaimed funds, or with the equivalent agencies of where the check was processed, in accordance with any and all state and local applicable laws and regulations. No portion of these funds shall revert, directly or indirectly, to TIAA.

40. The parties may modify any time frame set forth in this Decree by mutual agreement. In addition, OFCCP or TIAA may petition the Administrative Law Judge to extend any of the above time periods for no more than thirty (30) days in order to permit an Eligible Class Member to receive his or her share of the Settlement Fund where the interest of justice would be served by such extension and for good cause shown.

C. Salary Adjustments

41. Apart from TIAA's regular legally privileged compensation analyses conducted by TIAA and its counsel, TIAA will identify and retain a third-party consultant to conduct two additional legally privileged compensation analyses for current employees in jobs in the two Covered Groups as referenced herein, one to be completed pursuant to the timeframe set forth in Paragraphs 43 through 47, and a second to also be completed pursuant to the timeframe set forth in Paragraphs 43 through 47, except that for the second analysis, TIAA will provide the factors set forth in Paragraph 43 one year plus thirty (30) days after the Effective Date. Any other legally privileged compensation analyses by TIAA (and/or its third-party consultants) will not be subject

to this Decree.

42. Employees in the Covered Groups whose compensation is studied as described in this Part will be compared to similarly situated males (as defined under Title VII of the Civil Rights Act of 1964) as they relate to the Project Management and Recordkeeping Services Functions, as appropriate.

43. The legally privileged compensation analyses described in this Part will be based on legitimate non-discriminatory factors relevant to compensation for each Covered Group as reasonably determined in good faith by TIAA. Within thirty (30) days of the Effective Date (or, for the second analysis, within one year plus thirty days of the Effective Date), TIAA will propose legitimate non-discriminatory factors for review by OFCCP. OFCCP will review factors and, within 14 days, may object to any factor OFCCP deems to be unreasonable.

44. Within fifteen (15) days after OFCCP's response to the factors provided pursuant to Paragraph 43, TIAA with its third-party consultant will conduct the initial phase of the compensation analysis.

45. TIAA will share a progress report with OFCCP based on each of the two compensation analyses discussed in this Part pursuant to the procedures specified in Paragraph 54(c).

46. If the actions described in Paragraph 44 reveal patterns of statistically significant results that are adverse to covered employees, TIAA will investigate those identified disparities further to determine whether there are non-discriminatory factors not included in the analyses that in TIAA's reasonable good faith determination otherwise explain the adverse results. The investigation referenced in the paragraph shall extend no longer than forty-five (45) days. TIAA will document the results of all such investigations and analyses.

47. If on completion of the compensation analyses (following any further investigation described in Paragraph 46), TIAA is unable to otherwise explain with non-discriminatory factors the adverse results revealed by the legally privileged analyses described in Paragraph 44, TIAA will take reasonable remedial steps, including but not limited to adjustments to compensation within sixty (60) days of completing the compensation analysis as described in Paragraph 46. After the first analysis, any adjustments to compensation, if necessary, will be made out of the Adjustment Amount (as referenced in Paragraph 28) and reported to OFCCP (as set forth in Paragraph 54(c)). Any monies remaining following salary adjustments (if any) after the first analysis described in this Part will be reallocated as set forth in Paragraph 31 above, and before the Initial Payment Date, as set forth in Paragraph 33.

48. OFCCP agrees that providing information related to this Part (including but not limited to legitimate non-discriminatory factors as referenced in Paragraph 43 and/or other information that may be required subject to Section IV below) shall not constitute a waiver of any privilege related to any legally privileged compensation analyses (including statistical analyses, qualitative review of same, or advice or recommendations by legal counsel for TIAA related to the analyses).

D. Non-Monetary Actions

49. Equal Employment Opportunities. TIAA acknowledges its commitment to ensure that all employees are afforded equal employment opportunities with respect to TIAA's policies and practices that affect compensation.

50. Implement Additional Policies As Appropriate. Within one hundred fifty (150) days of the Effective Date, TIAA will comply with the provisions of this paragraph. TIAA will develop and implement additional anti-discrimination policies, practices, and procedures to

track and to evaluate compensation decisions with regard to jobs in the Covered Groups. TIAA will also develop training to ensure all individuals involved in determining compensation for jobs in the Covered Groups are aware of any such policies, procedures, and programs.

51. Record Retention. TIAA will ensure that its policy for record retention meets or exceeds the requirements of 41 C.F.R. §§ 60-1.12(a) and 60-3.

52. Training. Within one hundred eighty (180) days of the Effective Date, TIAA will train all TIAA managers involved in determining compensation for jobs in the Covered Groups on any new and/or revised policies, practices, procedures, and programs developed under Paragraph 50 of this Decree.

53. Self-Monitoring/Auditing. TIAA agrees to continue conducting a good faith review of its compensation systems for gender-based disparities at the establishment. If significant unexplained compensation disparities are identified during the course of TIAA's good faith review, TIAA agrees to implement reasonable corrective actions, which may include but are not limited to pay adjustments to current or future compensation. The parties understand that this provision imposes no obligations not already required by existing regulatory requirements and does not serve as an independent basis for opening a compliance audit against TIAA.

IV. REPORTING

54. TIAA will submit the documents and reports described below via email or mail to:

District Director
United States Department of Labor
Office of Federal Contract Compliance Programs
3800 Arco Corporate Drive, Suite 465
Charlotte, North Carolina 28273
Quinn.Pamela@dol.gov

- a. Within one hundred fifty (150) days of the Effective Date, TIAA will submit a copy of any written additional or revised compensation

policies and practices described in Paragraph 50 of this Decree.

- b. Within two hundred ten (210) days of the Effective Date, TIAA will submit documentation that all TIAA managers involved in making compensation decisions have received training on any additional or revised policies, procedures, and programs developed under Paragraph 52 of this Decree.

- c. TIAA will submit all documents and information referenced in Section III of this Decree within the prescribed timeframes. As referenced in paragraphs 45 and 47, TIAA will submit two progress reports to OFCCP based on compensation data derived through its legally privileged compensation analyses described in Paragraphs 41- 48 of this Decree. The first report will be due sixty (60) days after TIAA fulfills any obligations referenced in Paragraph 47 as a result of the first compensation analysis described in Paragraph 41, utilizing compensation data current as of the Effective Date. The subsequent report will be due no later than sixty (60) days after TIAA fulfills any obligations referenced in Paragraph 47 as a result of the second compensation analysis described in Paragraph 41, utilizing compensation data current one (1) year after the Effective Date. In each progress report, TIAA will provide OFCCP the results of its compensation analysis, including:
 - i. the job groupings and job titles of the employees in the analysis by gender, the resulting standard deviation and b-co-efficient, the legitimate non-discriminatory factors used in the analysis, the date the analysis was conducted,
 - ii. if statistically significant pay difference(s) that cannot be explained by legitimate factors (quantitative and qualitative) are identified by TIAA, documentation of pay adjustments to remedy the difference(s). The documentation will include the amount of each adjustment, the date each adjustment will be/was made, the percentage of disparity, and the gender of each individual receiving an adjustment, and
 - iii. with each progress report, TIAA will submit its written E.O. 11246 Affirmative Action Plan for the current year for the establishment. If TIAA was not required to prepare an AAP during the current year, it should note that in the progress report.

55. By submitting documents, reports, or any other information or data pursuant to this Section or any requirements in this Decree, TIAA does not waive privilege over its compensation analyses conducted under legal privilege (as described in Paragraphs 41-48 of this

Decree) nor over any other documents, reports, information, or data subject to any privilege.

56. TIAA agrees to retain all records relevant to the Covered Groups identified in Paragraph 17 above and the reports submitted or created in compliance with this Decree. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. TIAA will retain these records until this Decree expires or for the time period consistent with regulatory requirements, whichever is later.

V. IMPLEMENTATION AND ENFORCEMENT

57. This Decree shall constitute the final administrative order in this case and shall have the same force and effect as an order made after a full hearing and final review by the Administrative Review Board.

58. Pursuant to 41 CFR Section 60-30.13(b)(2), the entire record upon which this Decree is based shall consist solely of the OFCCP's Administrative Complaint 2019-OFC-00002 and this Decree, including Attachments A-D.

59. Except as otherwise provided herein, the parties hereby waive any further procedural steps provided in 41 C.F.R. Chapter 60-30 for a final administrative order.

60. The parties waive any right to challenge or contest the validity of the provisions of this Decree and any order issued in accordance with this decree.

61. The Office of Administrative Law Judges shall retain jurisdiction of this proceeding for the sole purpose of enforcing implementation of this Decree in accordance with its terms. The Office of Administrative Law Judges shall retain jurisdiction of this case for a period of until thirty (30) days after TIAA satisfies its obligations described herein, whichever is later. At such time, this enforcement action shall be dismissed with prejudice.

62. OFCCP shall be solely responsible for initiating enforcement of compliance with the terms of the Consent Decree.

63. TIAA agrees that OFCCP may review compliance with this Consent Decree and will provide OFCCP with all documents reasonably related to such a review. TIAA also agrees to allow OFCCP to go onsite at 8500 Andrew Carnegie Blvd., Charlotte, North Carolina 28262 during normal business hours as necessary to review compliance with this Decree and upon explaining in writing the reason for doing so. OFCCP agrees to coordinate with TIAA any onsite visit to review compliance with this Consent Decree prior to going onsite. If at any time during the term of this Decree OFCCP believes that TIAA has violated any portion of this Consent Decree, OFCCP will promptly notify TIAA in writing. This notification will include a statement of the alleged violations and the facts and circumstances OFCCP relied upon in forming that belief. TIAA will have fifteen (15) days in which to respond in writing to the allegations of violation, except in those circumstances in which OFCCP alleges that such a delay would result in irreparable injury.

64. Enforcement proceedings for violation of this Decree may be initiated at any time after the fifteen (15) day period has elapsed (or sooner if irreparable injury is alleged), and upon filing with the Office of Administrative Law Judges a motion for an order of enforcement and/or sanctions, along with a proposed order. The Administrative Law Judge may, if she deems it appropriate, schedule an evidentiary hearing on the motion. The issues in a hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

65. If a motion for an order of enforcement or clarification made by OFCCP or TIAA is unopposed, the motion may be presented to the Administrative Law Judge without a hearing, and the proposed order may be implemented immediately. If the application or motion of OFCCP or TIAA is opposed by the other party, the party in opposition shall file a written response within

fifteen (15) days of service of such motion.

The Consent Decree herein set forth is hereby **APPROVED** and shall constitute the final Administrative Order in this case.

ORDERED this ____ day of _____, 2020, at Newport News, Virginia.

Dana Rosen
Administrative Law Judge

For TIAA:

**For the Office of Federal Contract
Compliance Programs, United States
Department of Labor:**

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Date: _____

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Gary Siniscalco



Christopher Wilkinson

Date: 08/10/2020

Date:

Date:

Date: 8/13/2020