

Early Resolution Conciliation Agreement
Between the
U.S. Department of Labor
Office of Federal Contract Compliance Programs
and
US Foods, Inc.
9399 West Higgins Road #100
Rosemont, Illinois 60018

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs (“OFCCP”) is currently evaluating the following three US Foods, Inc. (“US Foods”) establishments: (1) 120 Longs Pond Road, Lexington, South Carolina (“Lexington, SC”); (2) 5425 South Williamson Boulevard, Port Orange, Florida (“Port Orange, FL”); and, (3) 7004 East Hanna Avenue, Tampa, Florida (“Tampa, FL”) (“Reviewed Establishments”) and is alleging that US Foods was not in compliance with Executive Order 11246 as amended (“E.O. 11246” or “Executive Order”), and its implementing regulations at 41 Code of Federal Regulations (CFR) Sections 60-1 – 60-3. 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 US Foods enter into this Conciliation Agreement (“Agreement”), and the parties agree to all the terms therein. The attachments to this Agreement are deemed incorporated into this Agreement.

PART II. GENERAL TERMS AND CONDITIONS

1. In exchange for US Foods’ fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246, based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III if US Foods violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations, including during the 5-year exemption period if OFCCP deems that US Foods is in breach of the agreement. In exchange for US Foods’ fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP further agrees not to initiate any new audits at the Reviewed Establishments as well as the following locations - 800 Food Service Drive, Fort Mill, South Carolina (“Fort Mill, SC”); 1500 NC Highway 39, Zebulon, North Carolina (“Zebulon, NC”); and 11994 Livingston Road, Manassas, Virginia (“Manassas, VA”) - until at least 2 years after US Foods submits the final progress report described in Part V of this Agreement and the OFCCP confirms to US Foods that it has fully complied with the terms of this Agreement.¹

¹ OFCCP did not conduct compliance evaluations of the Fort Mill, SC, Zebulon, NC, and Manassas, VA locations. As part of this Agreement, OFCCP is agreeing to the terms in Part II, Paragraph 1 with respect to scheduling these facilities. The agreement not to initiate new audits is limited to neutrally scheduled compliance evaluations. OFCCP retains the right to investigate complaints of discrimination at establishments covered by the Agreement.

2. US Foods agrees that OFCCP may review its compliance with this Agreement. As part of such 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 US Foods' compliance. US Foods will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents required.
3. This Agreement does not constitute an admission by US Foods of any violation of or noncompliance with any laws or of any other wrongdoing whatsoever, including but not limited to any violation of EO 11246, Section 503 of the Rehabilitation Act of 1973, as amended ("Section 503"), the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA") and their implementing regulations at 41 CFR Chapter 60, or other laws, nor has there been an adjudicated finding that US Foods violated any laws.
4. US Foods understands that nothing in this Agreement relieves US Foods of its obligation to fully comply with the requirements of EO 11246, Section 503, VEVRAA, their implementing regulations, and other applicable equal employment laws.
5. US Foods promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual benefits from this Agreement, or files a complaint or participates in any investigation or proceeding under EO 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 CFR §§ 60-1.32(a).
6. OFCCP and US Foods ("the parties") understand the terms of this Agreement and enter into it voluntarily.
7. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced therein. This Agreement contains all the terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing and signed by all parties.
8. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement becomes effective on the day it is signed by the Regional Director of the Southeast Region (the "Effective Date").
10. This Agreement will expire sixty (60) days after US Foods submits the final progress report required in Part V below, unless OFCCP notifies US Foods in writing prior to the expiration date that US Foods has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date OFCCP determines US Foods has met all of its obligations under the Agreement.

11. Each party shall bear its own fees and expenses with respect to this matter.
12. If US Foods violates the Conciliation Agreement,
 - A. The provisions set forth at 41 CFR §§ 60-1.34 will govern:
 - 1) If OFCCP believes that US Foods violated any term of the Agreement while it was in effect, OFCCP will send US Foods a written notice stating the alleged violations and summarizing any supporting evidence.
 - 2) US Foods will have 15 days from receipt of such notice to demonstrate in writing that it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - 3) If US Foods 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 for those establishments subject to this Agreement and seek a full make-whole remedy for victims.
 - 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
 - B. US Foods may be subject to the sanctions set forth in Section 209 of the Executive Order, and/or other appropriate relief for violation of this Agreement.
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. 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.
16. All references to “days” in this Agreement 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.

PART III. VIOLATION AND REMEDY

A. ALLEGED DISCRIMINATION VIOLATION

1. Sex Discrimination in Hiring

- a. Lexington, SC: OFCCP finds that US Foods discriminated against female applicants for Selector positions in violation of 41 CFR 60-1.4(a) (1). Specifically, OFCCP found statistically significant differences in the hiring rates of these women applicants when compared to similarly qualified male applicants, resulting in a shortfall of 5 female hires. After examining personnel records and conducting interviews, OFCCP determined that this practice of disproportionately hiring men was based on sex and not based on legitimate differences in qualifications.
- b. Port Orange, FL: OFCCP asserts that US Foods discriminated against female applicants for Selector positions in violation of 41 CFR 60-1.4(a) (1). Specifically, OFCCP found statistically significant differences in the hiring rates of these women when compared to male applicants, resulting in a shortfall of 5 female hires. After examining personnel records, OFCCP asserts that this practice of disproportionately hiring men was based on sex and not based on legitimate differences in qualifications.
- c. Tampa, FL: OFCCP asserts that US Foods discriminated against female applicants for Selector positions in violation of 41 CFR 60-1.4(a) (1). Specifically, OFCCP found that US Foods did not hire any of the 4 female applicants for the Selector position.

Establishment Location	Violation Period	Discrimination Violations	
		# Affected Female Applicants	Job Opportunities (Shortfall)
120 Longs Pond Rd, Lexington, SC 29072	1/1/2016 - 6/30/2016	96	5
5425 S. Williamson Blvd. Port Orange, FL 32128	1/1/2017- 6/30/2018	50	5

7004 E. Hanna Ave. Tampa, FL 33610	1/1/2017 - 6/30/2018	4 ²	0
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B. FINANCIAL REMEDY:

1. Notice. Pursuant to the dates agreed upon in Attachment C (“Timeline”), US Foods will notify the Applicants listed in Attachment A (“Affected Applicants”) of the terms of this Agreement by certified mail (return receipt) and provide the Notice, Interest Form, and the Release Form (included in Attachment B); and a postage paid return envelope. Affected Applicants must return the completed Interest and Release Forms to US Foods by the deadline included in the notice documents.

Pursuant to the dates in the Timeline, US Foods will notify OFCCP of all letters returned as undeliverable, and OFCCP will then attempt to obtain and provide updated addresses to US Foods. US Foods will use these new addresses to notify the individuals of their status as Applicants, and provide them with a second mailing of the documents described above.

2. Eligibility. All Affected Applicants (listed on Attachment A) who sign and return the Interest and Release forms to US Foods by the deadline set forth in the notice documents (“Eligible Applicants”) will be eligible for a payment. If an Affected Applicant receives but does not return the Release and Interest Forms to US Foods within the prescribed deadline, the Affected Applicant will no longer be entitled to any relief pursuant to this Agreement.

By the date indicated in the Timeline, US Foods will provide OFCCP with a list of the Eligible Applicants, OFCCP will approve the final list of Eligible Applicants, and include a final distribution amount for each Eligible Applicant and/or discuss with US Foods any issues necessary to finalize the list, such as the inclusion or exclusion of certain individuals.

3. Monetary Settlement. US Foods agrees to distribute \$111,309.70 in back pay and \$5,290.30 in interest, plus applicable withholdings required by law on the portion representing back pay only (such as federal, state and/or local taxes and the employers and Eligible Applicants’ share of FICA and FUTA taxes) to the applicants on the final Eligible Applicants list. US Foods shall mail to each Eligible Applicant 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. These IRS forms will be provided to the Eligible Applicants in the time required by

² US Foods and OFCCP agree that the four rejected female applicants will be eligible to participate in the back pay remedy only. US Foods will not be required to extend job offers to females rejected for the Selector position at the Tampa, FL establishment.

law. No Eligible Applicants will be required to complete a W-4 or W-9 in order to receive payments under this settlement.

By the date indicated in the Timeline, US Foods will notify OFCCP of the receipt of a check to an Eligible Applicant that was returned as undeliverable. US Foods will notify OFCCP of this fact via e-mail sent to District Director Pamela Quinn at **Ex (7)(C)**@dol.gov. Pursuant to the date specified in the Timeline, OFCCP will attempt to locate the Eligible Applicant, and if OFCCP obtains an alternate address in the designated time period, OFCCP will advise US Foods of the address and US Foods will re-mail the check to an alternate or corrected address. Any check that remains uncashed 120 days after the initial date the check was mailed to the Eligible Applicants will be void. With respect to any uncashed funds, US Foods will make a second distribution, in equal shares, to all Eligible Applicants who cashed their first check if the distribution exceeds \$30 for each Eligible Applicant. US Foods will mail the second distribution to such Eligible Applicants by the date specified in the Timeline.

NON-MONETARY REMEDY:

1. Job Opportunities. As vacancies occur in Lexington, SC and Port Orange, FL for the Selector position, US Foods shall make bona fide job offers to affected applicants who have expressed interest in employment and are not then employed by US Foods until ten females are hired or the list of interested Eligible Applicants is exhausted, whichever comes first. The ten hires will be split equally between Lexington, SC and Port Orange, FL. If either establishment has less than five opportunities, the remaining opportunities will be offered at the other establishment if hiring opportunities are available.

Eligible Applicants will have priority over all other candidates for hire into Selector positions. As vacancies occur in the Selector position, US Foods shall contact the Eligible Applicants with a written job offer in the order they submitted their Interest Forms, or, if the Forms were received on the same day, in the order of their original application date. Eligible Applicants who receive a conditional offer must successfully pass a background check and drug screen and must accept the conditions of the job according to the job posting and description.

The report-to-work date for Eligible Applicants hired pursuant to this Agreement shall be no later than fourteen (14) days after the date the written job offer is accepted. The Eligible Applicant must report to work on the day designated or provide US Foods notice of good cause for their absence on or before that date. If good cause is provided, the Eligible Applicant must report to work within five (5) days of the original designated start date. Otherwise, US Foods may withdraw the job offer and shall be under no obligation to hire the Eligible Applicant under this Agreement, but remains obligated to hire Eligible Applicants until five Selector positions at Lexington and 5

Selector positions at Port Orange are filled or the list of Eligible Applicants is exhausted, whichever comes first.

US Foods agrees to pay Eligible Applicants hired under this provision at least the current entry level wage for the Selector position, and provide all regular and on-the-job training. All hired Eligible Applicants shall receive retroactive seniority as a Selector back to the date of their original application for job retention purposes only, to the extent that seniority is a factor in layoff decisions.

2. Recordkeeping. Pursuant to 41 C.F.R. § 60-1.12, US Foods will ensure its managers properly document the results of hiring decisions made pursuant to the revised hiring policies and procedures, and properly maintain all records on the revised policies and procedures including any associated underlying data and information such as HRIS and payroll data, job applications, applicant and hire data, disposition codes, and personnel records, and any other records or data used to generate the required reports.

PART IV. ENHANCED COMPLIANCE AGREEMENT

1. The Agreement will be in effect for a five-year period beginning on the Effective Date of the Agreement.
2. To proactively facilitate compliance with Executive Order 11246, as amended, US Foods will take the steps described below to enhance its compliance with Executive Order 11246 in the hiring of Selectors at its establishments operating at 800 Food Service Drive, Fort Mill, South Carolina (“Fort Mill, SC”); 1500 NC Highway 39, Zebulon, North Carolina (“Zebulon, NC”); 11994 Livingston Road, Manassas, Virginia (“Manassas, VA”) and the Reviewed Establishments referenced in Part I of this Agreement, hereinafter “Covered Facilities.”
3. US Foods will retain a Human Resources Consultant (“Consultant”) for the purpose of evaluating the policies and procedures related to the Selector hiring process to increase the representation of women at the Covered Facilities. The Consultant will have the relevant educational background and substantial experience in developing and implementing job-related and neutral employee selection processes.
4. The Consultant will evaluate the policies and procedures US Foods currently uses to hire Selectors at its Covered Facilities. The Consultant will conduct on-site visits to the Covered Facilities as necessary in order to ensure a comprehensive and thorough evaluation of US Foods’ hiring policies and procedures for Selectors.
5. The consultant will review US Foods’ policies and procedures for hiring Selectors, its interview process and applicant tracking system. In an effort to ensure that US Foods’ selection process is optimized to increase the number of female hires, US Foods recently conducted a job analysis of the Selector position and developed a job-related assessment in accordance with the validation guidelines of the Uniform Guidelines for Employee Selection Procedures. Subject to and without waiving the attorney-client

privilege and/or work product doctrine, US Foods will share the job analysis and validation report with the outside consultant for additional feedback.

6. Within sixty (60) days after the Effective Date of this Enhanced Compliance Agreement, the Consultant will submit to US Foods and OFCCP a proposal that describes the methodology that will be used in the evaluation of the Covered Facilities. The proposal will estimate the time necessary to conduct a comprehensive evaluation of US Foods' Selector hiring practices and write a report containing the Consultant's findings and recommendations. The evaluation and recommendations will cover the following areas at the Covered Facilities:
 - a. Procedures to recruit, screen, interview, select, reject, and hire Selectors without regard to sex, sexual orientation, gender identity, race/ethnicity, color, national origin, and religion in compliance with Executive Order 11246.
 - b. Evaluation of recruitment efforts (methods and sources) for Selector positions and recommendations for additional strategies to increase the representation of qualified female applicants.
 - c. Procedures to limit subjectivity and implicit bias in the hiring process, including identifying objective qualifications and criteria to be used to select and/or eliminate from further consideration persons expressing an interest in employment at each step of the hiring process (*i.e.*, application screen, interview, post-offer screen, etc.).
 - d. Procedures to ensure that persons expressing an interest in employment are tracked and decisions are documented at each step in the hiring process.
 - e. Procedures to ensure that documents are retained in accordance with 41 CFR 60-1.12(a) and Part 60-3.
 - f. Procedures to train all employees involved in the hiring process on the policies and practices related to US Foods' selection of Selectors.
 - g. Procedures to ensure that adverse impact analyses are conducted in accordance with 41 CFR Part 60-3, including evaluation of the individual components and qualifications if statistical disparities exist.
 - h. Evaluation of US Foods company culture relating to gender stereotypes and other biased perceptions, family-friendly benefits, and implementation of US Foods sexual harassment policy that could impact retention of women in Selector positions.

The proposal will also outline provisions for the Consultant's annual monitoring of the implementation and effectiveness of the Consultant's recommendations at the Covered Facilities. Upon receipt of the proposal, US Foods and OFCCP will negotiate in good faith any amendments thereto.

7. Within sixty (60) days after the Consultant concludes the evaluation, the Consultant will present to US Foods and OFCCP the following:
 - a. A description of the evaluation conducted by the Consultant.
 - b. The Consultant's findings regarding US Foods' current policies, procedures and practices related to the recruitment, hiring and retention of Selectors.
 - c. The Consultant's findings and recommendations regarding each of the items set forth in Paragraph 4 above, as well as any other items included in the Consultant's proposal.
 - d. Any additional recommended actions or revisions to the policies, procedures and practices for Selectors to ensure equal opportunity for all persons expressing an interest in employment.
 - e. Recommendations for training for all individuals involved in the hiring of Selectors.
8. None of the consultant's findings and recommendations shall be considered final and/or binding on US Foods or OFCCP. At a mutually-agreeable date, but as soon as reasonably possible, US Foods, the Consultant, and OFCCP will discuss and evaluate the Consultant's recommendations. The parties will jointly agree on the timing and structure of the meeting to facilitate maximum exchange of ideas. If US Foods or OFCCP disagrees with any of the recommendations, the parties will discuss the reasons for the disagreement and possible alternatives. After the parties agree to the scope and nature of the recommendations, if any, to be implemented, US Foods will work with the Consultant, with input from OFCCP as requested, to fully implement such recommendations within one hundred and eighty (180) days. Should implementation of the agreed upon recommendations (or segments thereof) require more than one hundred and eighty (180) days, US Foods and OFCCP will work together in good faith to establish reasonable timelines for implementation.
9. US Foods will, in consultation with the Consultant, develop and conduct a training program to be presented to all individuals involved in the Selector hiring process (i.e., recruiting, screening, interviewing, selection, rejection, and hiring) at US Foods Covered Facilities. Individuals attending this training will include, at a minimum, all human resources recruiters, managers, and directors; and supervisors involved in the Selector hiring process. The training program will include instruction on the Consultant's recommendations that US Foods agrees to implement. The training will be mandatory for the personnel identified above, and any employees who are not able to attend the in-person training (which is preferred) will be required to listen to a recording of the in-person training.

10. US Foods, in consultation with the Consultant and/or additional resources, will annually monitor the implementation of and results achieved from the revised Selector hiring process, and will provide reports to OFCCP on an annual basis for a five-year period, consistent with the Timeline. The reports will indicate whether the revised hiring process has been fully implemented and whether the individuals involved in the revised hiring process are following the revised policies and procedures. The monitoring reports will also confirm that mid-year monitoring was conducted by US Foods and include the recommendations, if any, made by the consultant to alter or change the revised hiring process, its implementation, or training, to ensure a nondiscriminatory hiring process.
11. During the five-year period, US Foods will conduct adverse impact analyses of Selector hiring at each of the Covered Facilities consistent with the requirements of 41 CFR 60-3.4 and 3.15 on at least a semi-annual basis. If US Foods finds statistically significant disparities in hiring Selectors at any facility, US Foods shall work with the Consultant to investigate the cause of the disparities and take appropriate action, such as providing refresher training or making additional changes to the hiring process. US Foods will implement remedies to correct any statistically significant disparities in hiring and report to OFCCP on actions taken.
12. During the five-year period, US Foods and OFCCP (and if appropriate, the Consultant) will annually discuss US Foods' progress in implementing the adopted recommendations, discuss concerns, and continue to chart a path toward a mutually-beneficial partnership. The parties will jointly agree on the timing, location (including telephonic), and structure of the meeting to facilitate maximum exchange of ideas. Should the parties deem a meeting unnecessary, it can be waived by mutual agreement. Moreover, in recognition of the time necessary to fully implement the Consultant's recommendations, provide training to hiring managers and human resources staff, monitor the revised hiring process, and make additional changes or refinements to the revised hiring process that may be warranted, OFCCP agrees not to conduct compliance evaluations of the Covered Facilities for the five-year period, other than to investigate complaints filed by applicants or employees under Executive Order 12466, as amended, Section 503 of the Rehabilitation Act, and VEVRAA.
13. This Enhanced Compliance Agreement between US Foods and OFCCP does not provide US Foods with any grant of immunity or protection from its requirement to comply with Executive Order 11246.
14. This Enhanced Compliance Agreement between US Foods and OFCCP may be modified upon the written consent of the parties, and such consent will not be unreasonably withheld.
15. This Enhanced Compliance Agreement is between OFCCP and US Foods (as collectively defined above) and does not confer any rights or benefits to any other parties, other than any successor to, parent of, or subsidiary of US Foods or OFCCP.

In case of a disagreement over the implementation of this Enhanced Compliance Agreement, the parties agree to negotiate in good faith prior to enforcement.

Part V. REPORTS REQUIRED

US Foods must submit the documents and reports described below to Pamela B. Quinn, District Director of OFCCP, Charlotte District Office, 3800 Arco Corporate Drive, Suite 465, Charlotte, North Carolina 28273.

US Foods must submit a progress report covering each twelve-month period this Agreement is in effect. The first progress report will be due fourteen months after the Effective Date of this Agreement and must cover the first twelve-month period of the Agreement (see Timeline). Each subsequent report must cover the successive twelve-month period, and must be submitted within 60 calendar days after the close of that twelve-month period. US Foods will submit the following in the progress reports for the Reviewed Establishments, as applicable:

1. Documentation of monetary payments to all Eligible Class Members as specified in section III.B.2. The documentation must include the names Eligible Class Members who were paid, and, for each Eligible Class Member, the number and the amount of the check and the date the check cleared the bank. US Foods must provide OFCCP with copies of all canceled checks upon request;
2. Documentation of specific hiring activity for Eligible Class Members who were hired as Selectors in accordance with this Agreement, including name, date of hire, job title hired into and rate of pay and proof of retroactive seniority;
3. For Eligible Class Members who were considered for employment but were not hired, US Foods will provide the reason for non-placement along with all relevant documentation (e.g., documentation that the Eligible Class Member declined the offer); and
4. The total number of applicants and hires and the breakdown by gender of applicants and hires for Selector positions during the reporting period, including all temporary, part time, and seasonal workers who were referred to and/or assigned to work at US Foods by a staffing firm or employment agency.

US Foods must submit its Affirmative Action Plan narratives for E.O. 11246, Section 503 and VEVRAA Affirmative Action Plans at the Covered Facilities covering each twelve-month period this Agreement is in effect.

TERMINATION DATE: This Agreement will terminate pursuant to the terms in Part II, Paragraph 10.

INTEGRATION CLAUSE: This Agreement represents the full Agreement between US Foods and OFCCP and this Agreement supersedes any other agreements, oral or written. In signing this Agreement, neither US Foods 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.

NOTICES: Any notices referenced in this Agreement shall be sent to US Foods' General Counsel via first class mail to 9399 W. Higgins Road, Suite 100, Rosemont, Illinois 60018.

Attachments

- A. List of Affected Applicants
- B. Notice Documents
 - B-1-Notice
 - B-2 Interest Form
 - B-3 Release Form
- C. Timeline

PART VI. SIGNATURES

The person signing this Conciliation Agreement on behalf of US Foods, Inc. personally warrants that he is fully authorized to do so, that US Foods, Inc. 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 US Foods, Inc. This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and US Foods, Inc.

DATE: 7/24/19

DATE: 7/25/2019

Ex (6), Ex (7)(C)

Ex (6), Ex (7)(C)

Andrew Johnstone
Associate General Counsel -
Litigation, Employment, & Risk Management
US Foods, Inc.
9399 West Higgins Road #100
Rosemont, Illinois 60018

Samuel Maiden
Regional Director—Southeast
Office of Federal Contract Compliance
Programs

Attachment A: List of Affected Applicants

Lexington, SC

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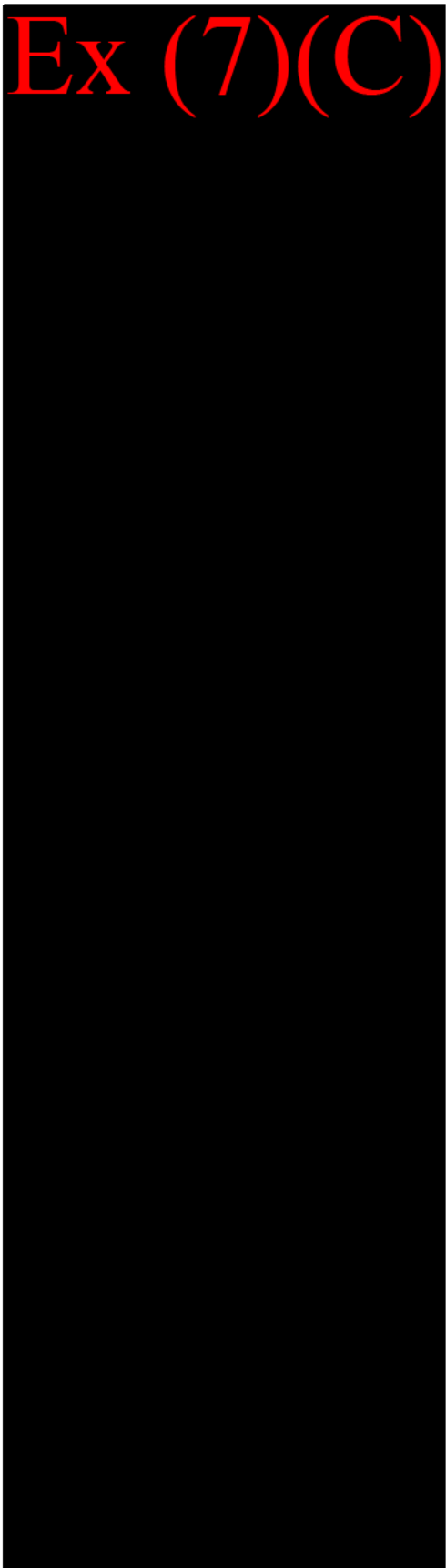


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Tampa, FL

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Attachment B-1
Notice
(Lexington and Port Orange Facilities)

You may be eligible to get money and a job because of a legal settlement between US Foods, Inc. and the U.S. Department of Labor

We are writing to provide information about a legal settlement between the U.S. Department of Labor and US Foods, Inc. (“US Foods”) that may benefit you. This settlement involves hiring claims, and our records show that you may be one of the applicants covered by the settlement. If you take the steps described in this Notice by the deadline below, you may be eligible for a payment of back wages and/or a job with US Foods.

ARE YOU AFFECTED?

Women who applied and were not hired for Selector positions at US Foods, 120 Longs Pond Road, Lexington, SC between 1/1/2016 and 6/30/2016 are covered by this settlement.

OR

Women who applied and were not hired for Selector positions at US Foods, 5424 S Williamson Blvd, Port Orange, FL between 1/1/2017 and 6/30/2018 are covered by this settlement.

WHAT IS THIS SETTLEMENT ABOUT?

The U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) conducted a review of US Foods’ hiring practices during 1/1/2016 to 6/30/2016 (Lexington) OR 1/1/2017 to 6/30/2018 (Port Orange). OFCCP is the government agency responsible for enforcing the nondiscrimination and equal employment opportunity through affirmative action requirements that apply to federal contractors. OFCCP alleges that US Foods discriminated against women in hiring for Selector positions. US Foods denies those claims. Ultimately, OFCCP and US Foods have agreed to resolve the issue through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement between US Foods and OFCCP. By entering into the Conciliation Agreement, US Foods has not admitted nor has there been any adjudicated finding that US Foods violated any laws when you were not hired for the position for which you applied.

As a result, affected applicants may be eligible for back pay and/or a job offer.

WHAT DOES THIS MEAN FOR YOU?

Because you applied for a Selector position during the relevant time frame, and were not hired, this settlement may provide you with some specific benefits:

- (1) **You may be eligible to receive a payment of at least \$777.33** (before taxes). This amount represents your share of back wages and other payments US Foods is making to settle the matter. The final amount you will receive will be reduced by legal deductions such as income tax withholding and Social Security contributions.
- (2) **You may be eligible for a job offer.** US Foods will be making job offers to some of the individuals receiving this notification. It is not guaranteed that you will receive a job offer. If you are interested in a job with US Foods, please express your interest on the enclosed Interest Form. To be hired, you must complete an electronic employment application, successfully pass a background check and drug screen, and accept the conditions of the job according to the job posting and description.

To get these benefits, you will need to release or agree to give up certain legal claims, and sign the enclosed Interest and Release forms.

WHAT IS YOUR NEXT STEP?

You should read this Notice and the enclosed Interest and Release forms.

Please do not ignore these forms or throw them away. Otherwise, you could miss an opportunity to receive money and a job with US Foods.

To be eligible for a payment and/or a job opportunity, you must complete, sign, and return **both** the following enclosed forms, (1) the Interest Form and (2) the “Release of Claims Under Executive Order 11246” (Release) to:

[Name and address for return of forms or instructions/email for electronic submission]

DEADLINE: The forms must be postmarked by [INSERT specific date for First or Second Notice deadline date in Attachment D]

After correct completion and timely submission of these forms, a final decision will be made about your eligibility.

If you fail to return both of the required forms by the deadline above, or if your forms do not verify your eligibility, you will not be eligible to receive any money, consideration for job opportunities or any other benefits that are available to you by the settlement.

HOW CAN YOU GET MORE INFORMATION?

Lexington: If you have any questions, you may contact Compliance Officer **Ex (7)(C), Ex (7)(E)** at **Ex (7)(C)** @dol.gov. You can also visit the U.S. Department of Labor Web site about this case at www.dol.gov/ofccp/cml.

Port Orange: If you have any questions, you may contact Compliance Officer **Ex (7)(C), Ex (7)(E)** at **Ex (7)(C)** @dol.gov. You can also visit the U.S. Department of Labor Web site about this case at www.dol.gov/ofccp/cml.

Attachment B-1
Notice
(Tampa Facility)

You may be eligible to get money because of a legal settlement between US Foods, Inc. and the U.S. Department of Labor

We are writing to provide information about a legal settlement between the U.S. Department of Labor and US Foods, Inc. (“US Foods”) that may benefit you. This settlement involves hiring claims, and our records show that you may be one of the applicants covered by the settlement. If you take the steps described in this Notice by the deadline below, you may be eligible for a payment of back wages from US Foods.

ARE YOU AFFECTED?

Females who applied and were not hired for Selector positions at 7004 East Hanna Avenue, Tampa, Florida between January 1, 2017 and June 30, 2018 are covered by this settlement.

WHAT IS THIS SETTLEMENT ABOUT?

The U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) conducted a review of US Foods’ hiring practices during January 1, 2017 and June 30, 2018. OFCCP is the government agency responsible for enforcing the nondiscrimination and equal employment opportunity through affirmative action requirements that apply to federal contractors. OFCCP alleges that US Foods discriminated against women in hiring for Selector positions. US Foods denies those claims. Ultimately, OFCCP and US Foods have agreed to resolve the issue through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement between US Foods and OFCCP. By entering into the Conciliation Agreement, US Foods has not admitted nor has there been any adjudicated finding that US Foods violated any laws when you were not hired for the position for which you applied.

As a result, affected applicants may be eligible for back pay.

WHAT DOES THIS MEAN FOR YOU?

Because you applied for a Selector position during the relevant time frame, and were not hired, this settlement may provide you with some specific benefits:

You may be eligible to receive a payment of at least \$777.33 (before taxes). This amount represents your share of back wages and other payments US Foods is making to settle the matter. The final amount you will receive will be reduced by legal deductions such as income tax withholding and Social Security contributions.

To get this benefit, you will need to release or agree to give up certain legal claims, and sign the enclosed Interest and Release forms.

WHAT IS YOUR NEXT STEP?

You should read this Notice and the enclosed Interest and Release forms.

Please do not ignore these forms or throw them away. Otherwise, you could miss an opportunity to receive money from US Foods.

To be eligible for a payment, you must complete, sign, and return **both** the following enclosed forms, (1) the Interest Form and (2) the “Release of Claims Under Executive Order 11246” (Release) to:

[Name and address for return of forms or instructions/email for electronic submission]

DEADLINE: The forms must be postmarked by [INSERT specific date for First or Second Notice deadline date in Attachment D]

After correct completion and timely submission of these forms, a final decision will be made about your eligibility.

If you fail to return both of the required forms by the deadline above, or if your forms do not verify your eligibility, you will not be eligible to receive any money, or any other benefits that are available to you by the settlement.

HOW CAN YOU GET MORE INFORMATION?

If you have any questions, you may contact **Ex (7)(C), Ex (7)(E)**, Compliance Officer at 407-**Ex (7)(C)** or **Ex (7)(C)** @dol.gov. You can also visit the U.S. Department of Labor Web site about this case at www.dol.gov/ofccp/cml.

Interest Form

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS INTEREST FORM.

INSTRUCTIONS FOR FILING A CLAIM TO BE CONSIDERED FOR MONEY (BACK WAGES) AND/OR A JOB OFFER FROM THE SETTLEMENT

DEADLINE: This form must be completed and post-marked by [INSERT specific date for First or Second Notice deadline date in Attachment D]

You may be eligible for a money payment from the settlement and you can express interest in a job offer. You can receive a money payment even if you do not express interest in a job.

To receive benefits (such as money or a job offer), you must complete and return this Interest Form and the enclosed Release Form. Both must be postmarked by the deadline listed above to:

[Name and Address]

If you do not submit a completed Interest Form and Release Form on or before the deadline above, then your claim will not be on time and **you will not receive any money from this settlement and you cannot be considered for a job offer from this settlement.**

Enclosed is a stamped, pre-addressed envelope you can use.

This Interest Form will only be used for the following purposes:

- (1) To confirm important information we need in order to make sure you are eligible to receive money under this settlement and process your payment, and**
- (2) To allow you to express interest in the jobs being offered as a result of the settlement.**

NOTE: This notice is only for the person it was sent to and cannot be transferred or used by another person who is not part of the settlement.

Step 1: Please provide the following contact information to process your payment (please PRINT legibly).

First Name: _____

Last Name _____

Any other names you have used: _____

Home Phone: _____

Cell Phone: _____

Email Address: _____

- I confirm that the address on the cover letter is correct.

- The address on the cover letter is not correct. My correct address is:
Address: _____

Please provide your social security number _____

Your Social Security Number is required in order to process your payment for tax purposes. Your Social Security Number will not be used for any other purpose.

Notify us at the address below if your address changes, or contact us if you have any questions about this Interest form, the notice, or the settlement.

Name

Address

Phone

Email/Web site link

Step 2: Inform us if you are interested in a position:

Yes, I am still interested in a Selector position with US Foods at 120 Longs Pond Road, Lexington, SC.

OR

Yes, I am still interested in a Selector position with US Foods at 5425 S Williamson Blvd, Port Orange, FL.

No, I am not currently interested in a Selector position with US Foods.

I am currently employed by US Foods.

Step 3: Sign and return along with the Release Form

I certify the above as true and correct.

Signature

Date

Attachment B
Interest Form
(Tampa Facility)

Interest Form

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS INTEREST FORM.

INSTRUCTIONS FOR FILING A CLAIM TO BE CONSIDERED FOR MONEY (BACK WAGES) FROM THE SETTLEMENT

DEADLINE: This form must be completed and post-marked by [INSERT specific date for First or Second Notice deadline date in Attachment D]

You may be eligible for a money payment from the settlement. To receive benefits (such as money), you must complete and return this Interest Form and the enclosed Release Form. Both must be postmarked by the deadline listed above to:

[Name and Address]

If you do not submit a completed Interest Form and Release Form on or before the deadline above, then your claim will not be on time and **you will not receive any money from this settlement.**

Enclosed is a stamped, pre-addressed envelope you can use.

This Interest Form will only be used to confirm important information we need in order to make sure you are eligible to receive money under this settlement and process your payment.

NOTE: This notice is only for the person it was sent to and cannot be transferred or used by another person who is not part of the settlement.

Step 1: Please provide the following contact information to process your payment (please PRINT legibly).

First Name: _____

Last Name _____

Any other names you have used: _____

Home Phone: _____

Cell Phone: _____

Email Address: _____

- I confirm that the address on the cover letter is correct.
- The address on the cover letter is not correct. My correct address is:

Address: _____

Please provide your social security number _____

Your Social Security Number is required in order to process your payment for tax purposes. Your Social Security Number will not be used for any other purpose.

Notify us at the address below if your address changes, or contact us if you have any questions about this Interest form, the notice, or the settlement.

Name

Address

Phone

Email/Web site link

Step 2: Sign and return along with the Release Form

I certify the above as true and correct.

Signature

Date

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

This Release of Claims under Executive Order 11246 ("Release") is a legal document. The document states that in return for US Foods, Inc. paying you money, you agree that you will not file any lawsuit against US Foods, Inc. for allegedly violating Executive Order 11246 in connection with its selection procedures for applicants for the Selector position. It also says that US Foods, Inc. does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money.

In consideration of payment of \$777.33 (less deductions required by law) by US Foods, Inc. to me, which I agree is acceptable, I (print name) _____ agree to the following:

I.

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

II.

I understand that US Foods, Inc. denies that it treated me unlawfully or unfairly in any way and that US Foods, Inc. entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment described above to resolve alleged disparities in selecting applicants and to resolve the matter without further legal proceedings in the compliance review initiated by OFCCP on September 9, 2016 (Lexington), December 22, 2018 (Tampa), or July 13, 2018 (Port Orange). I further agree that the payment of the aforesaid sum by US Foods, Inc. to me is not to be construed as an admission of any liability by US Foods, Inc.

III.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

IV.

I understand that if I do not sign this Release and return it to US Foods, Inc. by the date set forth in the enclosed notice, I will not be entitled to receive any payment (less deductions required by law) from US Foods, Inc.

IN WITNESS WHEREOF, I have signed this document on this ____ day of _____, 20__.

Signature

Attachment C- Timeline for Monetary and Hiring Relief

ACTIVITY	TIMEFRAME	DATE
US Foods Mails Notice Documents (First Mailing)	60 days from Effective Date	9/20/19
Postmark Deadline for Affected Applicants to Reply to Notice	90 days from Effective Date	10/20/19
US Foods Notifies OFCCP of Undeliverable Mailings	100 days from Effective Date	10/30/19
OFCCP Provides Updated Contact Information to US Foods	110 days from Effective Date	11/9/19
US Foods Mails Notice Documents (Second Mailing)	130 days from Effective Date	11/29/19
Postmark Deadline for Affected Applicants to Reply to Second Notice	150 days from Effective Date	12/19/19
US Foods Provides List of its Determination of Eligible Applicants	175 days from Effective Date	1/13/20
OFCCP Reviews and Approves Final List and Distribution Amounts	185 days from Effective Date	1/23/20
US Foods Mails Back pay Checks	220 days from Effective Date	2/27/20
US Foods Notifies OFCCP of Any Checks Returned as Undeliverable	Within 10 days of returned undeliverable check	TBD
OFCCP Provides Updated Addresses	Within 20 days of returned undeliverable check	TBD
US Foods Mails Back pay Checks to New Addresses	Within 50 days of returned undeliverable check	TBD
Distribution of Remaining Funds to Eligible Applicants	340 days from Effective Date	6/26/20

Attachment C- Timeline for Enhanced Compliance Agreement

ACTIVITY	TIMEFRAME	DATE
Consultant submits proposal to US Foods and OFCCP regarding methodology that will be used in the evaluation	60 days from Effective Date	9/20/19
Parties meet to review Consultant's report	7-1/2 months from Effective Date	3/8/20
US Foods implements recommendations	180 days after Report finalized	9/4/20

Attachment C- Timeline for Progress Reports

ACTIVITY	TIMEFRAME	DATE
First Progress Report Deadline	14 months from Effective Date	9/22/20
Second Progress Report Deadline	26 months from Effective Date	9/22/21
Third Progress Report Deadline	38 months from Effective Date	9/22/22
Fourth Progress Report Deadline	50 months from Effective Date	9/22/23
Fifth Progress Report Deadline	62 months from Effective Date	9/22/24