

CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

and

OLD DOMINION UNIVERSITY RESEARCH FOUNDATION

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) initiated a complaint investigation of Old Dominion University Research Foundation (ODURF) located at 4111 Monarch Way, Suite 204, Norfolk, Virginia 23508, beginning on June 18, 2018. OFCCP found that ODURF failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order) and its respective implementing regulations at 41 C.F.R. Part 60-1.

OFCCP notified ODURF of the specific violations and the corrective actions required in a Notification of Results of Investigation (NORI) issued on September 6, 2019.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and ODURF enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms stated therein.

The attachments to this Agreement are deemed incorporated into this Agreement.

II. General Terms And Conditions

1. In exchange for ODURF's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended 38 U.S.C. § 4212 (VEVRAA) based on the violations alleged in the NORI. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if ODURF violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review ODURF's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. ODURF will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents it requests, including those specified in this Agreement.

3. Nothing in this Agreement relieves ODURF of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. ODURF and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. ODURF agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
8. This Agreement becomes effective on the day it is signed by the Regional Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after ODURF submits its final progress report required in Section VIII, below, unless OFCCP notifies ODURF in writing before the expiration date that ODURF has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that ODURF has met all of its obligations under the Agreement.
11. If ODURF violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34 will govern:
 - i. OFCCP will send ODURF a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. ODURF shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If ODURF 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.

- iv. In the event of a breach of this Agreement by ODURF, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms agreed to in the Agreement.
 - b. ODURF may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, 41 C.F.R. 60-741.66 (2014), or 41 C.F.R. 60-300.66 (2014), and/or other appropriate relief for violating this Agreement.
12. ODURF neither admits nor denies any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
14. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
15. Each party shall bear its own fees and expenses with respect to this matter.
16. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP 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 Agreement.
17. All references to “days” in this Agreement, and in the Timeline included as Attachment B, are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

III. Discrimination Violations

1. **VIOLATION:** OFCCP alleges that ODURF discriminated against the complainant, (b) (6), (b) (7)(C) by terminating (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) inquired about (b) (6), (b) (7)(C) pay, in violation of 41 C.F.R. 60-1.4(a)(3). Specifically, OFCCP alleges that ODURF terminated the complainant from employment because (b) (6), (b) (7)(C) inquired about, discussed, and disclosed concerns regarding (b) (6), (b) (7)(C) compensation and that of other employees to (b) (6), (b) (7)(C) supervisor, who had the same access to ODURF’s compensation system as the complainant.

Additionally, OFCCP alleges that ODURF prohibited employees from discussing or disclosing the compensation of others. Specifically, OFCCP alleges that ODURF’s Code of Ethics and Standards of Conduct – Avoid Personal Conflicts of Interest discouraged employees from comparing their own compensation to others’ (Code of Ethics and Standards of Conduct, page 9 of 16). ODURF also stated, in (b) (6), (b) (7)(C) termination memo, that (b) (6), (b) (7)(C) was terminated for violating ODURF’s Code of Ethics and Standards of Conduct when ODURF stated that (b) (6), (b) (7)(C) used other employees’ compensation information,

without authorization, for the benefit of (b) (6), (b) (7)(C) personally, by comparing (b) (6), (b) compensation to others.

IV. Financial Remedy

1. Settlement Amount

The total settlement amount includes \$28,429.28 in back pay, \$2,000.00 to cover actual and/or potential attorney's fees, and \$3,000.00 in interest to resolve the specific alleged violations set forth above, as follows:

2. Allocation

- a. **Total Amount to be Allocated.** The back pay, attorney's fees, and interest amounts will be distributed to the Complainant as explained in this Section. The amount distributed will include appropriate deductions for the Complainant's share of payroll deductions required by law on the portion representing back pay only, such as federal (FICA/Federal Unemployment Tax Act (FUTA)), state or local insurance premiums or taxes.
- b. **Complainant Eligible to Receive Payments.** The settlement will be distributed to the Complainant (identified in Attachment A) if (b) (6), (b) (7)(C) timely responds to the Notice Process as explained below (hereinafter, Eligible Complainant). The final amount the Complainant is set forth below.
- c. **Individual Payment Amounts.**
Complainant (b) (6), (b) (7)(C) will receive a total net payment of approximately \$25,000, which represents gross wages of \$28,429.28 in back-pay, plus \$2,000 in attorney's fees, and \$3,000 in interest.
- d. **Payment to Complainant.** ODURF will issue a check or checks or make an electronic payment to the Eligible Complainant in the stated amount, along with appropriate tax reporting forms (such as W-2 and Internal Revenue Service (IRS) Form 1099) by the date set forth on the Timeline. OFCCP will receive timely documentation of the payment made and any payments returned undelivered or any checks not cashed, as set forth on the Timeline. A check that remains uncashed 180 days after the initial date the check was mailed to the Eligible Complainant will be void.
- e. **Tax Payments, Forms and Reporting.** ODURF will pay ODURF's share of social security withholdings, and any other tax payments required by law from additional funds separate from the Settlement Fund. ODURF shall mail to the Eligible Complainant an IRS Form W-2 for that portion of the payment representing back pay and an IRS Form 1099 for that portion of the payment representing interest and attorney's fees. These IRS forms will be provided to the Eligible Complainant either at the time of payment, electronically or with the settlement check, or at the end of the year, as required by the IRS. The

Complainant will not be required to complete a W-4 or W-9 in order to receive a payment under this settlement.

3. Notice Process

- a. **OFCCP and Contractor Obligations under the Notice Process.** The Notice Process set forth in this Agreement is intended to provide the Complainant a meaningful opportunity to understand her rights and obligations and act on them in a timely manner.
- b. **Notice Documents.** ODURF will distribute Notice Documents to the Complainant identified in Attachment A consistent with the sample Notice Documents contained in Attachment C. The Notice Documents may include a Notice, Release of Claims and Income Verification Forms. The Notice Documents may also include other materials such as standard OFCCP or U.S. Department of Labor materials, instructions or a cover sheet, job applications, or other information that better enables the Complainant to understand her rights and obligations and act on them in a timely manner. The Notice Documents will make clear the information about the settlement is being provided by or on behalf of the U.S. Department of Labor. As specified in the Timeline and as otherwise necessary to fulfill this Agreement, the parties will meet and confer on any reasonable modifications of the sample Notice Documents or additions to the materials distributed by ODURF, if proposed by either party.
- c. **Timeline.** Attachment B sets forth the agreed Timeline for Notice and for the parties' other obligations under this Agreement. The parties will meet and confer on any reasonable modifications to the Timeline proposed by either party.
- d. **Search for Complainant.** OFCCP shall provide ODURF with complete contact information in its possession or its authority to obtain on the Complainant by the date set forth in the Timeline.
- e. **Distribution of Mail Notice to Complainant.** ODURF will provide initial notice by regular first-class mail. ODURF will send copies of all of the Notice Documents as defined above, including a postage-paid return envelope, by first class mail to the best available mailing address for the Complainant, by the date set forth in the Timeline. If the envelope from the initial mail notice is returned with forwarding addresses, ODURF will re-mail the Notice Documents within five (5) days of receipt of the forwarding address.

Based on the response to the initial mail notice, the parties will meet and confer by the date set forth in the Timeline to assess the results of the initial mail notice and to ensure that the second round of mail notice maximizes the potential response rate. A second mail notice will be sent to Complainant with a valid address if [REDACTED] fails to respond to the first mail notice unless the parties agree otherwise.

- f. **Distribution of Notice by Other Means.** ODURF shall work with OFCCP to develop a recommended plan for Notice by other means in addition to first class mail.

- g. **Notice Deadline.** The final deadline for the Complainant to respond to the notice is set forth in the Timeline. The parties will prominently display this deadline on all materials they distribute in paper or online form regarding this Agreement, and explain that failure to respond by this deadline will result in a forfeiture of any relief provided by this Agreement.
- h. **Technical Assistance.** The parties will timely respond to any inquiries from Complainant using information consistent with this Agreement and the Notice Documents and will document all inquiries and the result. OFCCP will provide contact information for the Complainant to contact OFCCP regarding this Agreement. The parties will prominently display this contact information on all materials they distribute in paper or online form regarding this Agreement. ODURF will provide OFCCP contact information to the Complainant if (b) (6), (b) (7) has questions or concerns.
- i. **Exchange of Information Regarding Complainant.** ODURF and OFCCP will timely exchange information regarding the Complainant, including updated contact information and the results of any technical assistance provided.
- j. **Final List.** The Final List will include the Complainant if (b) (6), (b) (7) timely responds to the Notice by the deadline set forth in the Timeline. The parties will establish the Final List by the date set forth in the Timeline. The parties will meet and confer on any outstanding issues or questions regarding the Final List. OFCCP shall make the final determinations of eligibility but will make every effort to negotiate in good faith to resolve any dispute about the Final List. ODURF will provide to OFCCP any information necessary to determine the Final List.
- k. **Documentation of Payments.** By the deadline set forth in the Timeline, ODURF will provide OFCCP with copies of a cancelled check or electronic documentation of the payment to the Complainant, including the amount paid, the date payment was sent, the date payment was received or the check cashed, and any uncashed or returned checks.
- l. **Contractor's Expenses.** ODURF will pay all expenses associated with carrying out its duties pursuant to this Section, from funds separate and apart from the amount designated in this Agreement for the Settlement.

V. Additional Individual Relief

Personnel File. ODURF shall remove all references, if any, to any charge or allegation of discrimination against ODURF and this complaint from the Complainant's personnel file. ODURF will remove all references, if any, to any discipline or termination from the Complainant's personnel file. The reason for Complainant's separation from ODURF will be listed as a voluntary separation. ODURF may not disclose any information or refer to any charge of discrimination or this complaint in responding to requests for information about the Complainant. When fielding inquiries about the Complainant, ODURF shall provide a neutral job reference consisting of employment dates and positions held and shall not discuss the reasons for the Complainant's job separation.

VI. Modifications to Employment Practices and Other Non-Monetary Relief

1. Workplace Environment

ODURF will:

- a. Prominently display the Pay Transparency Nondiscrimination Provision electronically or by posting a copy of the provision in conspicuous places available for employees and applicants.
- b. Notify all employees that ODURF will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed their compensation or the compensation of another employee or applicant, as required by 41 C.F.R. § 60-1.4(a)(3), and provide assurances that ODURF will not retaliate against any employee for making a Pay Transparency claim.
- c. Disseminate to all employees its revised Code of Ethics and Standards of Conduct. The revised Code of Ethics and Standards of Conduct shall be provided to incumbent employees within 90 days of the Effective Date of this Agreement.

2. Company Policy and Procedure

ODURF will:

- a. Within 90 calendar days of the Effective Date of this Agreement, revise its Code of Ethics and Standards of Conduct to reflect ODURF's non-discriminatory obligations for individuals who inquire about, discuss, or disclose their compensation or the compensation of another employee or applicant, in accordance with E.O. 11246.
- b. Remove all references, if any, to any charge or allegation of discrimination against ODURF and this complaint from (b) (6), (b) (7)(C) personnel file.
- c. As long as ODURF remains a federal contractor subject to E.O. 11246, ODURF will annually prepare and update an Affirmative Action Program (AAP) for its facility and retain all supporting documentation as required by E.O. 11246 and its implementing regulations.

3. Training

ODURF will:

- a. Within 90 calendar days of the Effective Date of this Agreement, train all employees involved in employee compensation decisions and all individuals with supervisory or management status of ODURF's non-discriminatory obligations for individuals who inquire about, discuss, or disclose compensation. OFCCP, upon request from ODURF, can provide training and/or compliance assistance on 41 C.F.R. § 60-1.4(a)(3) and Pay Transparency.

- b. Maintain and produce to OFCCP upon request sign-in sheets containing the printed name, signature, and job title of all employees who attend the training described above.

VII. OFCCP Monitoring Period

1. **Recordkeeping.** ODURF agrees to retain all records relevant to the violations cited in Section III above and the reports submitted in compliance with Paragraph 2, below. 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. ODURF will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. Contractor Reports.

- a. **Schedule and Instructions.** ODURF agrees to furnish OFCCP with the following report during the Monitoring Period according to the following schedule (*e.g.* reports on revised policies, pay adjustments, validity studies, etc.):

Progress Report 1: December 1, 2020, report due on the first business day of the next month.

The progress report will include:

1. A copy of the Notice to Complainant sent to (b) (6), (b) (7)(C)
2. A copy of the Claim Form and Release of Claims under Executive Order 11246 returned by (b) (6), (b) (7)(C)
3. Documentation of the monetary payment to the Complainant as specified in the Remedy to Violation 1 in Part III. The documentation must include a copy of the check and the date the check cleared the bank.
4. A copy of (b) (6), (b) (7)(C) personnel file reflecting the changes as specified in Part VI of this Agreement.
5. Documentation that ODURF has revised its Code of Ethics and Standards of Conduct to reflect ODURF's non-discriminatory obligations for individuals who inquire about, discuss, or disclose their compensation or the compensation of another employee or applicant, in accordance with E.O. 11246. In addition, ODURF will conduct Pay Transparency training, for employees, including those involved in compensation decisions, all employees who hold supervisory status, and all Human Resources Generalist, on ODURF's non-discrimination obligations for employees who inquire about, discuss, or disclose compensation.

6. Documentation that ODURF has disseminated its revised Code of Ethics and Standards of Conduct to all employees.

ODURF will submit reports to Dianna Adams, Assistant District Director, 400 North 8th Street, Suite 466, Richmond, Virginia 23219, (b) (6), (b) (7)(C)@dol.gov. ODURF and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports ODURF provides in accordance with this agreement are customarily kept private or closely-held, and ODURF believes should remain confidential under Exemption 4 of FOIA in the event of a FOIA request, ODURF will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

- b. **Affirmative Action Programs.** ODURF will submit its current year AAP for E.O. 11246 with the first Progress Report and annually thereafter while the CA monitoring period is in effect.
- c. **Reports on Modifications to Personnel Practices.** In each Progress Report, ODURF will report on all modifications of personnel practices made to date pursuant to the Agreement and provide documentation of its compliance with the remedy provisions of this Agreement. If any of the relevant documents such as job postings or policies have not been modified since being provided during a prior reporting period, a statement to that effect is sufficient.
- d. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts ODURF's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify ODURF in writing within sixty (60) days of the date of the final progress report that ODURF 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 ODURF within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines ODURF has met all of its obligations under the Agreement.

VIII. Signatures

The person signing this Agreement on behalf of ODURF personally warrants that he or she is fully authorized to do so, that ODURF has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on ODURF.

This Conciliation Agreement is hereby executed by and between OFCCP and Old Dominion University Research Foundation, 4111 Monarch Way, Suite 204, Norfolk, Virginia.

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

JULIAN FACENDA
Executive Director
Old Dominion University
Research Foundation
Norfolk, VA 23508

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

MICHELE HODGE
Regional Director
Mid-Atlantic Region
Office of Federal Contract Compliance Programs

Date: September 15, 2020

Date: _____

Attachments:

- A. List of Affected Employee
- B. Timeline
- C. Notice Documents

ATTACHMENT A
COMPLAINANT

1. (b) (6), (b) (7)(C)

**ATTACHMENT B
TIMELINE**

ACTIVITY	DATE
ODURF Mails Notice Documents (First Mailing)	September 1, 2020
Deadline for Complainant to Reply to Notice	October 15, 2020
Deadline for Complainant to Reply to Second Notice	November 15, 2020
ODURF Mails Back-pay, attorney's fees, and interest checks	Within seven (7) days of receipt of signed Notice Documents and General Release

ATTACHMENT C-1

NOTICE TO COMPLAINANT

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

Old Dominion University Research Foundation (ODURF) 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 complaint investigation. OFCCP's investigation found that ODURF terminated you because you inquired about your pay. ODURF has not admitted to any violation of E.O. 11246 and there has not been any adjudicated finding that ODURF violated any laws. OFCCP and ODURF entered into the Agreement to resolve the matter without resorting to further legal proceedings.

Under the Agreement, you are eligible to receive a net payment of approximately \$25,000, representing back-pay of \$28,429.28, \$2,000 attorney's fees, and \$3,000 interest. Under the terms of the Agreement it may take up to six months from the date of this letter before you receive your payment. In order to be eligible for a payment, you must complete, sign, and return enclosed Information Verification and Release of Claims Form. This form should be mailed as soon as possible to the address below. **In order for you to be eligible to participate in the settlement, your documents must be received by [insert date by which complainant must respond].**

Hope Fowler
Human Resources Director
Old Dominion University Research Foundation
4111 Monarch Way #204
Norfolk, VA 23508-0369

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

If you have any questions you may call Hope Fowler at ODURF at 757-683-(b) (6), (b) (7) or OFCCP Compliance Officer (b) (6), (b) (7)(E) at (804) (b) (6), (b) (7)(C). Your call will be returned as soon as possible.

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENT(S) TO ODURF BY [insert date by which complainant must respond], YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT.

Sincerely,

Hope Fowler
HR Director
4111 Monarch Way #204

Norfolk, VA 23508-0369
Enclosures

Information Verification Form

Release of Claims Form

ATTACHMENT C-2

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 Old Dominion University Research Foundation (ODURF) 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 _____
Email _____

Notify ODURF at the address below if your address, email address or phone number changes within the next twelve (12) months.

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

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE ADDRESS BELOW BY [DATE COMPLAINANT MUST RESPOND], YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT.

[Name]
[Address]

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

Signature

Date