

Billing Code 6570-01P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Coordination of Functions; Memorandum of Understanding

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP) have updated their Memorandum of Understanding (MOU), last published at 64 Fed. Reg. 17,664 (April 12, 1999). These updates include: using contemporary office names and titles; designating a “Coordination Advocate” at both agencies; reorganizing and/or condensing language for clarity; streamlining the Compliance Coordination Committees; and clarifying the complaint/charge referral procedures.

FOR FURTHER INFORMATION CONTACT: Claudia Gordon, Special Assistant to the Director, Office of Federal Contract Compliance Programs, Department of Labor, (202) 693-1073; Tanisha R. Wilburn, Senior Attorney Advisor, Office of Legal Counsel, Equal Employment Opportunity Commission, (202) 663-4909 (voice), 202-663-7026 (TTY).

SUPPLEMENTARY INFORMATION: The purpose of this Memorandum of Understanding (MOU) is to further the agencies’ joint objectives in ensuring equal employment opportunities for applicants and employees under Title VII of the Civil Rights Act of 1964 (Title VII) and Executive Order 11246 (E.O. 11246), to promote greater efficiency and coordination, and to eliminate conflict and duplication of effort. The agencies first entered into this MOU on May 20, 1970, and revised it in 1974, 1981, and most recently in 1999.

In this update, the agencies edited the MOU’s Introduction and added paragraphs 1 and 10 to support coordination generally and specifically to create a Coordination Advocate at each agency. They edited paragraph 6 to clarify the tasks of the Compliance Coordination Committees at Headquarters and Field offices. They also explained that disability complaints/charges are not coordinated under this MOU, but rather pursuant to the 1992 joint regulation at 29 CFR part 1641 and 41 CFR part 60-742 (“joint disability regulation”).

To improve the clarity of the MOU’s provisions describing the referral process for complaints/charges under Title VII and E.O.11246, the agencies revised paragraph 7 and added new paragraph 8. Thus, language formerly in paragraph 7(d) of the 1999 MOU was moved to the beginning of paragraph 7(a), to state that OFCCP is the EEOC’s agent to accept the Title VII component of an E.O. 11246 complaint. Consistent with equivalent provisions in the agencies’ 1992 joint disability regulation, OFCCP expressly agreed to refer complaints to the EEOC when OFCCP determines that it lacks jurisdiction, and EEOC made a similar referral pledge in new

paragraph 8. *See* 29 C.F.R. § 1641.5(d) and §1641.6(c). In both instances, the date of filing with the first agency is deemed the date of filing with the second.

Finally, the agencies updated the description of DOL's structure and the titles of officials at both agencies. They also made minor editorial changes.

The text of the revised MOU follows below. The major changes to the MOU are in paragraphs 1(a), 6(a), 7(a), 8 and 10. The revised MOU is also available on the EEOC's Home Page at www.eeoc.gov and OFCCP's Home Page at www.dol.gov/ofccp.

/s/
JACQUELINE A. BERRIEN
Chair, Equal Employment
Opportunity Commission

11/9/2011
Date

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**Memorandum of Understanding
Between
U.S. Department of Labor
And
Equal Employment Opportunity Commission**

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) first entered into this Memorandum of Understanding (MOU) in 1970 to further the objectives of Congress under [Title VII of the Civil Rights Act of 1964, as amended \(Title VII\)](#), in coordination with [Executive Order 11246, 30 FR 12319, as amended \(E.O. 11246\)](#), and [Executive Order 12067, 43 FR 28967 \(E.O. 12067\)](#) (the EEOC's government-wide coordination authority). This MOU broadly promotes interagency coordination in the enforcement of equal employment opportunity (EEO) laws and also serves to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistency among the operations, functions and jurisdictions of the parties to the MOU. It includes specific coordination procedures for complaints/charges of employment discrimination filed with OFCCP under E.O. 11246 and/or Title VII, which deal with discrimination on the basis of race, color, religion, sex, or national origin. Further, the MOU includes provisions for sharing information as appropriate and to the extent allowable under law.

This MOU sets forth the complaint/charge referral procedures and information sharing provisions between the agencies as they relate to the enforcement of Title VII and E.O. 11246. However, the agencies' Compliance Coordination Committees (§ 6) are not limited to these two requirements, and may consult on any other topic that will enhance the agencies' mutual enforcement interests under any of the laws within their respective jurisdiction. This MOU does

not extensively discuss interagency coordination efforts involving disability and other bases, apart from the broad mandate for the agencies' Compliance Coordination Committees (§ 6). In 1992, the EEOC and OFCCP issued joint procedural regulations providing for information sharing, confidentiality, and complaint/charge referral under [Title I of the Americans with Disabilities Act](#) and [Section 503 of the Rehabilitation Act](#). See [29 CFR part 1641](#) (EEOC), and [41 CFR part 60-742](#) (OFCCP).

The parties to this MOU agree as follows:

1. Sharing Information

(a) EEOC and OFCCP shall share any information relating to the employment policies and/or practices of employers holding government contracts or subcontracts that supports the enforcement mandates of each agency as well as their joint enforcement efforts. Such information shall include, but is not limited to, affirmative action programs, annual employment reports, complaints, charges, investigative files, and compliance evaluation reports and files.

(b) OFCCP shall make available to the appropriate requesting official of the EEOC or his or her designee for inspection and copying and/or loan, any documents in its possession pertaining to the effective enforcement or administration of any laws or requirements enforced by the EEOC including: (i) [Title VII](#); (ii) [the Equal Pay Act of 1963 \(EPA\)](#); (iii) [the Age Discrimination in Employment Act of 1967 \(ADEA\)](#); (iv) [the Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#); (v) the [Americans with Disabilities Act \(ADA\)](#) (in accordance with [29 CFR part 1641](#)); and (vi) E.O. 12067. All documents will be made available within ten days of such request, or as soon as practical thereafter. Disclosure of such material by EEOC shall be in accordance with paragraphs 4 and 5 of this Agreement. All transfers of information under this and other paragraphs of this MOU shall only be made where not otherwise prohibited by law and in accordance with paragraph 5 of this Agreement.

(c) The EEOC shall make available to the appropriate requesting official of the OFCCP or his or her designee for inspection and copying and/or loan any documents pertaining to the enforcement and administration of (i) E.O. 11246; (ii) the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, [38 U.S.C. § 4212](#); (iii) Section 503 of the Rehabilitation Act of 1973 (in accordance with [41 CFR part 60-742](#)); and (iv) E.O. 12067. All documents in its possession (or to which it has access through a work-sharing agreement as described in paragraph 4(b) of this Agreement) will be made available within ten days of such request, or as soon as practical thereafter. Disclosure of such material by OFCCP shall be in accordance with paragraphs 4 and 5 of this Agreement.

2. "Appropriate Requesting Officials" shall, for the purpose of this Agreement, include the following officials and staff:

- (a) For the EEOC --
 - (1) The Chair
 - (2) A Commissioner
 - (3) The General Counsel

- (4) The Deputy General Counsel
- (5) The Associate General Counsel
- (6) The Legal Counsel
- (7) The Director of the Office of Research, Information and Planning
- (8) Any Regional Attorney
- (9) Any EEOC District, Field, Area or Local Office Director
- (10) Director, Office of Field Programs

(b) For the DOL/OFCCP --

- (1) The Secretary or Deputy Secretary of Labor
- (2) The Solicitor or Deputy Solicitor of Labor
- (3) The Director or Deputy Director, OFCCP
- (4) Any Associate Solicitor
- (5) Any OFCCP Regional, District or Area Office Director
- (6) Any Regional Solicitor of Labor
- (7) Any OFCCP Division Director

3. Requests directed to a headquarters office of one agency from a field office of the other shall first be forwarded through the headquarters of the requesting agency. Responses to all requests for information shall be made to the official making such request, or his/her designee.

4. Disclosure of Information

(a) All requests by third parties to this Agreement, including charging parties, respondents, and their attorneys, for disclosure of information shall be coordinated with the agency that initially compiled or collected the information. The decision of that agency regarding disclosure shall be honored.

(b) Subparagraph 4 (a), above, is not applicable to requests for data in EEOC files made by any state or local agency designated as a 706 agency with whom EEOC has a current charge resolution contract and a work-sharing agreement containing provisions required by Sections 706 and 709 of Title VII. Provided, however, that any such agency shall not disclose to third parties, including charging parties, respondents, and their attorneys, any of the information initially collected or compiled by OFCCP without express written approval by the Director, OFCCP.

5. Confidentiality

(a) When EEOC provides information to OFCCP, the confidentiality requirements of sections 706(b) and 709(e) of Title VII, apply to that information. When OFCCP receives the same information from a source independent of EEOC, the preceding sentence does not preclude disclosure of the information received from the independent source. However, OFCCP will also observe any confidentiality requirements imposed on such information by the Trade Secrets Act or the Privacy Act.

(b) When OFCCP obtains information from its receipt, investigation, and processing of the Title VII component of a dual filed charge, or when OFCCP creates documents that exclusively concern the Title VII component of a dual filed charge, OFCCP will observe any confidentiality requirements imposed on such information by the Trade Secrets Act, the Privacy Act, and sections 706(b) and 709(e) of the Civil Rights Act of 1964.

(c) Questions concerning confidentiality under Title VII, the EPA, the ADA or GINA shall be directed to EEOC's Office of Legal Counsel.

(d) Questions concerning confidentiality under E.O. 11246, 38 U.S.C. § 4212 (Section 402 of VEVRAA), or Section 503 of the Rehabilitation Act shall be directed to OFCCP, Director, Division of Program Operations.

6. EEOC and OFCCP shall establish procedures for notification and consultation at various stages of their respective compliance activities in order to develop potential joint enforcement initiatives, increase efficiency, ensure coordination and minimize duplication. Such procedures shall include:

(a) Establishment of ongoing Compliance Coordination Committees (CCC) --

1. Field Committees: OFCCP's and EEOC's District Directors and Regional Attorneys will meet, not less than biannually, to review enforcement priorities, systemic investigations of mutual interest, compliance review schedules, potential Commissioner Charges, and potential litigation. The Field Committees will work to increase efficiency, and eliminate competition and duplication, and may engage in consultation regarding any topic that enhances the agencies' mutual enforcement interests. In addition to sharing information about investigations of discrimination based on race, color, religion, sex, and national origin, the Field Committees may also share information related to the enforcement of the EPA, the ADEA, GINA, and the ADA and Section 503 of the Rehabilitation Act (in accordance with 29 CFR part 1641 (EEOC) and 41 CFR part 60-742 (OFCCP)).
2. Headquarters Committee: Representatives from OFCCP's and EEOC's Headquarters shall meet not less than biannually to discuss topics of mutual interest to both agencies, including, but not limited to:
 - (i) Procedures for routine access to and exchanges of electronic databases, including, but not limited to, lists of proposed and completed compliance evaluations; systemic and individual investigation files; and conciliation agreements and settlements;
 - (ii) Consistent analytical approaches to identifying and remedying employment discrimination under Title VII;
 - (iii) Joint and cross-training programs and materials;
 - (iv) Joint policy statements; and
 - (v) Procedures for coordinated collection, sharing and analysis of data.

(b) Contact by each agency at the commencement of and during a field investigation or compliance evaluation where appropriate to obtain information in the possession of the agency on the employer being investigated.

(c) Notification of OFCCP when EEOC has made a finding of cause, determined that attempts to conciliate have been unsuccessful, decided not to file a lawsuit, and learned or believes that the respondent is a federal contractor subject to E.O. 11246.

(d) Consultation with the appropriate field office of OFCCP when an EEOC field office is contemplating recommending a Commissioner Charge or litigation, and coordination of its activities.

(e) Consultation with the appropriate field office of EEOC when an OFCCP Regional Office is contemplating recommending the issuance of an administrative complaint and coordination of its activities.

7. Receipt, Investigation, Processing, and Resolution of Complaints Filed with OFCCP

(a) Dual-Filed Complaints/Charges -- Pursuant to this MOU, OFCCP shall act as EEOC's agent for the purposes of receiving the Title VII component of all complaints/charges. All complaints/charges of employment discrimination filed with OFCCP alleging a Title VII basis (race, color, religion, sex, national origin, or retaliation) shall be received as complaints/charges simultaneously dual-filed under Title VII. In determining the timeliness of such complaint/charge, the date the matter is received by OFCCP, acting as EEOC's agent, shall be deemed the date it is received by EEOC. When OFCCP receives such a complaint/charge and determines that the employer is not a federal contractor subject to E.O. 11246, it shall transfer the charge to EEOC within 10 days of that determination and notify the parties. Such notification shall explain that OFCCP, as EEOC's agent, has received the Title VII charge and that the date OFCCP received it will be deemed the date it was received by EEOC.

(b) Systemic or Class Allegations -- OFCCP will retain, investigate, process, and resolve allegations of discrimination of a systemic or class nature on a Title VII basis in dual filed complaints/charges. OFCCP will promptly notify EEOC of OFCCP's receipt of such allegations, by forwarding a copy of the complaint/charge (and third party certificate, if any). OFCCP shall make available to EEOC, upon request, information obtained in processing such allegations, pursuant to paragraphs 1 and 6(b) herein. However, in appropriate cases, the EEOC may request that it be referred such allegations to avoid duplication of effort and to ensure effective law enforcement.

(c) Individual Allegations -- OFCCP will refer to EEOC allegations of discrimination of an individual nature on a Title VII basis in dual filed complaints/charges. However, in appropriate cases, OFCCP may request that it retain such allegations so as to avoid duplication and to ensure effective law enforcement.

(d) Investigating, Processing and Resolving Dual-Filed Complaints/Charges -- OFCCP will act as EEOC's agent for the purposes of investigating, processing and resolving the Title VII

component of dual filed complaints/charges that it retains under this paragraph. OFCCP shall investigate, process and resolve such complaints/charges as set forth in this subparagraph, and in a manner consistent with Title VII principles on liability and relief.

(1) Notice of Receipt of Complaint/Charge -- Within ten days of receipt, OFCCP shall notify the contractor/respondent that it has received a complaint/charge of employment discrimination under E.O. 11246 and Title VII. This notification shall include a copy of the complaint/charge, if taken on OFCCP's complaint form, or otherwise state the name of the charging party, respondent, date, place and circumstances of the alleged unlawful employment practice(s).

(2) Fair Employment Practice Agency (FEPA) Deferral Period -- Pursuant to work-sharing agreements between EEOC and state and local agencies designated as fair employment practice agencies, the deferral period for dual filed Title VII complaints/charges that OFCCP receives will be waived.

(3) Not Reasonable Cause Findings -- If the OFCCP investigation of a dual filed complaint/charge results in a not reasonable cause finding under Title VII, OFCCP will issue a Title VII dismissal and notice of right-to-sue, close the Title VII component of the complaint/charge and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(4) Reasonable Cause Findings -- If the OFCCP investigation of a dual filed complaint/charge results in a reasonable cause finding under Title VII, OFCCP will issue a reasonable cause finding under Title VII. OFCCP will attempt conciliation to obtain relief, consistent with EEOC's standards for remedies, for all aggrieved persons covered by the Title VII finding.

(i) Successful Conciliation -- Conciliation agreements will state that the complainant/charging party agrees to waive the right to pursue the subject issues further under Title VII. OFCCP will close the Title VII component of the complaint/charge, and promptly notify EEOC.

(ii) Unsuccessful Conciliation -- If conciliation is not successful, OFCCP will consider the E.O. 11246 component of the complaint/charge for further processing under its usual procedures. At the conclusion of OFCCP processing, it shall transmit the Title VII charge component to EEOC for any action EEOC deems appropriate. If EEOC declines to pursue further action, it will close the Title VII charge and issue a notice of right-to-sue.

(5) Issuance of Notice of Right-to-Sue Upon Request -- Consistent with 29 C.F.R. §1601.28, once 180 days have passed from the date the complaint/charge was filed, OFCCP shall promptly issue upon request a notice of right-to-sue on the Title VII component of a complaint/charge that it has retained. Issuance of a notice of right-to-sue shall terminate OFCCP processing of the Title VII component of the complaint/charge unless it is determined at that time, or at a later time, that it would effectuate the purposes of Title VII to further process the Title VII component of the complaint/charge.

(6) Subsequent Attempts to File a Charge with EEOC Covering the Same Facts and

Issues -- If an individual who has already filed an OFCCP complaint/charge that is dual-filed under Title VII subsequently files a Title VII charge with EEOC covering the same facts and issues, EEOC will forward the charge to OFCCP for consolidated processing.

8. Complaints Misfiled with EEOC -- When EEOC receives a complaint not within its purview, but over which it believes OFCCP has jurisdiction, it will refer the complaint to OFCCP. In determining the timeliness of such complaint, the date the matter is received by EEOC shall be deemed the date it is received by OFCCP.

9. EEOC and OFCCP shall conduct periodic reviews of the implementation of this agreement, on an ongoing basis.

10. Coordination Advocate -- OFCCP and EEOC seek to ensure consistent compliance and enforcement standards and procedures, and to make the most efficient use of their available resources through coordination. Therefore, within sixty (60) days of the effective date of this MOU, the headquarters offices of each agency shall appoint a Coordination Advocate who will be available to assist, as necessary, in obtaining a full understanding of, and compliance with, the procedures set forth in this MOU.

11. Effect of Agreement

This agreement is an internal Government agreement and is not intended to confer any rights against the United States, its agencies, or its officers upon any private person.

Nothing in this agreement shall be interpreted as limiting, superseding or otherwise affecting either party's normal operations or decisions in carrying out its statutory, Executive Order, or regulatory duties. This agreement does not limit or restrict the parties from participating in similar activities or arrangements with other entities.

This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.

12. Effective Date. This MOU will take effect once signed by both parties.

13. Signatures

/s/
PATRICIA A. SHIU
Director, Office of Federal
Contract Compliance Programs

11/7/2011
Date

/s/
JACQUELINE A. BERRIEN
Chair, Equal Employment
Opportunity Commission

11/7/2011
Date