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DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60-1, 60-2, 60-3, 60-4, 60-20, 60-30, 60-40, 60-50, and 60-999

[Docket No. OFCCP-2025-0001]

RIN 1250-AA17

Rescission of Executive Order 11246 Implementing Regulations

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: On January 21, 2025, President Trump issued Executive Order 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” which revoked Executive Order 11246. Accordingly, the U.S. Department of Labor publishes this final rule to rescind the implementing regulations for Executive Order 11246.

DATES: This rule is effective on October 26, 2026.

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

Prior to January 21, 2025, the U.S. Department of Labor (the Department) administered and enforced Executive Order (E.O.) 11246, as amended. Issued in 1965, and amended several times in the intervening years, E.O. 11246, and its implementing regulations at 41 CFR part 60-1 *et seq.*, prohibited covered Federal contractors and subcontractors[1] from discriminating against employees and applicants because of race,

[1] Hereinafter, the term “contractor” is used to refer collectively to Federal contractors and subcontractors that fall under OFCCP’s authority, unless otherwise expressly stated. This approach is consistent with OFCCP’s regulations, which define “contract” to include subcontracts and “contractor” to include subcontractors.

color, religion, sex, sexual orientation, gender identity, national origin, or because they inquired about, discussed, or disclosed their compensation or that of others, subject to certain limitations. Contractors were also required to take certain affirmative actions to promote equal employment opportunity in their workplaces, as specified in 41 CFR part 60-2 and 41 CFR part 60-4.

On January 21, 2025, E.O. 14173 revoked E.O. 11246. Accordingly, this final rule rescinds the regulations implementing E.O. 11246 and modifies the administrative enforcement proceeding procedures at 41 CFR part 60-30 to remove the E.O. 11246 components. The Department also determined that significant portions of the E.O. 11246 regulatory framework are legally vulnerable because they are inconsistent with constitutional principles, civil rights law, and statutory authority.

II. Background

A. E.O. 11246 and Development of Implementing Regulations

Issued in 1965, E.O. 11246 required Federal contracts to include an “Equal Opportunity Clause” barring discrimination and requiring affirmative action in employment based on race, creed, color, and national origin. 30 FR 12319 (Sept. 28, 1965). The Order has been amended in the intervening years: to add sex to contractors’ nondiscrimination and affirmative action obligations, 32 FR 14303 (Oct. 17, 1967); to exempt certain religious employers with respect to religious nondiscrimination obligations, 67 FR 77141 (Dec. 16, 2002); to prohibit contractors from retaliating against employees who inquire about, disclose, or discuss compensation, 79 FR 20749 (Apr. 11, 2014); and to add sexual orientation and gender identity to contractors’ nondiscrimination obligations, 79 FR 42971 (July 23, 2014).

Executive Order 11246 charged the Secretary of Labor with enforcing these nondiscrimination and affirmative action obligations and set forth specific sanctions and penalties.[2] With respect to noncompliant contractors under E.O. 11246, the Secretary could publish the names of such contractors, cancel or suspend contracts, or debar them.[3] Executive Order 11246 also authorized the Secretary of Labor to recommend that the Department of Justice (DOJ) or the Equal Employment Opportunity Commission (EEOC) bring appropriate civil and criminal cases in Federal court.[4] In 1965, the Department created the Office of Federal Contract Compliance to discharge responsibilities assigned to the Secretary of Labor under E.O. 11246.[5] The entity known as the Office of Federal Contract Compliance later became the Office of Federal Contract Compliance Programs (OFCCP). OFCCP promulgated its first permanent implementing regulations in 1968. 33 FR 7804 (May 28, 1968). Those regulations have since been amended and expanded through successive rulemakings. The following subsection describes the current regulatory provisions implementing E.O. 11246 and the obligations they impose on contractors.

B. Overview of Current Regulations

1. Affirmative Action Provisions

The affirmative action requirements for nonconstruction contractors are found at 41 CFR part 60-2. The Department first codified these regulations in February 1970. *See* 35 FR 2586 (Feb. 5, 1970). As amended in 2000, by 65 FR 68042 (Nov. 13, 2000), these regulations prescribe the contents of nonconstruction contractors' affirmative action programs (AAPs) and standards and procedures for evaluating the compliance of those programs. 41 CFR 60-2.1(a).

Specifically, nonconstruction contractors with 50 or more employees and a contract of at least $50,000 must develop and maintain a written AAP for each of their

[2] *See* E.O. 11246 Sec. 209.
[3] *Id.*
[4] *Id.*
[5] Dep't of Labor Secretary's Order No. 26-65, Office of Federal Contract Compliance (EEO), Establishment (Oct. 5, 1965).

establishments. 41 CFR 60-2.1(b). The $50,000 threshold was promulgated in 1968 and has never been updated for inflation.[6] Any contractor that fails to develop and maintain a written AAP for each of its establishments violates E.O. 11246 and can be subject to penalties and sanctions. 41 CFR 60-2.2. These regulations also specify the purpose and contents of AAPs. 41 CFR 60-2.10. Nonconstruction contractors must evaluate the racial, ethnic, and sex composition of their workforce and compare it against the relevant labor market and internal availability. 41 CFR 60-2.10(a)(1), 60-2.14, and 60-2.15. If the percentage of minorities or women employed in a particular job group is less than expected, "the contractor's AAP includes specific practical steps designed to address this underutilization." *Id.* The regulations likewise mandate that, when the percentage of minorities or women employed in a particular job group is less than would reasonably be expected given their availability percentage in that particular job group, the contractor must establish "placement goals" that serve as objectives or targets that contractors must use to address disparities. 41 CFR 60-2.15(b). A placement goal must be "at least equal to the availability figure derived for women or minorities, as appropriate, for th[e] job group." 41 CFR 60-2.16(c). Contractors effectively must affirmatively take action with the aim of achieving a representation of minorities and women in their workforce that reflects the estimated availability of minorities and women. 41 CFR 60-2.12–2.15. There is no corresponding requirement to address the "underutilization" of other groups.

The regulations set forth in 41 CFR 60-2.12 through 41 CFR 60-2.15 allow contractors to treat minorities in the aggregate, meaning the question is not whether a

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[6] *See* 33 FR 7804, 7811 (May 28, 1968) (establishing an AAP dollar threshold of a single contract of $50,000); *see also* 43 FR 49240, 49247 (Oct. 20, 1978) (updating the AAP dollar threshold to a single contract of $50,000 or more, or Government bills of lading which in any 12-month period, total or can reasonably be expected to total $50,000 or more*); see also* 45 FR 86216, 86237 (Dec. 30, 1980) (updating the AAP dollar threshold to a single contract of $50,000 or more, or contracts (including Government bills of lading) which, in any 12-month period total $50,000 or more, or reasonably may be expected to total $50,000 or more); *see also* 65 FR 68022, 68042 (Nov. 13, 2000) (reverting back to 1978 language by amending 60-1.40(a)(1)(ii) to read "Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total $50,000 or more").

particular group is underutilized but whether minorities as a whole are underutilized. Likewise, a contractor may generally set placement goals for minorities as a whole so long as there are no substantial disparities in the utilization of certain minority groups. 41 CFR 60-2.16(d).

The affirmative action requirements for construction contractors are found at 41 CFR part 60-4. This part applies to all contractors, subcontractors, contracting agencies, and applicants, as defined in 41 CFR 60-1.3, that are party to or seek to enter Federal and federally assisted construction contracts in excess of $10,000, as well as certain nonconstruction contractors awarding construction contracts. The $10,000 threshold was promulgated in 1978 and has never been updated for inflation.[7] Nonconstruction contractors and subcontractors are required to comply with these requirements if, as a part of their Federal contract or subcontract, construction work is necessary in whole or in part to the performance of a nonconstruction contract or subcontract. *See* 41 CFR 60-4.1. Part 60-4 defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, and specifies certain recordkeeping and reporting requirements.

Instead of "placement goals" that apply to nonconstruction contractors, the Department developed "participation goals" for females and minorities that construction contractors must use as affirmative action benchmarks.[8] For females, the participation goal is set to 6.9% of the total hours worked by the contractor's construction workforce in each trade. For minorities, there are participation goals for each geographic area in the

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[7] *See* 43 FR 14888, 14894 (Apr. 7, 1978) (establishing the requirements for construction contractors and subcontractors subject to Executive Order 11246. Under 41 CFR 60-4.1, part 60-4 applies to all contractor and subcontractors which hold any Federal or federally assisted construction contracts in excess of $10,000). Although part 60-4 was revised in 1980, no changes were made to the dollar threshold of $10,000. *See* 45 FR 65976 (Oct. 3, 1980).

[8] The participation goals for females and minorities were originally issued in a 1978 *Federal Register* notice, 43 FR 14899 (Apr. 7, 1978) (Appendices A and B). The participation goals for minorities were later updated in a 1980 *Federal Register* notice, 45 FR 65979 (Oct. 3, 1980), but the goals for females remained unchanged.

United States. These goals apply to minority groups in the aggregate and include those groups enumerated in the definition of "minority" at 41 CFR 60-4.3(a)(1)(d).[9] Covered contractors are required to apply the goals to each construction trade in their workforce in the relevant geographic area. Section 60-4.6 outlines participation goals and timetables for minority and female utilization on construction projects. The participation goals and related requirements apply to all covered contractors, without regard to their utilization of females or minorities.[10] The goals also apply to all of the contractor's construction work performed in the covered geographic area, whether or not it is Federal or federally assisted. Unlike placement goals applicable to nonconstruction contractors, there is no regulatory language forbidding government-set participation goals from being treated as quotas. *Compare* 41 CFR 60-4.3 *with* 41 CFR 60-2.16. The regulations nonetheless prohibit using "the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin." 41 CFR 60-4.3(a)(10).

Section 60-4.2 requires all contracting officers and applicants for construction contracts to include a "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)" in solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts. It further requires covered nonconstruction contractors to include this notice in all construction agreements that are necessary in whole or in part to the performance of the covered nonconstruction contract. The notice includes information on minority and female participation goals applicable to the contractor's workforce. Section 60-4.2 also provides that contracting officers, applicants for construction contracts, and nonconstruction

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[9] "Minority" is defined to include Black; Hispanic; Asian and Pacific Islander; and American Indian or Alaskan Native individuals. 41 CFR 60-4.3(a)(1)(d).

[10] By contrast, nonconstruction contractors must only establish placement goals if they discover underutilization of women and/or minorities in a particular job group at a particular establishment. 41 CFR 60-2.16.

contractors must notify the Director of OFCCP in writing within 10 working days of the award of a covered contract in excess of $10,000.

Section 60-4.3 further requires these entities to incorporate the "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" set forth in 41 CFR 60-4.3 into all nonexempt Federal contracts and subcontracts. These standards describe the female and minority participation goal requirements and outline specific actions covered contractors must take to ensure equal employment opportunity in their work sites. For example, contractors must maintain a working environment free of harassment, intimidation, and coercion at all sites and must establish and maintain a current list of minority and female recruitment sources. *See* 41 CFR 60-4.3(a)(7)(a) and (b).

2. Nondiscrimination Provisions

Part 60-1 describes various obligations of contractors pursuant to E.O. 11246. One key provision is 41 CFR 60-1.4, which describes the equal opportunity clause that must be included in government contracts. This section includes the requirement that contractors state in all solicitations or advertisements for employment that applicants will receive consideration without regard to one or more of the protected bases and that contractors notify labor organizations of their obligations under E.O. 11246.

Contractors who meet the requirements set forth in 41 CFR 60-1.7 must file an annual Employer Information Report (EEO-1 Report) with the EEOC. In this report, covered contractors include information on their workforce demographics, including data by job category, sex, race, and ethnicity.[11]

[11] In this final rule, the Department is rescinding the 41 CFR 60-1.7 regulations, solely to the extent that they are codified in the E.O. 11246 regulations. This final rule does not impact EEOC's actions with respect to the EEO-1 report.

Section 60-1.10 requires the contractor to notify the Department of State and the Director of OFCCP when an employee or potential employee is denied a visa of entry to a country in which or with which it is doing business and it believes the denial was due to one, or more, of the protected bases covered by E.O. 11246.

Section 60-1.12 outlines the record retention requirements that apply to covered contractors under E.O. 11246. These regulations require contractors to preserve any personnel or employment record made or kept for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the record retention period is one year from the date of the making of the record or the personnel action involved, whichever occurs later. This section also provides that the contractor must be able to identify the gender, race and ethnicity of each employee for any record the contractor maintains. Where possible, the contractor must also identify the gender, race, and ethnicity of each applicant or Internet Applicant, as defined at 41 CFR 60-1.3.

Section 60-1.20 outlines the investigative methods the Department uses to evaluate a contractor's compliance with the E.O. 11246 regulations. A compliance evaluation may consist of one or any combination of the investigative procedures listed in the regulations, *i.e.*, a compliance review, an off-site review of records, a compliance check, and/or a focused review. This section also provides that if a contractor fails to submit an AAP and the supporting documents within 30 calendar days of the Department's request, the Department may initiate enforcement procedures. Section 60-1.40 requires the development and maintenance of an AAP under E.O. 11246. This section requires each contractor with 50 or more employees and a contract of $50,000 or more to develop an annual AAP for each of their establishments. Pursuant to these regulations, contractors must undertake the specific equal employment opportunity efforts set forth in 41 CFR part 60-2 (such as analyses of the contractor's employment processes) and document these efforts in a written AAP.

Part 60-20 sets forth the types of sex discrimination prohibited under E.O. 11246. This part interprets the Order's prohibition on discrimination "because of sex" to bar both disparate treatment and facially neutral employment practices that have a disparate impact on the basis of sex unless justified by business necessity. It addresses a broad range of employment practices, including recruitment, hiring, promotion, compensation, fringe benefits, training, layoffs, and terminations. The regulations specifically address sex-based distinctions related to family status; sex stereotypes; sexual orientation and gender identity; and pregnancy, childbirth, and related medical conditions.

3. Administrative Proceedings

The regulations at 41 CFR 60-1.26 were first promulgated in 1977 and authorize OFCCP to initiate administrative proceedings within the Department if OFCCP finds that the contractor violated E.O. 11246 or its regulatory requirements. 41 CFR 60-1.26(a)(1)(i)–(ii) and (b)(1). The proceedings are conducted under the supervision of the Solicitor of Labor and are adjudicated by a Department of Labor Administrative Law Judge (ALJ) and the Administrative Review Board. 41 CFR 60-1.26(a)(1)(i)–(ii) and (b) and 41 CFR 60-30.27–30.30. OFCCP is specifically authorized to seek back pay and other make whole relief for victims of discrimination. 41 CFR 60-1.26(a)(2). And it may refer matters to the DOJ for judicial proceedings. 41 CFR 60-1.26(c). Monetary relief is not referenced in the "Sanctions and Penalties" section of E.O. 11246, which authorizes the Secretary to publish a list of noncompliant contractors; cancel, suspend, or terminate contracts; and debar such contractors. E.O. 11246, sec. 209. The Order also authorizes the Secretary to recommend to the DOJ or the EEOC that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964, which would allow these agencies to seek monetary damages in Federal court for certain violations. *Id.*

Administrative proceedings brought under 41 CFR 60-1.26 are governed by the procedural regulations at 41 CFR part 60-30. In such proceedings, a Department of Labor ALJ resolves motions, receives evidence and testimony, and holds oral arguments. 41 CFR 60-30.8–30.11 and 60-30.14. At the end of the proceedings, the ALJ "recommend[s] findings, conclusions, and a decision" as to whether the contractor violated the Equal Opportunity Clause and, if so, what sanctions to impose. 41 CFR 60-30.27. Either party may file exceptions to the ALJ's recommended decision and order with the Administrative Review Board, which issues a final agency decision based on the record created before the ALJ. 41 CFR 60-30.27–30.30. Part 60-30 also governs administrative proceedings authorized under Section 503 of the Rehabilitation Act of 1973, as amended (Section 503) and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA).

4. Other Requirements

The Uniform Guidelines on Employee Selection Procedures (UGESP) are located at 41 CFR part 60-3 and 29 CFR part 1607. UGESP applies to "tests and other selection procedures which are used as a basis for any employment decision." 29 CFR 1607.2(B). UGESP was jointly adopted by the Department of Labor, the EEOC, the Civil Service Commission, and DOJ. 29 CFR 1607.1. When a test or other selection procedure is determined to have an adverse impact on minorities or women, UGESP requires the contractor to validate the test or procedure and to retain the validation documentation. Under UGESP, each contractor must maintain records and other information for each job sufficient to permit analyses of the impact of its selection procedures on the employment opportunities of people based on race, sex, or ethnic group. Using this information, the contractor and the Department identify and evaluate the contractor's selection procedures for adverse impact. As part of the Department's proposed rescission of the E.O. 11246 regulations, the Department proposed to rescind the 41 CFR part 60-3 regulations, solely to the extent that they were codified in the E.O. 11246 regulations. This action does not impact other agencies' interpretation and application of UGESP, or the existence of UGESP more broadly.

Part 60-40 describes the rules and restrictions the agency has in place for providing public access to its records. Part 60-50 sets forth the Department's interpretations and guidelines for enforcing its religion and national origin discrimination protections.

Lastly, 41 CFR part 60-999 provides information on Office of Management and Budget (OMB) approved information collections relevant to the regulations. The information in this part is outdated and refers to regulatory provisions that the Department is rescinding through this rulemaking.

C. Notice of Proposed Rulemaking

On January 21, 2025, President Trump issued E.O. 14173, ''Ending Illegal Discrimination and Restoring Merit Based Opportunity,"[12] which, among other things, revoked E.O. 11246 in its entirety and directed OFCCP within the Department to immediately cease each of the following: promoting "diversity"; holding Federal contractors and subcontractors responsible for taking "affirmative action"; and allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.[13] On April 1, 2025, President Trump issued a memorandum directing agencies to repeal regulations that conflict with recent Supreme Court precedents, including *West Virginia v. EPA*, 597

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[12] 90 FR 8633 (Jan. 31, 2025).
[13] *Id.* at 8634.

U.S. 697 (2022) and *Students for Fair Admissions v. President & Fellows of Harvard Coll.,* 600 U.S. 181 (2023) (*SFFA*).[14]

Accordingly, on July 1, 2025, the Department published a Notice of Proposed Rulemaking (NPRM) that proposed rescinding the E.O. 11246 implementing regulations at 41 CFR parts 60-1, 60-2, 60-3, 60-4, 60-20, 60-40, and 60-50, all promulgated under the authority of E.O. 11246. *See* 90 FR 28472 (July 1, 2025).

The NPRM also proposed modifying the administrative enforcement proceeding procedures at 41 CFR part 60-30 to remove the E.O. 11246 components. As these procedures also apply to VEVRAA and Section 503, the Department pursued separate rulemakings to incorporate these procedures directly into the VEVRAA and Section 503 implementing regulations. *See* 90 FR 28485 (July 1, 2025); 90 FR 28494 (July 1, 2025).[15] The Department also proposed rescinding the 41 CFR part 60-999 regulations, which include outdated information on OMB-approved information collections related to the regulations.

In addition to E.O. 14173's revocation of E.O. 11246, the Department identified several other reasons for rescinding the regulations, including eliminating legal vulnerabilities related to the affirmative action requirements, improving the efficiency of the Federal contracting process, decreasing employer burden, and providing regulatory certainty to contractors and other stakeholders by aligning the regulations with recent executive orders impacting the Department's enforcement. *See* 90 FR 28472, 28474–28477 (July 1, 2025).

D. Executive Order 14398

On March 26, 2026, President Trump issued E.O. 14398, "Addressing DEI Discrimination by Federal Contractors." 91 FR 16147 (Mar. 31, 2026). The Order

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[14] Presidential Memorandum, Directing the Repeal of Unlawful Regulations (Apr. 1, 2025).

[15] If the VEVRAA and Section 503 rulemakings take effect, the Department will then rescind the 41 CFR part 60-30 regulations in their entirety.

requires Federal contractors to include a clause in their contracts affirming that they will not engage in “disparate treatment based on race or ethnicity in the recruitment, employment . . . , contracting . . . , program participation, or allocation or deployment of an entity’s resources” in connection with the performance of work under the contract, and will furnish records necessary to verify compliance with this nondiscrimination obligation. Noncompliance may result in cancellation or suspension of the contract, and the contractor may be subject to debarment. Executive Order 14398 also directs the Federal Acquisition Regulatory Council to promulgate implementing regulations.

III. Discussion of Public Comments and Reasons for Rescission

As described above, on July 1, 2025, the Department published an NPRM in the *Federal Register* proposing rescission of parts 60-1, 60-2, 60-3, 60-4, 60-20, 60-40, 60-50 and 60-999, and revisions to part 60-30. 90 FR 28472 (July 1, 2025). The NPRM originally provided for a 60-day comment period, with the comment period scheduled to close on September 2, 2025. After receiving comments requesting an extension of the comment period, the Department extended the comment period until September 17, 2025.[16] DOL received 917 public comments in response to the NPRM. Comments came from individuals and from a wide variety of organizations, including employer associations, law firms, legal organizations, policy and advocacy groups, political organizations, unions, educational and research centers, and governmental entities, among others.

Commenters addressed many topics, including the legal basis for the regulations implementing E.O. 11246, those regulations’ consistency with constitutional and statutory civil rights principles, the scope of the Department’s enforcement authority, and the potential effects of rescission. After considering the comments received, the

[16] Rescission of Executive Order 11246 Implementing Regulations; Extension of Comment Period, 90 FR 42711 (Sept. 4, 2025).

Department decided to finalize the rescission of the regulations implementing E.O. 11246 and to modify the administrative enforcement proceeding procedures at 41 CFR part 60-30 to remove the E.O. 11246 components as proposed. As explained below, this determination is based on the following factors: 1) the revocation of E.O. 11246 provides a standalone and sufficient basis for rescinding regulations promulgated solely to implement that Order; 2) the affirmative action regulations conflict with the Constitution's equal protection principles and are inconsistent with Federal civil rights law, including Titles VI and VII of the Civil Rights Act of 1964; 3) significant portions of the E.O. 11246 regulatory framework—including the affirmative action requirements and the provisions authorizing administrative enforcement and monetary relief under the E.O. 11246 implementing regulations—lack statutory authorization; and 4) rescission will promote more efficient and economical Federal contracting, reduce unnecessary compliance costs, and will not result in increased discrimination. The Department anticipates that rescission will actually encourage fairer, more merit-based employment decision-making consistent with Federal civil rights law.

A. Revocation of E.O. 11246

On January 21, 2025, E.O. 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," 90 FR 8633, revoked E.O. 11246. Section 201 of E.O. 11246 delegated authority to the Secretary of Labor to adopt regulations and issue orders to carry out the purposes of that Executive Order and was the sole source of authority for the regulatory framework the Department is rescinding. Authority delegated by the President to the head of a department or agency is "revocable at any time by the President in whole or in part." 3 U.S.C. 301. Once E.O. 11246 was revoked, the delegation of authority it contained necessarily terminated. As the NPRM explained, since the Department's regulations at 41 CFR parts 60-1, 60-2, 60-3, 60-4, 60-20, 60-40, and 60-50 were promulgated solely to implement E.O. 11246, the revocation of E.O. 11246 is an independent and sufficient reason to rescind those regulations. 90 FR 28474. As a result, OFCCP's implementing regulations no longer have operative legal force and cannot be maintained or enforced.

A commenter asserted that revocation of E.O. 11246 is not a sufficient basis for rescinding regulations promulgated under that Order. The commenter, National Nurses United (NNU), argued that Congress's recognition in 42 U.S.C. 2000e-17 that OFCCP may disapprove AAPs "gives [OFCCP's] affirmative action obligations statutory status," and therefore those regulations cannot be rescinded through executive action alone. As explained in greater detail in Section III(C), Congress does not confer statutory authority on agency action merely by acknowledging or referencing that action.

Further, as the Competitive Enterprise Institute (CEI) explained, "The wisdom of revoking E.O. 11246 is not at issue, however. The president has already made that decision." Because the President revoked E.O. 11246, the Department has no authority to restore it or to implement it as if it were still in force. A labor attorney who supported E.O. 11246 agreed that "[f]ollowing the revocation of E.O. 11246, it is clearly appropriate for OFCCP to rescind those rules for which [E.O. 11246] was the sole authority and whose only purpose was to implement the executive order."

Because the delegation of authority to the Secretary of Labor in section 201 of E.O. 11246 was duly revoked, there is, as the Ethics and Public Policy Center (EPPC) commented, "no longer any 'illusion of authority' for the regulations." The American Civil Rights (ACR) Project similarly recognized OFCCP for "undertaking the proper housekeeping of removing the Rescinded Regulations from the Code of Federal Regulations now that they are a nullity."

The Department concludes that the revocation of E.O. 11246 alone provides an independent and sufficient ground for rescinding the regulations. Moreover, as explained in Section III(B) below, even if Congress had conferred statutory status on the affirmative action regulations in parts 60-2 and 60-4, as NNU suggests, those regulations would nonetheless be unconstitutional.

B. The Affirmative Action Regulations Are Unlawful

1. The Nature of the Affirmative Action Regulations

As explained in Section II(B) above, 41 CFR parts 60-2 and 60-4 require covered nonconstruction contractors to establish placement goals to address any underutilization—*i.e.*, where the percentage of minorities or women employed in a job group is less than reasonably would be expected given their availability. The "central premise underlying [race- and sex-based goals] is that, absent discrimination, over time a contractor's workforce, generally, will reflect the gender, racial and ethnic profile of the labor pools from which the contractor recruits and selects." 41 CFR 60-2.10(a)(1). If contractors do not take sufficient action to meet goals, they could be found "nonresponsible" for meeting affirmative action obligations, and further investigation and costly administrative enforcement may follow. *See* 41 CFR 60-2.2. Construction contractors are subject to similar minority and female participation goals, the main difference being such goals are set by the Department.

In response to the NPRM, numerous commenters addressed the nature and operation of the affirmative action requirements contained in parts 60-2 and 60-4. Many commenters characterized these affirmative action requirements as governmental discrimination that seeks demographic balancing in contractors' workforces. Independent Women, along with more than a hundred commenters participating in a coordinated letter campaign, criticized OFCCP's employment goals as being effectively "quotas." The joint comment of the Pacific Legal Foundation, Center for Equal Opportunity, and Defending Education (hereinafter collectively referred to as "PLF") questioned whether regulations authorizing racially preferential contracting policies are even authorized by E.O. 11246. PLF's comment stated: "these regulations essentially require contractors to discriminate until they attain the government's desired demographics[.]" That comment further criticized the E.O. 11246 implementing regulations' underlying assumption that any statistical disparity in workforce composition should be corrected, agreeing with the NPRM that there are many non-discriminatory reasons why a group may be over- or underrepresented in a particular job at a particular employer. *See* 90 FR 28472. In a joint comment, 22 state attorneys general likewise observed that the "mere fact that a disparity exists thus says very little about whether discrimination is the cause."

The Center for Regulatory Freedom (CRF) cited 2024 data showing that the occupations of health care support, education, and office administration support are each between 70% to 85% female. Conversely, the occupations of construction or extraction, architecture, and transportation are each between 79% to 96% male. CRF added that there is no nationwide campaign to discourage women from going into construction. "Instead," CRF wrote, "a plethora of data is readily available explaining that these sex-based disparities exist because the sexes tend to lean towards pursuing different professions than those of the opposite sex. Regardless of whether the reason for these trends is biological or environmental, the disparities that exist are not a consequence of discrimination, but of individual choices reflected on a macro scale."

Some commenters, including NNU and Representative Robert C. Scott of Virginia, disagreed with the revocation of E.O. 11246, stressing its continuity with earlier executive orders regarding nondiscrimination in Federal contracting. But the continuity they asserted does not present a fully accurate comparison between E.O. 11246 and its predecessors. Unlike previous nondiscrimination executive orders, E.O. 11246 gave the Secretary of Labor enforcement authority over certain types of discrimination by governmental contractors. As the comment of America First Legal pointed out, as a result of regulations subsequently issued by the Secretary of Labor, E.O. 11246 "transformed the concept of affirmative action from an obligation to eliminate racial discrimination into a requirement to implement a new kind of race-conscious employment."

Other commenters commended E.O. 11246 for protecting minorities,[17] promoting jobs for women in construction[18] and, as E.O. 11246 was amended in 2016, for protecting workers from adverse action for discussing pay, thereby helping to uncover pay disparities.[19] NNU characterized the revocation of E.O. 11246 as an attack on civil rights and equality for the working class. Nine members of the House of Representatives "encourage[d] the Department to reconsider this proposed rule and continue upholding the principles of E.O. 11246." Rep. Scott likewise "ask[ed] the Department to withdraw this harmful proposal and restore [E.O. 11246]."

NNU disagreed that there could be non-discriminatory reasons for statistical disparities, countering that such disparities reflect "occupational segregation, an active process whereby government policies and employer practices create a concentration of a particular group in a workplace, workforce, industry." The Department finds NNU's sweeping assertion that occupational disparities must be the product of "active" wrongdoing to be flawed. There is no reason to expect free people making free choices to distribute themselves evenly across every occupation by sex and along racial categories that "are arbitrary or undefined." *See SFFA*, 600 U.S. at 216–17. Indeed, the Supreme Court has explained that "[i]t is completely unrealistic to assume that unlawful discrimination is the sole cause of people's failing to gravitate to jobs and employers in accord with the laws of chance." *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 992 (1988). Treating uneven representation as presumptive proof of discriminatory design, as NNU suggests, is not serious analysis. Rather, it is a reflexive conflation of statistical

[17] *E.g.*, Comment of nine members of the House of Representatives.
[18] Comment of Chicago Women in Trades.
[19] Comment of National Partnership for Women & Families at 2–3.

disparity with unlawful discrimination, untethered from the evidentiary standards the law requires.

Other commenters defended the E.O. 11246 affirmative action regulations by denying that race- and sex-based employment goals could encourage race- or sex-based decision-making. For example, one employment attorney asserted that the Department "completely misconstrues" its race-based placement goals, explaining that they are intended only to identify and remove barriers, rather than act as race-based numeric goals. The joint comment of the National Women's Law Center and several other civil rights and worker rights organizations (hereinafter collectively referred to as "NWLC") similarly argued that "the only requirement is to identify gaps between availability and utilization, and take steps to understand any barriers causing those gaps." These commenters emphasized that the regulations state that goal-setting requirements may not be used to justify quotas or explicit preferences based on race or sex.

The Department acknowledges that it previously revised the regulations governing nonconstruction contractors to include an express disclaimer that placement goals do not justify quotas or discrimination. *See* 41 CFR 60-2.16(e) and 41 CFR 60-4.3(a)(10). But the same regulations also expressly require the consideration of race and sex in employment practices through the establishment of race- and sex-based goals and the obligation to undertake efforts to meet them. In these circumstances, the Department concludes that, as a practical matter, the regulations require race- and sex-conscious employment decision-making.

Disclaimers do not alter the underlying premise of the regulations that, absent discrimination, "over time a contractor's workforce, generally, will reflect the gender, racial and ethnic profile of the labor pools from which the contractor recruits and selects," 41 CFR 60-2.10(a)(1), which, if left unqualified, discounts "innocent causes" that may lead to disparities. *Watson*, 487 U.S. at 992. Nor does the disclaimer affect the structure of the regulatory framework, which requires contractors to classify employees and applicants by race and sex; to compare those classifications to external demographic benchmarks; to establish numerical goals where race or sex disparities are identified; and to implement "action-oriented programs" to address "underutilization." *See, e.g.*, 41 CFR 60-2.10(a)(1) (requiring nonconstruction contractors to "address [the] underutilization" of groups based on race or sex); *see also* 41 CFR 60-4.3(a) (requiring construction contractors to consider utilization based on minority groups in AAPs). Through this regulatory scheme, " '[a]ffirmative action' was … decisively transformed into a numerical concept, whether called 'goals' or 'quotas.' " Thomas Sowell, "Civil Rights: Rhetoric and Reality" 41 (1984).

"The inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate prophylactic measures." *Watson*, 487 U.S. at 992. OFCCP's reliance on statistical disparities and numerical goals have encouraged some employers to discriminate. Judge Silberman, for instance, expressed regret regarding the structure of OFCCP's affirmative action regulations, which he helped establish during his tenure as Solicitor of Labor and Undersecretary of Labor, observing that "[o]ur use of numerical standards in pursuit of equal opportunity has led ineluctably to the very quotas guaranteeing equal results that we initially wished to avoid." "The Road to Racial Quotas," Wall Street Journal (Aug. 11, 1977).

Although placement and participation goals are not denominated as quotas, they function as numerical targets that contractors must pursue. Contractors were at risk that OFCCP might subject them to intrusive and costly investigations and enforcement proceedings if they failed to make sufficient progress toward meeting their goals. In practical operation, as American First Legal recognized, "the existing regulatory infrastructure requires employers to take into account race and sex" when making employment decisions with the aim of correcting statistical disparities. Put another way, the regulations implementing E.O. 11246 are self-contradictory. In 2000, OFCCP added 41 CFR 60-2.16, which ostensibly prohibits quotas and prohibits discrimination based on race, sex, and other protected characteristics. Government Contractors; Affirmative Action Requirements, 60 FR 68022, 68046 (Nov. 13, 2000). Yet, the requirements that form the bulk of parts 60-2 and 60-4 actively induce employers to treat the goals as quotas and to take affirmative action that constitutes discrimination based on race and sex.

Having considered the comments, the Department concludes that the affirmative action requirements at issue extend beyond the removal of barriers to equal employment opportunity. They instead establish a framework of race- and sex-based workforce classification, demographic benchmarking, and numerical goal-setting that requires contractors to engage in sustained race-conscious analysis in employment practices.

2. Equal Protection Principles

Several commenters agreed with the Department that OFCCP's race-based affirmative action regulations raise serious constitutional equal-protection concerns and are vulnerable to legal challenge, particularly in light of the Supreme Court's recent decision in *SFFA*, 600 U.S. at 181. *See* 90 FR 28474.

Citing *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954), the state attorneys general and PLF noted that the Fifth Amendment's Due Process Clause applies the principles of equal protection to the Federal Government and argued that the regulations cannot be reconciled with those principles. The regulations, the state attorneys general asserted, require or incentivize the use of race and sex in employment decisions, use racial classifications that trigger strict scrutiny, and lack a logical endpoint. They emphasized that, like the admissions programs invalidated in *SFFA*, the regulations encourage race-conscious employment decision-making aimed at achieving predetermined numeric benchmarks and are not narrowly tailored to remedy specific acts of past discrimination by the entities in question against the individuals receiving the benefits of those measures. PLF and America First Legal similarly contended that the Constitution's equal-protection guarantee prohibits the Federal Government from conditioning contracting eligibility on race- or sex-based employment practices, and that *SFFA* reinforces the longstanding principle that government must treat individuals as individuals rather than as members of race- or sex-based classes. Independent Women and the ACR Project likewise supported rescission, asserting that race- and sex-based placement goals and related compliance mechanisms operate in practice as de facto quotas and pressure contractors to depart from merit-based hiring.

Other commenters responded that the Department misconstrued *SFFA* because that decision arose in the narrow context of college admissions, not employment or Federal contracting. For example, the National Partnership for Women & Families (NPWF) asserted that "the decision in *SFFA* applies only to race-conscious decision-making in institutions of higher education," and the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) argued that *SFFA* "has no bearing on the affirmative action programs adopted by Federal contractors under E.O. 11246 and its implementing regulations," which it characterized as "clearly distinguishable from the race-based admissions programs in that case."

The Department agrees that *SFFA* arose in the context of college admissions, the decision rests on longstanding and enduring equal-protection principles that predate and extend well beyond the admissions context, confirming race-based governmental decision-making is presumptively invalid absent an extremely narrow justification. Indeed, the Supreme Court expressly relied on *SFFA* in the context of the Voting Rights Act to reiterate that ' ' 'the Constitution almost never permits the Federal Government or a State to discriminate on the basis of race.' ' ' *Louisiana v. Callais*, 146 S. Ct. 1131, 1152 (2026) (quoting *SFFA*, 600 U.S. at 207). That is because " '[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' " *Id.* at 1153 (quoting *SFFA*, 600 U.S. at 208). As Chief Justice Roberts explained nearly twenty years ago: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007). In fact, the NPRM cited *SFFA* precisely to reaffirm those bedrock equal protection principles.

SFFA struck down race-conscious admissions policies as incompatible with "the 'core purpose' of the Equal Protection Clause: 'do[ing] away with all governmentally imposed discrimination based on race.'" 600 U.S. at 206 (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984)). *See also Strauder v. West Virginia*, 100 U.S. (10 Otto) 303, 310 (1879) (The Fourteenth Amendment's "aim was against discrimination because of race or color."). That principle applies to Federal contracting no less than to higher education. Indeed, the Supreme Court has long held that racial classifications employed in Federal contracting are subject to the same equal-protection constraints. For example, in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995), which *SFFA* cites as authority,[20] the Court held that strict scrutiny applies to the Department of Transportation contracting program that employed racial or ethnic criteria.

Under the Constitution, "[g]overnment policies that classify people by race are presumptively invalid." *Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021) (citing U.S. Const. amend. XIV; *Adarand*, 515 U.S. at 234). Arguing that the Department's characterization of *SFFA* is inaccurate and unsupported, a coalition of ninety organizations asserted that "[t]he Court recognized that race-based action may be permissible in certain circumstances." But those circumstances are extremely narrow: a racial classification must survive strict scrutiny, meaning it must be narrowly tailored to

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[20] 600 U.S. at 206.

achieve a compelling governmental interest. *SFFA*, 600 U.S. at 206. Relying on *SFFA*, the Supreme Court in *Callais* explained that racial classification "triggers strict scrutiny, and [the Court's] precedents have identified 'only two compelling interests' that can satisfy that standard.'' 146 S. Ct. at 1152 (quoting *SFFA*, 600 U.S. at 207). The first is "avoiding imminent and serious risks to human safety in prisons," *id*., which plainly has no application here. The second is "remediating specific, identified instances of past discrimination that violated the Constitution or a statute," *id.,* which also does not apply, as explained below.

Sex-based classifications likewise are "presumptively invalid" and may be sustained only if they satisfy intermediate scrutiny—they must serve an important governmental objective and are substantially related to the achievement of that objective. *Vitolo*, 999 F.3d at 364. For the reasons explained below, the Department concludes that the race- and sex-based affirmative action regulations in 41 CFR parts 60-2 and 60-4 are unconstitutional under these standards and therefore should be rescinded.

a. OFCCP's Race-Based Affirmative Action Regulations Are Unconstitutional

The state attorneys general, PLF, America First Legal, and other commenters argued that OFCCP's race-based affirmative action regulations constitute racial classifications that fail strict scrutiny and therefore must be rescinded. No commenter disputed that these regulations either classify individuals on the basis of race for purposes of equal-protection jurisprudence or are subject to strict scrutiny.

i. Race-Based Affirmative Action Regulations Trigger Strict Scrutiny

The Department concludes that the affirmative action regulations that require contractors to set placement goals where minority underutilization occurs and then make good faith efforts to address that underutilization create racial classifications that trigger strict scrutiny under settled equal-protection principles. Long before *SFFA*, courts repeatedly held that governmental policies pressuring or encouraging regulated entities to consider race in hiring, promotion, assignment, or other employment decisions constitute racial classifications attributable to the government. *See, e.g., Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 710–13 (9th Cir. 1997); *Lutheran Church-Mo. Synod v. FCC*, 141 F.3d 344, 351–54 (D.C. Cir. 1998); *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13, 19–20 (D.C. Cir. 2001).

Although some commenters correctly note that 41 CFR 60-2.16(e) disclaims the use of placement goals as "rigid and inflexible quotas," that disclaimer is beside the point. The relevant inquiry is whether the regulatory scheme encourages, induces, or effectively requires employment decisions because of race. *See Anderson v. Martin*, 375 U.S. 399, 402 (1964). Where such pressure exists, courts treat the regulatory framework itself as a racial classification subject to strict scrutiny. *Lutheran Church*, 141 F.3d at 352–53; *MD/DC/DE Broadcasters Ass'n*, 236 F.3d at 19–20. And that is precisely what the regulatory framework does. The rules require "goals" not "quotas," but for many regulated contractors, the two are synonymous. A quota, as the word is commonly used (particularly in sales), does not necessarily have a "rigid and inflexible" connotation. For equal protection purposes, it does not matter "whether a government hiring program imposes hard quotas, soft quotas, or goals. Any one of these techniques induces an employer to hire with an eye toward meeting the numerical target. As such, they can and surely will result in individuals being granted a preference because of their race." *Lutheran Church*, 141 F.3d at 354.

The placement goal framework in part 60-2 exerts such pressure in at least two ways. First, OFCCP considers a contractor's underutilization of minorities when conducting compliance reviews of contractors. *See* 41 CFR 60-2.16(e). If a contractor does not exhibit underutilization, there is no predicate for finding a failure to undertake "good faith efforts" to remedy it; conversely, where underutilization is identified, the contractor's good faith efforts are subject to scrutiny and potential enforcement. In this way, the presence or absence of underutilization effectively determines exposure to liability. Since fiscal year 2020, OFCCP issued over 40 notices of violations against contractors for either failing to conduct the utilization analysis or failing to "execute action-oriented programs" to address underutilization of minorities. Contractors were subjected to these violations even where OFCCP did not allege that any underutilization was due to discrimination. The threat of enforcement based on knowledge of a contractor's underutilization creates a strong incentive to meet numerical race-based goals, thereby inducing race-based decision-making. An attorney who has represented many contractors commented, "I have observed first-hand several dozen major corporations just 'hitting the numbers' by either setting hiring percentages at either their applicant flow percentages or the percentage availability they calculated in their AAP [for minorities and females]."

Courts have consistently recognized that the prospect of government enforcement exerts coercive pressure sufficient to influence regulated conduct. *Lutheran Church*, 141 F.3d at 353 ("No rational firm—particularly one holding a government-issued license—welcomes a government audit."); *MD/DC/DE Broadcasters Ass'n*, 236 F.3d at 19–20 ("Investigation by the licensing authority is a powerful threat, almost guaranteed to induce the desired conduct.").

Second, the regulations require contractors to undertake "good-faith efforts" and other affirmative actions to address minority underutilization. Requirements to take action to meet race-specific employment targets likewise encourage contractors to consider race and therefore trigger strict scrutiny. *See Monterey Mech.*, 125 F.3d at 710–13.

The constitutional concerns are even more pronounced with respect to construction contractors' participation goal requirements under part 60-4. Unlike placement goals, there is no prohibition against treating participation goals as inflexible quotas in the regulatory text. To the contrary, construction contractors are expressly "expected to make substantially uniform progress in meeting … [their participation] goals." 41 CFR 60-4.3(a)(4). Section 60-4.2(d)(2) further requires that hours worked by minorities and women be "substantially uniform throughout the length of the contract" and that contractors make good-faith efforts to employ minorities and women evenly across projects. These provisions directly encourage contractors to monitor and manage staffing decisions on the basis of race, even though contractors were ostensibly prohibited from "us[ing] the goals and timetables or affirmative action standards to discriminate" on that and other bases. 41 CFR 60-4.3(a)(10). These requirements operate in a context where compliance directly affects a contractor's eligibility for Federal work and exposure to enforcement action, including the potential loss of existing or future contract revenue. Such financial incentive structure can exert significant pressure on contractors to manage staffing decisions on the basis of race.

In addition, the affirmative action steps mandated by OFCCP's construction equal opportunity clause are facially race-based. The regulations require contractors to take specific preferential actions with respect to minority applicants or employees because of their race—or, here, grouping of their races as "minority" races—without imposing corresponding obligations with respect to non-minority individuals. *See* 41 CFR 60-4.3(a)(7). As one example of mandatory preferential disparate treatment, construction contractors must annually conduct "an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities." 41 CFR 60-4.3(a)(7)(l). By contrast, there is no requirement to evaluate promotion opportunities for non-minority males, nor to encourage them to seek or prepare for opportunities through training. This inequality persists despite the Supreme Court's affirmation that equal protection applies "with equal force regardless of 'the race of those burdened or benefited by a particular classification.'" *Miller v. Johnson*, 515 U.S. 900, 904 (1995) (quoting *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 494 (1989)).

Ultimately, both the placement- and participation-goal frameworks rest on the premise that nondiscriminatory employment practices should yield workforces that approach proportional representation based on the labor pool, and that deviations from such representation warrant correction. Part 60-2 states that, absent discrimination, a contractor's workforce is expected to "reflect the gender, racial, and ethnic profile of the labor pools from which [it] recruits and selects." 41 CFR 60-2.10(a)(1). Part 60-4 similarly defines participation goals as the percentages of hours of employment that a contractor "should reasonably be able to achieve." 41 CFR 60-4.3(a)(4). As discussed above in section III(B)(1), there are often benign reasons for members of certain racial or ethnic groups being over- or under-represented in a particular line of work. And courts have squarely rejected the proportional representation premise as constitutionally suspect. In *Lutheran Church*, the D.C. Circuit explained that regulatory schemes "built on the notion that [employers] should aspire to a workforce that attains, or at least approaches, proportional representation" obligate employers "to grant some degree of preference to minorities in hiring" and, therefore, trigger strict scrutiny. 141 F.3d at 352.

ii. Race-Based Affirmative Action Regulations Fail Strict Scrutiny

OFCCP's race-based affirmative action regulations cannot survive strict scrutiny. The regulations do not serve a compelling governmental interest, and even if such an interest could be identified, they are not narrowly tailored to achieve that interest.

As the state attorneys general explained, the only potentially relevant compelling interest recognized by the Supreme Court in this context is the remediation of identified occurrences of past discrimination. *See Croson*, 488 U.S. at 497.[21] Importantly,

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[21] The Court has acknowledged rationales other than remedying past discrimination, but they were strictly limited to the higher education context in which they arose. *See*, e.g., *Grutter v. Bollinger*, 539 U.S. 306,

generalized assertions of societal or industry-wide discrimination are not enough; there must be specific instances of past intentional discrimination in which the Federal Government itself was an active or passive participant. *Id.* at 498–500; *see also Vitolo,* 999 F.3d at 361.

For the Department to impose a blanket requirement that all contractors nationwide address a general underutilization of minorities through race-based employment goals and other affirmative measures, the Department would need to identify concomitant discrimination—that is systematic, nationwide discrimination by all contractors nationwide against all minorities in which the Federal Government itself was an active or passive participant. *See Wygant v. Jackson Bd. of Educ.,* 476 U.S. 267, 274 (1986). The Department cannot meet this exacting standard. The rulemaking records underlying OFCCP's race-based placement and participation goals do not identify any discrete, contemporaneous instances of intentional discrimination by contractors, much less all contractors to which OFCCP's goals apply, in which the Federal Government participated or acquiesced.[22] *See* Part 60-2 Affirmative Action Programs, 35 FR 2586 (Feb. 5, 1970).

Even assuming the Department could demonstrate widespread Federal governmental participation in discrimination that could be remedied with race-motivated policies, the E.O. 11246 regulations fail the narrow tailoring requirement for several reasons. First, narrow tailoring minimally requires serious, good-faith consideration of workable race-neutral alternatives. *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003); *Croson*, 488 U.S. at 507. The rulemaking records underlying parts 60-2 and 60-4 reflect no assessment whatsoever of race-neutral alternatives to race-based affirmative action

328–33 (2003). And even so, those rationales have since been severely limited. *See SFFA*, 600 U.S. at 214–18.

[22] The Federal Government has prohibited contractors from race discrimination since President Franklin Roosevelt did so relying on war legislation. *See* E.O. 9001, 6 FR 6787 (citing Act of Dec. 18, 1941, Sec. 593, Pub. L. 77-354, 55 Stat. 838).

requirements. Second, race-conscious remedial programs must be limited in duration or subject to periodic review to ensure that they do not outlast their justification. *See W. States Paving Co. v. Wash. State Dep't of Transp.*, 407 F.3d 983, 994 (9th Cir. 2005). None of OFCCP's race-based affirmative action requirements is limited in duration or subject to meaningful periodic review. Third, and especially problematic, the regulations apply collectively to all minority groups in the aggregate, regardless of whether a particular group was harmed by instances of discrimination or even experiences underutilization. By permitting race-conscious requirements untethered to evidence of discrimination affecting particular groups, the regulations lack the narrow tailoring required by equal-protection principles. *See Rothe Dev. Corp. v. Dep't of Defense*, 545 F.3d 1023, 1036 (Fed. Cir. 2008) (citing *Croson*, 488 U.S. at 506).

Under OFCCP's regulations, individuals of different races are treated interchangeably, as long as the races qualify as "minority" in the view of the agency. Paradoxically, even a contractor with a history of discrimination against black workers could "remedy" that discrimination in the eyes of OFCCP by hiring individuals of other minority races. Regardless, the interchangeability of individuals of different minority races under the regulations significantly broadens—not narrows—their scope. Ultimately, that breadth as well as the permanence of the affirmative action regulations related to E.O. 11246—as noted above, they apply across all industries, to all minority groups, and without temporal limitation—preclude a finding of narrow tailoring.

The overbreadth of the affirmative action requirements in parts 60-2 and 60-4 is underscored when compared against targeted remedial orders that preceded them. For example, the Third Circuit affirmed the 1969 Philadelphia Plan, an affirmative action order that applied only to six construction trades in the Philadelphia area and was based on the Secretary of Labor's finding that race-conscious hiring goals were necessary to remedy "obvious underrepresentation [that] was due to the exclusionary practices of the unions" in those specific trades. *Contractors Ass'n of E. Pa. v. Sec'y of Labor*, 442 F.2d 159, 171–72 (1971).[23] By contrast, parts 60-2 and 60-4 require across-the-board, race-based employment practices on contractors nationwide, without regard to industry, trade, geographic location, history, or specific findings of discriminatory conduct. This stark contrast illustrates the absence of narrow tailoring in the current regulatory regime and reinforces the Department's conclusion that the regulations cannot be justified as remedial measures under equal-protection principles.

OFCCP's race-based affirmative action regulations are unlikely to satisfy the compelling-interest requirement and definitively fail the narrow-tailoring requirement. On these bases alone, the Department concludes that the regulations cannot survive strict scrutiny and should be rescinded.

b. OFCCP's Sex-Based Affirmative Action Regulations Are Likely Unconstitutional

The Department further concludes that the affirmative action requirements in 41 CFR parts 60-2 and 60-4 are sex-conscious regulations that are unlikely to satisfy intermediate scrutiny, which requires that the classification serve an important governmental objective and be substantially related to the achievement of that objective. *Craig v. Boren*, 429 U.S. 190, 197 (1976).

The Supreme Court has explained that "[i]n limited circumstances, a gender-based classification favoring one sex can be justified if it intentionally and directly assists members of the sex that is disproportionately burdened." *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 728 (1982). As with race-based classifications, remedying specific instances of past discrimination may constitute a valid governmental objective. However, "general claims of societal discrimination" are insufficient. The government must show

[23] The Philadelphia Plan was not challenged on equal protection grounds but rather on statutory grounds. It is unclear whether even this narrower race-based remediation plan would survive strict scrutiny, since there was neither evidence presented showing that the government participated—even passively—in the unions' discrimination, nor that race-neutral alternative was ever given good-faith consideration.

that the favored sex "actually suffer[ed] a disadvantage" caused by discrimination in a particular field or context that the policy is designed to remedy. *Id*. at 727–29.

The Department does not dispute that women have at times experienced discrimination in certain trades or occupations. The constitutional problem is not the existence of discrimination in some contexts, but the absence of any findings that the sex-conscious requirements in parts 60-2 and 60-4 are tied to discrimination by particular employers or even to discrimination within specific industries, occupations, trades, or geographic areas. The rulemaking records for part 60-2 do not contain findings of sex-based discrimination in specific nonconstruction trades. OFCCP's first issuance of goals and timetables for the construction industry contains a discussion of the state of female employment in the industry, citing comparative workforce participation data, testimony presented at fact-finding hearings, studies indicating that placement goals would increase the percentage of women interested in applying for construction jobs and the impact of a Maritime Administration goals program on the increased representation of women in that workforce. The discussion did not, however, include court findings or other concrete evidence of proven systemic discrimination against women across the industry. *See* Goals and Timetables for Female and Minority Participation in the Construction Industry, 43 FR 14888, 14892–93 (Apr. 7, 1978). Thus, these findings were not sufficient to justify imposing uniform, sex-conscious requirements across all covered industries and locations nationwide. *Vitolo*, 999 F.3d at 365.

Instead, the structure and text of the regulations indicate that their objective is not the remediation of identified, trade-specific discrimination but the reduction of disparities between a contractor's workforce and the available labor pool.[24] Part 60-2 expressly states that a contractor's workforce should "reflect the gender … profile of the labor pools from which [it] recruits and selects." 41 CFR 60-2.10(a)(1). That formulation

[24] NNU made the same admission, commenting, "The sole determining factor is whether disparities exist."

reflects a sex-balancing objective rather than a remedial one. But statistical disparities between workforce composition and labor-market availability, standing alone, are insufficient to demonstrate an important governmental objective. *See Vitolo*, 999 F.3d at 364 (citing *Craig*, 429 U.S. at 200-04). Absent evidence that women suffered intentional discrimination in each of the specific trades or occupations subject to regulation, sex-based classifications cannot be justified as remedial measures. *Id.* at 365 ("Without proof of intentional discrimination against women, a policy that discriminates on the basis of sex cannot serve a valid governmental objective.").

Moreover, the means employed by parts 60-2 and 60-4 likely are not substantially related to the objective of remedying past discrimination, at least in the main. The regulations in part 60-2 apply broadly across industries and occupations without regard to whether discrimination occurred in a particular sector, job group, or geographic area. Although the regulations in part 60-4 are limited to construction, OFCCP established a uniform 6.9 percent participation goal for women nationwide, without accounting for regional variation, differences among construction trades, or evidence of past discrimination in particular local labor markets. *See* Construction Contractors, Affirmative Action Requirements, 45 FR 85750, 85751 (Dec. 30, 1980).[25] The sex- and race-based placement goals for construction contractors were set by notices in the *Federal Register* in 1978. 43 FR 14888. Race-based goals were updated in 1980, while sex-based goals were never updated, even though industry practices have changed substantially.

By imposing a single nationwide participation goal untethered to specific findings of sex-based discrimination in particular trades or regions, the regulations reflect a

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[25] The 1978 *Federal Register* Notice establishing the female goal explained that OFCCP took the nationwide approach because the female representation level in the construction industry was so low that Census data did not allow for variations based on locality. 43 FR 14888, 14899.

generalized sex-balancing approach rather than a remedial program that addresses identified discrimination.

The types of sex-based classifications upheld under intermediate scrutiny are materially different from the broad, industry-wide requirements imposed by these regulations. For example, in *Schlesinger v. Ballard*, 419 U.S. 498 (1975), the Court upheld a statutory provision that directly compensated for specific legal barriers to advancement faced by female naval officers. By contrast, the regulations here impose uniform, sex-conscious requirements across industries and locations without findings that women face comparable, legally imposed barriers in the covered fields or that the requirements are calibrated to remedy such barriers.

While intermediate scrutiny is less demanding than strict scrutiny, the Department concludes that the sex-based affirmative action requirements in parts 60-2 and 60-4 raise serious constitutional concerns and are unlikely to survive constitutional scrutiny.

3. Federal Civil Rights Law

a. Conflict with Title VII of the 1964 Civil Rights Act

Some commenters, including the CRF and America First Legal, agreed with the Department's concern that OFCCP's race-based and sex-based affirmative action regulations conflict with Federal civil rights law—specifically Title VII of the Civil Rights Act of 1964—because they require contractors to address underutilization of minorities and women, but not other groups. *See* 90 FR at 28475 (citing *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303 (2025)). Other commenters disagreed. NNU contended that the proposed rescission is "in direct conflict with Title VII," but did not explain how. The ACR Project argued that the Department "seriously understates" the conflict because the E.O. 11246 affirmative action regulations "require employers to violate the Civil Rights Act" and urged the Department to acknowledge this conflict as an additional justification for rescission. Upon careful consideration of these comments, the

Department generally agrees with the ACR Project and concludes that OFCCP's affirmative action regulations compel contractors to adopt employment practices that conflict with Title VII.

The Lawyers' Committee asserted that OFCCP has historically interpreted E.O. 11246's nondiscrimination provisions to be analogous to and consistent with Title VII. That assertion is largely correct with respect to OFCCP's nondiscrimination regulations at 41 CFR parts 60-1, 60-20, and 60-50. But the affirmative action regulations at parts 60-2 and 60-4 go further. They require contractors not only to establish employment goals for minorities and women but also to undertake specific employment actions with respect to those groups to meet those "goals." These requirements conflict with the text of Title VII, which generally prohibits covered employers from making employment decisions because of an individual's race or sex. Title VII also makes it an unlawful employment practice to "classify" employees or applicants in a manner that deprives or tends to deprive individuals of employment opportunities because of race, color, sex, or national origin. 42 U.S.C. 2000e-2(a). The Civil Rights Act of 1991 broadened this prohibition by providing that an unlawful employment practice is established when race, color, religion, sex, or national origin was even "a motivating factor" for an employment practice, even if other factors also motivated, or even were the primary reasons for,, the decision. 42 U.S.C. 2000e-2(m). The statutory text of Title VII thus adopts a broad prohibition on race- and sex-based employment practices that, on its face, bars affirmative action measures to meet numeric goals based on those characteristics.

As several commenters noted, the Supreme Court has construed Title VII to permit race- or sex-conscious affirmative action in extremely narrow circumstances. *See United Steelworkers v. Weber*, 443 U.S. 193 (1979); *Johnson v. Transp. Agency, Santa Clara Cnty, Cal.*, 480 U.S. 616 (1987). Subsequent Supreme Court decisions call into question the continued viability of the *Weber-Johnson* framework. *See, e.g.*, *Callais*, 146

S. Ct. at 1152-53*; Ames*, 605 U.S. at 308-310; *SFFA*, 600 U.S. at 181; *and Ricci v. DeStefano*, 557 U.S. 557, 579 (2009). However, even assuming that the *Weber-Johnson* framework remains good law and applies, the E.O. 11246 affirmative action regulations would still be inconsistent with Title VII.[26]

Under the *Weber-Johnson* framework, an employer may voluntarily adopt a race- or sex-conscious measure to address a manifest imbalance in traditionally segregated job categories, provided that the measure is remedial in purpose, temporary in duration, and does not employ quotas or inflexible goals or unnecessarily trammel the interests of non-beneficiaries. *Weber*, 443 U.S. at 208; *Johnson*, 480 U.S. at 638. Such programs must be designed to eliminate the effects of past discrimination or segregation, not to maintain racial or gender balance for its own sake. *Johnson,* 480 U.S. at 639–40. As the Eighth Circuit explained: "An affirmative action policy is valid [under Title VII] if the policy is remedial and narrowly tailored to meet the goal of remedying the effects of past discrimination." *Humphries v. Pulaski Cnty. Special Sch. Dist*., 580 F.3d 688, 695 (8th Cir. 2009). It is often difficult for an employer to establish compliance with the strict limitations of *Weber* and *Johnson*; those who attempt such a path and fail necessarily violate Title VII with the practice in question.[27]

To comply with the E.O. 11246 affirmative action regulations, a contractor must establish race- and sex-based employment goals and take other race- and sex-conscious

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[26] The state attorneys general criticize the *Weber–Johnson* framework as a judge-made doctrine that lacks a textual basis in Title VII and that would be rejected by the current Supreme Court. *See Johnson*, 480 U.S. at 647 (O'Connor., J. concurring) (agreeing with Justice Scalia's dissent that Title VII "has been interpreted by *Weber* and succeeding cases to permit what its language read literally would prohibit."). The Supreme Court more recently explained when interpreting Title VII that "[w]hen the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit." *Bostock v. Clayton County*, 590 U.S. 644, 653 (2020). While the *Weber-Johnson* framework is atextual and its continued viability is questionable, the Department assumes that the framework remains controlling Supreme Court precedent, and therefore it applies the framework in assessing the compatibility of the E.O. 11246 affirmative action regulations with Title VII.
[27] The EEOC has rescinded its guidelines at 29 CFR 1608.5 which provided that if a Title VII complaint is based on action taken pursuant to an approved E.O. 11246 AAP, or if the approved AAP was used as the justification for the challenged action, the EEOC would issue a determination of no reasonable cause, in recognition of the "similar purposes" of both laws. *See* 91 FR 40879 (July 6, 2026).

employment actions. The Department does not believe such practices would fit within the *Weber–Johnson* framework—and certainly not generally across contractors. First, they are not voluntary: contractors are required, as a condition of obtaining and retaining Federal contracts, to adopt and implement OFCCP's race- and sex-based affirmative action requirements.[28] Second, they are not remedial: the regulations require contractors to undertake good faith efforts to meet, achieve, or approach proportional representation in terms of race and sex, not to specifically remedy manifest imbalances in a traditionally segregated job category. Third, they are not temporary: they have existed for over half a century, and unless rescinded, contractors would continue to be subject to these regulations on an indefinite basis. Fourth, the regulations contain rigid goals. While placement goals for nonconstruction contractors must not be rigid quotas, a similar prohibition is missing from participation goals for construction contractors. Instead, for example, construction contractors must "make substantially uniform progress in meeting its goals" and "where possible, will assign two or more women to each construction project." *See* 41 CFR 60-4.3(a)(4) and (7). The Department is not aware of any authority where a court has upheld a similarly broad arrangement under the *Weber–Johnson* framework.

"[T]he existence of an affirmative action plan … when combined with evidence that the plan was followed in an employment decision is sufficient to constitute direct evidence of unlawful discrimination unless the plan is valid." *Frank v. Xerox Corp.*, 347 F.3d 130, 137 (5th Cir. 2003) (quoting *Bass v. Bd. of Cnty. Comm'rs*, 256 F.3d 1095,

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[28] Justice Rehnquist's dissent in *Weber* notes that the "voluntary" action upheld by the majority may have been adopted in response to pressure from the Office of Federal Contract Compliance. *See id*. at 222–23 & n.2 (Rehnquist, J., dissenting). But the majority opinion made no mention of that fact when deeming the action to be "private" and "voluntary." *Id.* at 208. In any event, even assuming that actions taken for the express purpose to comply with OFCCP's binding regulations could somehow be considered "voluntary" within the meaning of the *Weber–Johnson* framework, those regulations do not satisfy the framework's other requirements, including that any race- or sex-conscious measure be narrowly tailored to remedy a manifest imbalance in a traditionally segregated job category and be temporary in nature.

1110 (11th Cir. 2001)).[29] Many employment actions taken to comply with the E.O. 11246 affirmative action regulations would not fall within the narrow *Weber–Johnson* framework and would instead constitute direct evidence of unlawful discrimination in violation of Title VII. The Department concludes that OFCCP's placement and participation goals and related regulatory requirements—backed by compliance evaluations and enforcement consequences—compel regulated employers to adopt race- and sex-conscious employment practices that are, in many cases, unlawful under Title VII.

b. Affirmative Action Regulations Conflict with Title VI of the Civil Rights Act

The Department also considered the compatibility of 41 CFR part 60-4's affirmative action requirements as applied to contractors performing federally assisted construction projects with Title VI of the Civil Rights Act of 1964, which prohibits recipients of Federal financial assistance from engaging in discrimination on the basis of race, color, or national origin. 42 U.S.C. 2000d *et seq*. The Supreme Court has long held that Title VI's nondiscrimination mandate is coextensive with the Equal Protection Clause. *See, e.g.*, *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978).

Under that framework, race-based affirmative action measures—even those falling short of explicit quotas—are permissible only when narrowly tailored to remedy identified, specific instances of past discrimination or, in limited contexts, to address imminent and serious threats to human safety. As explained above, the E.O. 11246 affirmative action regulations applicable to federally assisted construction projects would not pass this exacting test. They are not tied to identified instances of past discrimination by recipients of Federal assistance and apply broadly without regard to local conditions or historical findings. Accordingly, the Department also concludes that these regulations

[29] *See also, e.g.*, *McGarry v. Bd. of Cnty. Comm'rs*, 175 F.3d 1193, 1199 (10th Cir. 1999); *Bass v. Bd. of Cnty. Comm'rs*, 256 F.3d 1095, 1110 (11th Cir. 2001); *Humphries v. Pulaski Cnty. Special Sch. Dist.*, 580 F.3d 688, 693 (8th Cir. 2009).

compel recipients of Federal financial assistance to engage in race-based conduct that conflicts with Title VI.

Like the unconstitutionality of the affirmative action regulations, those regulations' incompatibility with Titles VI and VII of the Civil Rights Act supplies independent reasons for their rescission. The Department agrees with the conclusion of the state attorneys general that the regulations' "requirements run counter to deeply rooted legal and moral principles enshrined in the constitutions of the United States and our states and state and federal civil rights laws."

C. Lack of Statutory Authority to Maintain Regulations Implementing E.O. 11246

Several commenters, including the attorneys general of 22 states, the EPPC, New Civil Liberties Alliance (NCLA), and the ACR Project, questioned the Department's statutory authority to maintain regulations implementing E.O. 11246. These commenters contended that, regardless of E.O. 11246's status, the regulations the Department proposes to rescind are unlawful because Congress never authorized them. They argued that the E.O. 11246 regulations impose legally binding affirmative action and nondiscrimination obligations on contractors and therefore constitute legislative rules requiring a clear delegation of authority from Congress. In particular, they asserted that the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 101–1315 (Procurement Act)—the only statute the Department has cited in rulemaking as authority for the E.O. 11246 regulations—does not provide such authorization.

The state attorneys general and the EPPC invoked the major questions doctrine and argued that the Procurement Act's purpose of ensuring an economical and efficient system of procurement does not supply authority to impose broad employment mandates governing contractors' hiring and employment practices. NCLA further noted that the Department cited the Procurement Act as the source of authority for E.O. 11246 regulations only decades after the Executive Order's issuance, arguing that this delayed reliance undermines any claim that the regulations reflect a contemporaneous or longstanding interpretation of statutory authority. The state attorneys general and other commenters urged the Department to rescind the E.O. 11246 implementing regulations not only because E.O. 11246 has been revoked, but also because the regulations lack statutory authorization. These commenters encouraged the Department to acknowledge this lack of authority in the final rule to clarify the limits of agency authority with respect to the E.O. 11246 regulations.

No commenters defended the Procurement Act as statutory authority for the E.O. 11246 regulations. Several commenters suggested alternative sources of authority. Some commenters argued that the longevity of the E.O. 11246 regulations supports their statutory authorization. The AFL-CIO stated that generally applicable equal employment opportunity laws enacted by Congress require compliance with the regulations. NNU argued that Congress ratified the E.O. 11246 regulatory framework through enactment of section 718 of Title VII of the Civil Rights Act of 1964, as amended in 1972. *See* 42 U.S.C. 2000e–17.

In light of these comments, the Department has reconsidered its authority to maintain the regulations implementing E.O. 11246 under the Procurement Act and the alternative statutory ground suggested by commenters. Upon review, the Department has determined that it lacks statutory authority for significant portions of the E.O. 11246 regulatory framework, including its regulations requiring race- and sex-based affirmative action related to E.O. 11246 and authorizing OFCCP to seek monetary relief in E.O. 11246 administrative proceedings against contractors. The Department further believes that the Procurement Act could authorize it to require contractors to follow Federal nondiscrimination law—but not to seek monetary relief for violations in E.O. 11246 administrative proceedings.

1. The Need for Statutory Authorization

An agency "literally has no power to act … unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). However, the sources of congressional delegation for the Department's regulations implementing E.O. 11246 have never been clear. E.O. 11246 identifies no specific statutory delegation and is purported to be authorized under the "Constitution and statutes of the United States."[30] OFCCP's early regulations did not identify any specific statutory source of authority. In 1979, the Supreme Court recognized in *Chrysler Corp. v. Brown* that "[t]he origins of the congressional authority for Executive Order 11246 are somewhat obscure and have been roundly debated by commentators and courts." 441 U.S. 281, 304 (1979).

NCLA pointed out in its comment that "Executive Order 11246 and the regulations promulgated pursuant to it might well be fine, if they did not seek to bind the conduct of anyone outside the Executive Branch." But in fact, the regulations do extend beyond the Executive Branch by subjecting private parties to non-contractual legally binding requirements and to significant monetary loss. They are enforceable judicially as if they had the force of law. 41 CFR 60-1.26(a), (c)–(d). "But in order for such regulations to have the 'force and effect of law,'" the Supreme Court explained when considering OFCCP's E.O. 11246 authority, "it is necessary to establish a nexus between the regulations and some delegation of the requisite legislative authority by Congress." *Chrysler Corp.*, 441 U.S. at 304.

In *Chrysler*, the Supreme Court explained that "[t]he legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative authority by governmental departments and agencies"—such as the E.O. 11246 regulations at issue—"must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes." *Id.* at 302. Applying that principle, the Court found no authority for OFCCP's regulations providing for public disclosure of information from its

[30] *See* E.O. 11246.

records in any of the statutes identified by the Federal Government, including the Procurement Act, Titles VI and VII of the Civil Rights Act of 1964, and the Equal Opportunity Act of 1972. *Id.* at 304–8. With regard to the Procurement Act, the Court said, "The Act explicitly authorizes Executive Orders 'necessary to effectuate [its] provisions.' [Sec. 486(a)]. However, nowhere in the Act is there a specific reference to employment discrimination." *Id.* at 304 n.34. The Court ultimately suggested that the Procurement Act may authorize nondiscrimination provisions that prohibit contractors from "excluding from the labor pool available minority workmen," *id.*, but held that it does not authorize the disclosure regulation at issue, *id.* at 304.

Despite the Supreme Court's clarification in 1979 that OFCCP regulations must be rooted in statutory authority, the Department continued to promulgate regulations implementing E.O. 11246 without identifying any statutory basis in rulemaking documents. For example, a 1982 rule confirming OFCCP's ability to seek back pay and other monetary relief in administrative proceedings against contractors asserted that "the Executive Order vests OFCCP with the legal authority to seek back pay for victims of discrimination," without citing any statute. Government Contractors; Affirmative Action Requirements, 47 FR 17770, 17773 (Apr. 23, 1982).[31] As NCLA noted, the Department did not identify a specific statutory source of authority for any regulation implementing E.O. 11246 for many decades.[32] Indeed, it is our understanding that the first time OFCCP cited any statutory authority in a rulemaking document was a 2016 final rule revising sex-based nondiscrimination requirements relying on the Procurement Act. 81 FR 39108

[31] The 1982 Final Rule did not even identify the part of the E.O. that vests OFCCP or the Department with authority to seek back pay. The Order's "penalty and sanctions" section does not authorize the Department to seek back pay or monetary relief and instead merely authorizes the Department to recommend to DOJ or EEOC to bring civil cases in Federal court when it believes such relief is appropriate.

[32] NCLA suggested that 2002 marked the first time the Federal Government cited statutory authority in connection with regulations implementing E.O. 11246, pointing to E.O. 13279. That Executive Order, however, invoked the Procurement Act only to justify creating exemptions from E.O. 11246's requirements; it did not rely on the Act as authority to impose those requirements in the first instance.

(June 15, 2016).[33] The Department's 2023 revisions to its religious discrimination standards likewise cited the Procurement Act as statutory authority. 88 FR 12842. Those citations, however, addressed only nondiscrimination requirements; they did not purport to authorize affirmative action obligations or OFCCP's system of administrative adjudication awarding monetary relief. The Department has never cited statutory authority when promulgating those regulations, which renders them especially vulnerable to legal challenge. *See Council for Urological Interests v. Burwell*, 790 F.3d 212, 223 (D.C. Cir. 2015) (courts "cannot consider [an] argument" regarding an agency's authority that the agency never "articulate[d] ... during ... rulemaking").

With this backdrop in mind, the Department turns to an analysis of its statutory authority for affirmative action, administrative adjudication, and nondiscrimination regulations implementing E.O. 11246, beginning with the Procurement Act and then alternative sources of statutory authority suggested by commenters.

2. Statutory Authority under the Procurement Act

The Procurement Act authorizes the President to "prescribe policies and directives that the President considers necessary to carry out" the Procurement Act's purpose, which includes providing the Federal Government "with an economical and efficient system for ... [p]rocuring and supplying property and nonpersonal services, and performing related functions including contracting." 40 U.S.C. 101, 121(a). Courts interpreting this provision have generally required a "sufficiently close nexus" between

[33] Two slightly earlier nondiscrimination regulations implemented Executive Orders that cited the Procurement Act. First, a 2014 final rule implemented E.O. 13672 by adding sexual orientation and gender identity as protected categories. That Order expressly invoked the Procurement Act. Implementation of Executive Order 13672 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors, 79 FR 72985 (Dec. 9, 2014). Second, a 2015 final rule implemented E.O. 13655, which amended E.O. 11236, which in turn relied on the Procurement Act to require non-retaliation against employees who discuss compensation. Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions, 80 FR 54934 (Nov. 11, 2015).

the requirements imposed by an Executive Order and the Procurement Act's goals of economy and efficiency in Federal procurement.[34]

In *Chrysler*, the Supreme Court doubted that the Procurement Act authorizes all aspects of E.O. 11246. The Court observed that "nowhere in the Act is there a specific reference to employment discrimination," and characterized lower court suggestions that the Procurement Act independently authorized the predecessors to E.O. 11246 as "dicta and made without any analysis." 441 U.S. at 304 n.34. The Court also noted a Third Circuit decision that concluded the Procurement Act's "economical and efficient" authority could support "at least some aspects" of E.O. 11246 because "it is in the interest of the United States in all procurement to see that its suppliers are not over the long run increasing its costs and delaying its programs by excluding from the labor pool available minority workmen." *Id.* (quoting *Contractor Association,* 442 F.2d at 170).

More recently, the Supreme Court articulated the major questions doctrine, under which an agency must point to clear congressional authorization when asserting regulatory authority of vast economic or political significance.[35] Under that doctrine, "a vague statutory grant is not close to the sort of clear authorization required" to sustain regulations with significant economic or political impact.[36] Although these cases do not directly address OFCCP programs, multiple courts of appeals have applied this principle when analyzing the Procurement Act's "economical and efficient" provision, holding that

[34] *Louisiana v. Biden*, 55 F.4th 1017, 1026 (5th Cir. 2022) (quoting *AFL-CIO v. Kahn*, 618 F.2d 784 (1979)). The Sixth and Ninth Circuits recently interpreted the Procurement Act more narrowly, holding that the "economical and efficient" language in the Act's purpose clause at 40 U.S.C. 101 is not a basis for the President to exercise his authority under section 121(a). *Commonwealth v. Biden*, 57 F.4th 545, 551–52 (6th Cir. 2023); *Nebraska v. Su*, 121 F.4th 1, 8 (9th Cir. 2024).
[35] *Biden v. Nebraska*, 600 U.S. 477, 504 (2023); *West Virginia v. EPA*, 597 U.S. 697, 732 (2022); *NFIB v. DOL*, 595 U.S. 109, 117 (2022); *Alabama Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021).
[36] *Id.*

it does not authorize the Federal government to impose vaccination mandates on Federal contractors.[37]

Several commenters argued that the major questions doctrine applies to OFCCP's regulations. The state attorneys general argued that "[r]egulating the hiring practices of approximately one-fifth the U.S. workforce to require employers to engage in discriminatory affirmative action no doubt implicates decisions of vast economic and political significance." (citing *Louisiana,* 55 F.4th at 1028). And EPPC claimed that "the lucrative nature of federal contracts and this onerous enforcement regime is surely a matter of 'vast economic and political significance' that requires 'clear congressional authorization.'" (quoting *West Virginia v. EPA*, 597 U.S. 697, 716, 723–32 *passim* (2022)).

a. Affirmative Action Regulations

Part 60-2 applies to nonconstruction contractors and subcontractors with 50 or more employees and a Federal contract of at least $50,000. These regulations require contractors to analyze their workforce by race, ethnicity, and sex; compare workforce representation to labor-market availability; and, where minorities or women are deemed "underutilized," establish placement goals at least equal to availability and take affirmative steps to meet those goals. Part 60-4 applies to contractors and subcontractors performing Federal construction contracts or federally assisted construction contracts exceeding $10,000. Those regulations require contractors to use minority and female participation goals established by the Department and to take affirmative action to achieve those goals.

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[37] *See, e.g.*, *Louisiana v. Biden,* 55 F.4th at 1029; *Kentucky v. Biden,* 23 F.4th 585, 606 (6th Cir. 2022); *Georgia v. President of the United States*, 46 F.4th 1283, 1296 (11th Cir. 2022). The Ninth Circuit affirmed authority under the Procurement Act to impose a Federal contractor vaccine mandate, but that decision was vacated as moot, *Mayes v. Biden*, 67 F.4th 921 (9th Cir.), *vacated as moot,* 89 F.4th 1186 (9th Cir. 2023), and criticized as unpersuasive by a subsequent Ninth Circuit panel, *Nebraska v. Su*, 121 F.4th 1, 8 (9th Cir. 2024).

In considering whether the Procurement Act authorizes Parts 60-2 and 60-4, the Department finds that the E.O. 11246 affirmative action regulations likely trigger the major questions doctrine because they rest upon an assertion of regulatory authority of significant economic and political consequence. The Department estimates that approximately one-fifth of U.S. workers are employed by contractors subject to OFCCP's regulations, and courts have found regulatory regimes of comparable scope to be economically significant for purposes of the major questions doctrine. *See Louisiana,* 55 F.4th at 1028. This economic overbreadth arises in significant part because Parts 60-2 and 60-4 apply not only to the employees who perform work on or in connection with Federal procurement contracts, but also to a contractor's entire workforce, including employees whose duties have no relationship to Federal procurement.[38] The Procurement Act may authorize contractual efficiency-enhancing provisions governing employees who work on or in connection with Federal contracts. But by extending regulatory requirements to portions of a contractor's workforce that have no connection with work performed under Federal procurement contracts, the regulations appear to sweep beyond the economy and efficiency of Federal procurement and may instead operate more like a form of economically significant employment regulation.

The Department also believes these affirmative action requirements to be politically significant within the meaning of the doctrine. Government-mandated classifications based on race and sex occupy a central place in contemporary public debate and have long been treated by courts as constitutionally sensitive. Although the constitutionality and consistency with Federal law of the E.O. 11246 affirmative action requirements are addressed elsewhere in this preamble, the Department concludes that the

[38] Section 204 of E.O. 11246 allowed OFCCP to grant exemptions for facilities that are in all respects separate and distinct from the activities of the contractor related to the performance of the contract, provided the exemption would not interfere with or impede the effectuation of the purposes of the order. *See* 41 CFR 60-1.5(b)(2). E.O. 11246's requirements covered all of a contractor's facilities, however, absent such a waiver.

major questions doctrine independently requires clear congressional authorization for an agency to impose race- and sex-based employment mandates of this nature. By contrast, procurement contract conditions prohibiting discrimination and reinforcing compliance with existing Federal civil rights law do not represent the type of transformative assertion of regulatory authority that would implicate the major questions doctrine.

That clear statement requirement is especially strong here because the regulations mandate race- and sex-conscious employment practices that are "presumptively invalid" under the Constitution, *Vitolo*, 999 F.3d at 364, and that, on their face, could otherwise conflict with Title VII's general prohibition on race- and sex-based decision-making in employment. This is true even apart from the Department's independent conclusion that OFCCP's affirmative action regulations cannot survive strict scrutiny. Under the canon of constitutional avoidance, where a statute is susceptible to more than one plausible interpretation, the Department should adopt the interpretation that avoids serious constitutional questions. That canon therefore counsels against interpreting the Procurement Act to authorize regulations that trigger strict scrutiny in the first place by requiring race- and sex-based classifications in employment.

Similar concerns arise under Title VII. As explained above, compliance with OFCCP's affirmative action regulations encourage contractors to engage in race- and sex-conscious employment practices that would constitute direct evidence of unlawful discrimination under Title VII unless they fall within the narrow *Weber–Johnson* framework. *See Frank*, 347 F.3d at 137. Absent clear statutory authorization, the Department will not interpret the Procurement Act to empower it to promulgate regulations that induce conduct—*e.g.*, trying to meet race- and sex-based employment goals by taking race or sex into account in employment decisions—that Title VII generally prohibits and that regulated parties must attempt to justify under a limited, judge-made exception.

In sum, without clear congressional authorization, the Department will not infer an intent to delegate authority to impose race- and sex-conscious employment mandates that raise serious constitutional concerns and that depart so sharply from the background principles of Federal civil rights law. The Procurement Act contains no such clear authorization for the broader affirmative-action framework implemented under E.O. 11246.

These concerns are reinforced by the Department's regulatory history. While the Department has cited the Procurement Act as statutory authority for its nondiscrimination regulations, it has not previously identified the Procurement Act—nor any other statute—as providing clear authority to promulgate affirmative action regulations that encourage race- and sex-based employment considerations in employment. An effort to locate such authority now would require reading into a long-extant statute an unheralded power to regulate a substantial portion of the national workforce, a circumstance that courts have repeatedly viewed with skepticism. *See Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014).

The Department further finds application of the E.O. 11246 affirmative action regulations to federally assisted construction projects exceeds the Procurement Act's authority for another reason. These projects are distinct from Federal procurement. Under the Procurement Act, the President's authority extends to prescribing policies and directives necessary to provide the Federal Government with an economical and efficient system for "[p]rocuring and supplying property and nonpersonal services, and performing related functions." 40 U.S.C. 101, 121(a). Federal financial assistance—where the Government provides grants or other assistance to third parties rather than procuring construction services for itself—does not constitute procurement of property or nonpersonal services and therefore falls outside the Procurement Act's core "economical and efficient" authority.

This conclusion is reinforced by the 1976 amendments to the Procurement Act, which expressly prohibited sex discrimination in "a program or activity carried on or receiving federal assistance under this subtitle[.]" 40 U.S.C. 122(a). Congress's decision to legislate separately with respect to sex discrimination in federally assisted programs confirms that Federal assistance is distinct from procurement and that conditions imposed on recipients of such assistance require separate and explicit statutory authorization, rather than reliance on the Procurement Act's general procurement-based "economical and efficient" authority.

The Department recognizes that *Contractors Association* upheld the Philadelphia Plan's racial employment goals by invoking the President's "general authority" to "analogiz[e] federally assisted construction to direct federal procurement." 442 U.S at 171. The court further reasoned that, because no Act of Congress forbade the challenged race-based employment goals, they fell within the "implied authority of the President and his designees." *Id.* But that reasoning cannot be readily reconciled with the Supreme Court's subsequent emphasis on the need for affirmative congressional delegation, specifically in the context of OFCCP regulations. *Chrysler*, 441 U.S. at 304. The pertinent inquiry is not whether Congress failed to forbid the agency's action, but whether Congress authorized it. *Id.* In any event, *Contractors Association* also upheld the Philadelphia Plan because it was designed to remedy "obvious underrepresentation [that] was due to the exclusionary practices of the unions" in specific trades. *Id.* at 171. By contrast, OFCCP's current affirmative action requirements in connection with federally assisted projects are not remedial.

Accordingly, the Department concludes that the Procurement Act does not provide congressional authorization necessary to support OFCCP's race- and sex-conscious affirmative action regulations related to E.O. 11246. As explained below, the concerns identified here arising from race- and sex-based affirmative action obligations do not undermine the authority under the Procurement Act to condition contracts on nondiscrimination requirements that are consistent with Federal civil rights law.

b. Administrative Enforcement Regulations

The regulations at 41 CFR 60-1.26 authorize OFCCP to enforce its affirmative action and nondiscrimination requirements related to E.O. 11246 through administrative proceedings in which the agency may seek monetary relief, including back pay. Those proceedings operate with the force of law and are reviewed by Federal courts under a deferential standard. The regulations' creation of a quasi-judicial enforcement mechanism within the Executive Branch required a clear grant of authority from Congress.[39] The regulations did not have one. As the NCLA commented, the absence of any clear statutory framework for enforcement of E.O. 11246 "stands in stark contrast to other enforcement and adjudication regimes that protect employees and were specifically authorized by Congress." NCLA highlighted two statutory regimes enforced by OFCCP in which Congress expressly authorized the Department to conduct administrative enforcement of affirmative action or nondiscrimination requirements through clear, defined statutory limits. VEVRAA authorized the Department to receive and investigate complaints from qualified veterans alleging noncompliance by contractors and to take appropriate enforcement action consistent with the terms of the contract and applicable law. 38 U.S.C. 4212(a). Similarly, under Section 503, Congress required certain Federal contracts to include affirmative action provisions for individuals with disabilities and expressly authorized the Department to receive and investigate complaints and to take appropriate enforcement action. 29 U.S.C. 793(b). By comparison, the Procurement Act contains no language authorizing the Department to receive and investigate complaints of

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[39] *See, e.g.*, *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851–57 (1986).

employment discrimination and to take appropriate enforcement actions.[40] That silence is significant in light of Congress's ability to legislate administrative enforcement mechanisms within the Procurement Act when it chooses to do so. Congress amended the Procurement Act in 1976 to prohibit sex discrimination in programs receiving Federal assistance, and Congress expressly authorized administrative enforcement through "agency provisions and rules similar to" those already established under Title VI. *See* Sec. 8, Pub. L. 94-519, 90 Stat. 2456 (1976) (now codified at 40 U.S.C. 122). Title VI, in turn, requires the agency awarding Federal assistance to follow detailed procedural safeguards in enforcement proceedings—for example, pursuing conciliation before punishment, limiting relief to the specific program or activity in which the violation occurred, and restrictions on monetary relief—that are missing from Part 60-1.26.

Title VII's comprehensive and carefully calibrated framework for enforcing employment discrimination claims reinforces the Department's belief that it lacks authority to adjudicate employment nondiscrimination claims under E.O. 11246. *See* 42 U.S.C. 2000e-4 through 2000e-6. Early proposed versions of Title VII proposed empowering the Department of Labor with authority to investigate discrimination claims and prosecute complaints before an administrative Equal Employment Opportunity Board, which would adjudicate claims and "issue broad remedial orders to remedy violations," subject to judicial review of the final administrative decision. EEOC, *Legislative History of Titles VII and XI of the Civil Rights Act of 1964*, at 3070–71 (H.R. Rep. No. 88-914, at 14, 711(b) (1963)). Congress rejected that approach, opting instead to create EEOC and vest it with enforcement authority. The EEOC may investigate

[40] This conclusion concerns the Department's regulatory enforcement framework under E.O. 11246, including the use of administrative adjudication and the pursuit of monetary remedies through agency proceedings. It does not address the ordinary contract administration authorities of procuring agencies to monitor compliance with contract terms, including the authority to require contractors to furnish information relevant to compliance, to evaluate contractor responsibility, to pursue appropriate corrective action, or to enforce contractual requirements through traditional procurement remedies such as termination, suspension, or debarment.

discrimination claims, issue subpoenas, and attempt informal resolution that can result in binding conciliation agreements enforceable in court, but it has no authority to conduct in-house adjudications or issue binding remedial orders for private employers. *See* Sec. 705–713, Pub. L. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. 2000e-5). Where enforcement is pursued against private employers, the EEOC must bring suit in Federal court.

That statutory structure reflects deliberate legislative judgments concerning forum, process, and explicit authorization of relief for employment discrimination. It would therefore be inappropriate to presume that Congress implicitly authorized the Department to operate a parallel administrative enforcement system—empowered to adjudicate employment discrimination claims and award monetary relief against private sector employers—through the Procurement Act's general provisions, particularly where Congress affirmatively rejected that very model when enacting Title VII.[41]

The Department concludes that the Procurement Act does not authorize OFCCP to bring E.O. 11246-related administrative enforcement actions against contractors to compensate alleged victims of employment discrimination.

The Department also received comments regarding its proposal to relocate the administrative enforcement proceeding procedures from the revoked E.O. 11246 regulations directly into the VEVRAA and Section 503 implementing regulations. Some commenters expressed their support for this proposal, asserting that the relocation is reasonable in light of the E.O. 11246 rescission. Other commenters recommended that the Department modify the administrative enforcement proceeding procedures because of

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[41] An early draft of Title VII also considered ratifying E.O. 11246's predecessors by authorizing "[t]he President ... to take such action as may be appropriate to prevent … an unlawful employment practice [such as a Title VII violation] by a person in connection with the performance of a contract with ... the United States." EEOC, Legislative History of Titles VII and XI of the Civil Rights Act of 1964, at 2014 (H.R. Rep. No. 88-914, at 14, Sec. 711(b) (1963)). This approach was not taken in part because Opponents explained it "strengthened and broadened the enforcement provisions [of Title VII] by giving the President blanket and unlimited authority (sec. 711(b))" regarding government contractors. *Id.* at 2087 (H.R. Rep. No. 88-914, at 87).

recent case law in this area.[42] Relying on recent case law, these other commenters asserted that OFCCP's practice of adjudicating investigations through proceedings before Administrative Law Judges may not survive constitutional scrutiny.

The Department concludes that it is not necessary to address the constitutional question raised by these comments because E.O. 11246 has been revoked and, in any event, OFCCP's administrative enforcement of E.O. 11246 is not statutorily authorized. Moving regulations concerning procedural provisions will provide clarity about the administrative enforcement procedures applicable to VEVRAA and Section 503. The Department acknowledges that the case law in this area is evolving. To the extent that the Department determines that it may need to update these procedures in light of changing case law, such changes may be pursued in a separate rulemaking.

c. Nondiscrimination Regulations

The Department next considers regulations at Part 60-1 containing nondiscrimination requirements relating to race, ethnicity, national origin, sex, religion, sexual orientation, and gender identity. As explained above, the Department concludes that the Procurement Act's "economical and efficient" authority is limited to Federal procurement and does not extend to Federal financial assistance. That authority therefore does not delegate power to impose general nondiscrimination requirements on recipients

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[42] *See e.g,. SEC v. Jarkesy*, 603 U.S. 109 (2024) (finding that the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties against him for securities fraud, as the SEC's antifraud provisions replicate common law fraud and it is well established that common law claims must be heard by a jury); *ABM Industry Groups, LLC vs. U.S. Department of Labor, et al*, 756 F.Supp.3d 468 (S.D. Tex 2024) (holding that under *Jarkesy,* Plaintiff is likely to succeed on the merits of its claim that the assigned DOL ALJ is unconstitutionally protected by two layers of good-cause removal restrictions); *Sun Valley Orchards, LLC v. U.S. Department of Labor*, 148 F.4th 121 (3d Cir. 2025), *cert. granted*, 2026 WL 1127242 (Apr. 27, 2026) (finding that as DOL sought common law remedies, including civil penalties and back wages, Sun Valley was entitled to have its case decided by an Article III court); *Space Exploration Techs. Corp. v. NLRB*, 2025 U.S. App. LEXIS 21226 (5th Cir. Aug. 19, 2025) (discussing the constitutionality of the ALJ's multi-layered removal provisions, specifically, that ALJ's may be removed only "for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board." The Court found that ALJs are inferior officers insulated by two layers of for-cause removal protection—an arrangement the Supreme Court and the Fifth Circuit have both held unconstitutional.).

or subrecipients of Federal assistance, nor does it authorize the Department to seek monetary relief through administrative enforcement mechanisms.

That said, the Procurement Act nonetheless authorizes the President to impose requirements through contract clauses designed to promote economy and efficiency in procurement. To keep such authority within the government's procurement powers, nondiscrimination requirements should be enforced through procurement-based remedies, such as cancellation or debarment, as opposed to back-pay or other monetary relief for nonparties to the procurement contract at issue. As noted above, the nondiscrimination requirements imposed under E.O. 11246 were not limited to conduct occurring in connection with the performance of work under a procurement contract but instead applied across a contractor's entire workforce, including employees whose duties bore no relationship to Federal procurement. This lack of a limiting procurement nexus contributed to the significant economic and political scope of the regulatory scheme. By contrast, limiting procurement-based nondiscrimination requirements to conduct occurring in connection with the performance of Federal contract work better ensures the requisite nexus to the government's interest in economy and efficiency in procurement. Such a limitation confines the requirements to the context in which the government acts as a market participant and helps avoid the type of broad assertion of regulatory authority over a contractor's general employment practices that could raise concerns under the major questions doctrine.

Properly limited, procurement-based nondiscrimination conditions applicable solely to work performed in connection with Federal contracts fall within the President's authority under the Procurement Act to promote an economical and efficient system of Federal procurement. The Federal Government has a legitimate interest in contracting with firms that do not exclude qualified workers on grounds unrelated to merit and that therefore draw from the full available labor force, reducing inefficiencies associated with unjustified exclusionary practices. *See Contractor Association*, 442 F.2d at 170. Conditioning Federal contracts on compliance with existing Federal civil rights law prohibiting discrimination reflects a conventional exercise of the government's discretion to determine the terms on which it will enter into contracts and to decline to contract with entities that violate applicable law. For instance, E.O. 14173 forbids contractors from violating Federal anti-discrimination laws, 90 FR 8634, and E.O. 14398 further prohibits contractors from racial discrimination in connection with work performed on contracts, 91 FR 16147. Unlike the E.O. 11246 affirmative action regulations being rescinded, these requirements are fully consistent with Federal civil rights laws. They forbid rather than encourage race-conscious decision-making. They do not create administrative adjudication schemes to award monetary relief. Executive Order 14398 is specifically limited to work performed in connection with procurement contracts. While E.O. 14173 may apply beyond a contractor's workforce that performs procurement functions, it merely requires contractors to follow Federal antidiscrimination laws. It is neither "transformative" nor "unheralded" for the Federal government to stop doing business with companies that violate Federal laws. Rather, such a sensible contracting practice bears a "close nexus" to the economy and efficiency of procurement and does not claim regulatory authority of vast economic or political significance.

By contrast, imposing nondiscrimination requirements under the Procurement Act that create substantive employment obligations beyond existing Federal civil rights law or that establish parallel regulatory enforcement regimes could raise serious legal concerns. The Procurement Act's "economical and efficient" authority does not supply sufficient authorization for transformative procurement conditions, such as a vaccine mandate applicable to contractors' employees. *See Louisiana v. Biden*, 55 F.4th 1017, 1026 (5th Cir. 2022). The creation or modification of employment nondiscrimination standards is itself a matter of substantial economic and political significance. Congress has addressed those questions through comprehensive civil rights statutes specifying the scope of prohibited conduct, enforcement mechanisms, and available remedies. The Department would expect Congress to speak clearly if it intended to authorize additional employment nondiscrimination standards, exceptions from existing law, or parallel regulatory regimes applicable to contractors. The Procurement Act contains no such authorization. Rather, its authority should be interpreted to authorize compliance with nondiscrimination standards that promote "economical and efficient" merit-based decision-making, and to enforce those standards with procurement-based remedies such as cancellation of contracts. Procurement-based nondiscrimination conditions may include reporting mechanisms necessary to allow agencies to assess contractor compliance with contractual nondiscrimination obligations, such as certification requirements, reporting obligations, and information-sharing provisions tied to contract performance.

An example of an E.O. 11246 nondiscrimination obligation not found in Federal discrimination law is the compensation-discussion anti-retaliation provisions promulgated pursuant to E.O. 13665's amendments to section 202 of E.O. 11246. *See* 80 FR 54934 (Sept. 11, 2015); 41 CFR 60-1.4(a)(3), (b)(3). Those regulations prohibit contractors from retaliating against employees who inquire about, discuss, or disclose compensation information. They impose legally binding employment obligations that extend beyond merely requiring compliance with existing civil rights statutes. They apply to employees whose work has no connection with Federal procurement and are enforceable through monetary awards. In promulgating those regulations, the Department said that economy and efficiency in Federal procurement requires contractors to compensate employees based on merit and that eliminating barriers created by pay secrecy helps ensure that contractors compensate employees based on merit. The Department also asserted that allowing employees of contractors to discuss their pay minimizes risks of enforcement actions that could result from pay secrecy policies. 80 FR 54934, 54937 (Sept. 11, 2015).

Upon reconsideration, the Department concludes that this speculative rationale does not satisfy the Procurement Act's requirement of a "close nexus" between procurement conditions and the government's interest in economy and efficiency. *AFL-CIO v. Kahn*, 618 F.2d 784, 793 (D.C. 1979). In *Kahn*, the *en banc* D.C. Circuit upheld an executive order limiting contractors' ability to raise wages and prices because the measure bore a direct and immediate relationship to contract pricing and likely savings to the Government. *Id*. at 793. The court cautioned, however, that the Procurement Act does not "write a blank check for the President to fill in at his will." *Id*. The wage controls in *Kahn* had a close nexus to contracting efficiency: limits on wage growth directly enabled contractors to pass labor cost savings to the contractors. By contrast, the regulations promulgated pursuant to E.O. 13665's amendments to section 202 of E.O. 11246 rest on far more attenuated reasoning: that restrictions on compensation discussions may impede detection of discrimination; that undiscovered discrimination may persist; that such persistence may increase the risk of enforcement actions or labor disputes; and that those downstream effects may disrupt Federal procurement. The Department believes that this speculative chain is insufficient to establish the requisite close nexus to procurement economy and efficiency. *See Chrysler*, 441 U.S. at 304 ("But in order for such regulations to have the 'force and effect of law,' it is necessary to establish a nexus between the regulations and some delegation of the requisite legislative authority by Congress."). Accepting such logic would effectively convert the Procurement Act's limited procurement authority into a general license to regulate workplace practices whenever an indirect economic benefit is asserted, a position courts have rejected. *See Nebraska v. Su.*, 121 F.4th 1, 10 (9th Cir. 2024); *Louisiana v. Biden*, 55 F.4th at 1031–1032.

Some commenters noted that the National Labor Relations Act (NLRA) protects certain workers from retaliation for engaging in "concerted activity," including wage discussions, and argued that those protections do not extend to all categories of workers, such as agricultural workers and supervisors. These commenters urged the Department to extend such protection to all contractor workers. But the NLRA's coverage is a reflection of Congress's deliberate policy judgment. If Congress determines that the scope of anti-retaliation protections should be expanded, then it may do so through legislation.

The Department declines to rely on attenuated procurement-efficiency reasoning to expand such protections beyond the boundaries Congress established. Even where a procurement-based nondiscrimination condition would not independently trigger the major questions doctrine, the Procurement Act requires that such a condition be justified by a sufficient nexus to procurement economy and efficiency. Any additional nondiscrimination requirement must produce benefits to procurement efficiency that are not outweighed by compliance costs that are passed on to the government. Absent a demonstrated, cost-justified connection to procurement economy and efficiency, novel nondiscrimination requirements may exceed the Procurement Act's authorization.

Accordingly, the Department concludes that while the Procurement Act would support procurement-based nondiscrimination conditions that operate as contractual assurances of compliance with existing Federal employment discrimination law and that are enforceable only through traditional contract remedies, the Procurement Act does not provide authority under E.O. 11246 to impose nondiscrimination requirements on recipients of Federal financial assistance, to establish new or expanded nondiscrimination standards, or to authorize administrative adjudication or monetary relief outside traditional procurement remedies, such as contract cancellation or debarment. At the same time, the Department recognizes that the Procurement Act supports nondiscrimination requirements applicable to contractors, provided such requirements are enforced through contract remedies, consistent with existing Federal civil rights law, and have a close nexus to the economy and efficiency of Federal procurement. Thus, nothing in this rule limits or questions the President's authority under the Procurement Act to impose nondiscrimination requirements on Federal contractors through contract terms designed to promote economy and efficiency in procurement. To the contrary, properly tailored procurement conditions prohibiting discrimination in a manner consistent with existing Federal civil rights laws fall squarely within the traditional scope of that authority.

Finally, the Procurement Act delegates this power to the President, not the Department. *See* 40 U.S.C. 121(a). In E.O. 14173, the President rescinded his sub-delegation to the Department. 90 FR 8634. Executive Order 14398 authorizes other agencies, rather than the Department, to enforce the contract clause prohibiting race-based discrimination. 91 FR 16148. The Department thus lacks authority to enforce these nondiscrimination requirements across any other Federal agency.

3**. Alternative Sources of Statutory Authority**

Several commenters advanced alternative arguments in support of the regulations' legality. The Department has carefully considered these arguments and for the reasons explained below is unpersuaded.

a. Longevity of the Regulations

Nearly all comments opposing the rescission stressed the sixty-year duration of the regulatory regime under E.O. 11246, implying or explicitly arguing that the duration of the regulations supports their statutory authorization. The Department disagrees.

Because legislative power is vested in Congress, exercise of quasi-legislative authority by executive agencies must be rooted in an affirmative delegation of authority from Congress and remain subject to the limits Congress imposes. *Chrysler*, 441 U.S. at 302. An agency cannot acquire regulatory authority through historical practice, acquiescence, or inertia. *See United States v. Morton Salt,* 338 U.S. 632, 647 (1950). Where Congress has not authorized an agency to impose legally binding obligations, the mere longevity of a regulation does not cure the absence of statutory authority. As the *en banc* Fifth Circuit explained when holding that an agency lacked statutory authority to approve race- and sex-conscious hiring requirements for corporate boards: "The Executive cannot acquire authority forbidden by law through a process akin to adverse possession." *Alliance for Fair Board Recruitment v. SEC*, 125 F.4th 159, 184 (2024) (internal quotation marks and alterations omitted) (quoting *Biden v. Texas*, 597 U.S. 785, 830 (2022) (Alito, J., dissenting)).

b. Titles VI and VII of the 1964 Civil Rights Act

Some commenters contended that generally applicable equal employment opportunity statutes—particularly Titles VI and VII of the Civil Rights Act of 1964—authorize or require compliance with the E.O. 11246 regulatory framework. For example, the AFL-CIO asserted that "EEO laws, which were passed by Congress, require compliance" with the regulations. However, neither Title VI nor Title VII "contain[] any express delegation of substantive lawmaking authority to the President [or the Department]." *Liberty Mut. Ins. Co. v. Friedman*, 639 F.2d 164, 172 (1981). As the Supreme Court explained, the relevant inquiry has "usually been put in terms of whether E.O. 11246 is consistent with these titles," not whether they authorize the Order or its implementing regulations. *Chrysler*, 441 U.S. at 305 n.35.

As explained above, the Department's regulations requiring affirmative action are inconsistent with Titles VI and VII. Under existing precedent, which may no longer be viable in light of *SFFA*, *Callais*, and other recent Supreme Court decisions, race- or sex-based affirmative action is permissible only where it is remedial of identified past discrimination and appropriately tailored to that objective. As explained earlier in Section III.B.3.a, OFCCP's E.O. 11246 affirmative action regulations do not meet those requirements. Among other issues, the regulations do not require any finding or evidence of prior unlawful discrimination by the regulated contractor and instead mandate race- and sex-based employment measures on a non-remedial basis. Titles VI and VII therefore do not authorize such requirements.

Titles VI and VII likewise do not authorize OFCCP's nondiscrimination enforcement regime. Congress assigned enforcement authority under Title VI to the DOJ and to agencies administering Federal financial assistance, subject to specific procedural and remedial limits. Congress assigned private-sector enforcement authority under Title VII to the EEOC, which lacks authority to adjudicate claims or award monetary relief in administrative proceedings and must pursue enforcement through Federal court. Neither statute assigns any enforcement or adjudicatory role to the Department of Labor with respect to private-sector employment discrimination.

c. Ratification under the Equal Employment Act of 1972

NNU argued that Congress ratified the E.O. 11246 affirmative action regulations through enactment of the Equal Employment Opportunity Act of 1972, pointing to 42 U.S.C. 2000e-17. As an initial matter, Congress's rejection of proposed provisions in the 1972 Act, which would have curtailed affirmative action efforts under E.O. 11246, does not constitute ratification. *Friedman*, 639 F.2d at 172. Legislative inaction or the failure to enact limiting amendments does not amount to affirmative approval of prior executive or agency action.

To effect ratification of prior agency action, Congress must recognize that the action was unauthorized when taken and must expressly ratify it in clear and unequivocal statutory language. *EEOC v. CBS, Inc.*, 743 F.2d 969, 974 (2d Cir. 1984). Legislative acquiescence, awareness, or accommodation is insufficient. Even statutory provisions that explicitly acknowledge existing agency practices do not ratify the agency's underlying claim of authority unless they "expressly approved the agency's interpretation." *Tiger Lily, LLC v. HUD*, 992 F.3d 518, 524 (6th Cir. 2021) (holding that congressional recognition and temporary extension of an eviction moratorium did not ratify the agency's unlawful imposition of the mandate); *accord Alabama Ass'n of Realtors v. HHS*, 539 F. Supp. 3d 29, 42 (D.D.C. 2021), *aff'd*, 594 U.S. 758 ("To [ratify], however, Congress must make its intention explicit.").

Section 2000e-17, relied on by NNU, limits the circumstances under which a Federal agency may deny, withhold, terminate, or suspend a government contract where an employer has an affirmative action plan previously accepted by the Government, unless the employer is afforded a full administrative hearing. The provision is procedural and constraining in nature. It does not acknowledge that the E.O. 11246 regulations were unauthorized when adopted, nor does it confer authority to impose affirmative action or nondiscrimination requirements.

If anything, Section 2000e-17 restricts agencies' use of procurement sanctions to enforce equal opportunity law. While the provision reflects congressional awareness that some contractors maintained AAPs under executive orders, it nowhere authorizes the Department or any other agency to require AAPs, much less race- or sex-based employment goals. Nor does it authorize any agency to seek monetary relief in administrative proceedings.

Accordingly, neither Section 2000e-17 nor any other provision of the Equal Employment Opportunity Act of 1972 provides statutory authorization for the E.O. 11246 affirmative action, nondiscrimination, or administrative adjudication regulations.

Finally, even if Congress had purported to ratify non-remedial race- or sex-based affirmative action requirements of the type imposed by OFCCP's regulations, such ratification would not bind the Department, compelling it to retain regulations that raise serious constitutional concerns. After Congress has expressed approval of regulations, an agency "may well reach a different judgment given changed circumstances." *Motor*

Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 45 (1983). That is particularly the case with regulations at odds with recent constitutional jurisprudence. Because the regulations mandate race- and sex-based action without the findings and tailoring required under equal-protection principles, they would exceed the scope of constitutionally permissible affirmative action. Congress cannot ratify regulations that the Constitution itself forbids.

For these reasons, the Department concludes that none of the alternative sources of statutory authority identified by commenters authorizes the regulatory framework implementing E.O. 11246. The Procurement Act's goal of ensuring an "economical and efficient" system of Federal procurement does not authorize E.O. 11246 regulations requiring affirmative action or empowering OFCCP to seek monetary relief through administrative proceedings. The Department agrees with the state attorneys general and other commenters that those portions of the regulatory framework lack statutory authorization and would therefore require rescission even if E.O. 11246 had not been revoked. At the same time, the Department recognizes that the Procurement Act may support certain nondiscrimination requirements applicable to contractors, to the extent such requirements are enforced through contract remedies, consistent with existing Federal civil rights law, and have a close nexus to the economy and efficiency of Federal procurement.

D. Effects of Rescission

Some commenters supported the rescission of the E.O. 11246 regulations on the grounds that rescission would yield favorable economic effects, including reduced compliance costs and regulatory burdens. Other commenters who opposed rescission contended that the regulations generated cost savings or produced broader social benefits. The Department notes, however, that it need not justify rescission by weighing the practical or policy effects of eliminating the regulations implementing E.O. 11246. The

Department is rescinding these regulations because they can no longer be lawfully maintained following the revocation of E.O. 11246. Moreover, that substantial portions of the regulatory framework are unconstitutional, inconsistent with Federal civil rights statutes, and unsupported by any clear grant of statutory authority provides additional grounds, which on their own support rescission.

An agency must consider and respond to significant comments that it receives during the comment period. *Perez v. Mortgage Bankers Ass'n,* 575 U.S. 92, 96 (2015). "Significant comments are those 'which, if true, raise points relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rule.'" *City of Portland, Oregon v. EPA*, 507 F.3d 706, 715 (D.C. Cir. 2007) (quoting *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 n.58 (D.C. Cir. 1977)). Comments on any other aspect of the merits of the regulations cannot require a change in the result ordained by E.O. 14173's revocation of E.O. 11246. Though not significant, comments related to the benefits and the alleged effects of rescinding the regulations will be discussed below.

Although not determinative of the result, the Department nonetheless concludes that rescission is ultimately beneficial. As explained below, rescinding these regulations reduces regulatory burdens and compliance costs for contractors, with resulting savings passed on to contracting Federal agencies and, ultimately, to consumers and taxpayers. Rescission also eliminates regulatory mandates that required or encouraged race- and sex-based decision-making, promoted racialized frameworks that divided Americans along immutable characteristics, and conflicted with the Nation's commitment to equal treatment under the law. Moreover, the Department finds that the regulations at issue produced no discernible benefits that could justify their continuation and, at best, duplicated existing statutory protections under Federal civil rights law and agency procurement policies. At worst, they impose costly, divisive, and unnecessary requirements that undermine meritocracy and drive social division.

1. Social and Institutional Effects

In evaluating the effects of rescinding the regulations implementing E.O. 11246, the Department begins by considering social and institutional consequences of government-mandated consideration of race and sex in employment decision-making and processes.

Beyond being at odds with the Constitution's equal protection principles, the Department is concerned that government policies that classify individuals by race foster resentment, erodes trust, and weakens shared civic identity that underpins a pluralistic society. *Cf. Hirabayashi v. United States,* 320 U.S. 81, 100 (1943) ("Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."). The state attorneys general commented that the regulations' affirmative action requirements pit races against each other, instill in the benefited races feelings of inferiority or entitlement, and normalize the notion that race is a proper consideration. The notion that race is a proper consideration can become self-reinforcing. The Department concludes that affirmative action requirements imposed through the E.O. 11246 regulations contributed to these corrosive effects by institutionalizing race- and sex-based classifications in employment decisions across a substantial segment of the American workforce. Such governmental requirements pit groups against one another, intensifying racial tension,[43] and they reorient workplace decision-making away from individual merit and toward group-based expectations. Rather than reducing racial consciousness, the E.O. 11246 affirmative action regulations heighten it by signaling that race is a relevant and appropriate factor in evaluating workers.

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[43] As with college admissions, employment opportunities "are zero-sum. A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter." *SFFA*, 600 U.S. at 218–19.

These problems are amplified by the arbitrary nature of racial and ethnic categories. *See, e.g.*, *SFFA*, 600 U.S. at 216–17 (noting that racial categories such as " 'Hispanic,' are arbitrary or undefined."). In *SFFA*, when the Supreme Court asked, "how are applicants from Middle Eastern countries classified," counsel for the University of North Carolina replied that he did not know. *Id.* The Department would have likewise struggled to provide a well-founded answer to the same question, as individuals of Middle Eastern and North African ancestry were not included in OFCCP's regulatory definition of "minorities."[44] *See* 41 CFR 60-4.3.

The Department is also mindful of the stigma associated with race- and sex-based employment decisions. Employment systems that rely on numerical goals or benchmarks tied to race or sex may undermine confidence in merit-based outcomes and cast doubt on the achievements of women and minority workers by creating uncertainty as to whether their selections reflect job qualifications or race- and sex-based employment goals. Such goals "stamp minorities with a badge of inferiority." *Adarand Constructors,* 515 U.S. at 241 (Thomas, J., concurring). Independent Women agreed that "the credibility of the very individuals those policies aim to support is put in question. Indeed, Americans are less likely to take women and minorities seriously when they believe those individuals were hired to fulfill a quota rather than because of their qualification or abilities."

Taken together, the Department believes these considerations reinforce the Department's conclusion that rescinding the regulations implementing E.O. 11246

[44] The categories available to contractors were set to change within the next few years. On March 29, 2024, OMB published Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 FR 22182. SPD 15 was revised to, among other things, add Middle Eastern or North African (MENA) as a minimum reporting category, separate and distinct from the White category. OMB defined MENA as "Individuals with origins in any of the original peoples of the Middle East or North Africa, including, for example, Lebanese, Iranian, Egyptian, Syrian, Iraqi, and Israeli." 89 FR 22191. OMB has set timelines by which federal agencies' information collections that collect race and ethnicity data must be made consistent with the updated standards. Thus, if OFCCP continued to have authority to enforce as to race and ethnicity, it would have incorporated the MENA category into its data collection requirements.

promotes equal treatment under law and advances social cohesion by rejecting race- and sex-based decision-making in employment. Moving away from government-imposed racial classifications and toward neutral, merit-based standards supports workplace fairness and reduces division and conflict. The proposed rescission therefore represents an overdue course correction toward individual dignity and equality under the law.

2. Efficiency of Government Contracting

In the NPRM, the Department noted that rescinding the regulations will improve the efficiency of the Federal contracting process and decrease employer burden, as contractors will no longer be required to undertake the E.O. 11246 requirements. Some commenters disagreed with this position and asserted that the E.O. 11246 regulations facilitated the adoption of workplace practices that help contractors recruit and retain talent, boost their profitability, and reduce their risk, thereby resulting in efficient and effective performance of government contracts.

The Department disagrees with these comments. Rather than promoting efficient and effective performance of government contracts, the requirements imposed significant and unnecessary burdens on contractors. For example, the AAP requirements set forth at 41 CFR 60-2.10 alone required contractors to create an organizational profile, conduct a job group analysis, and conduct an availability analysis, among other requirements, on an annual basis. Further, resolving cases under E.O. 11246's framework often resulted in prolonged disputes about the legal sufficiency of the agency's findings and proposed remedies. With these disputes, an E.O. 11246 discrimination case would take, on average, over three years to resolve. Many contractors would also hire legal representatives, consultants, and statistical experts to help resolve these matters, which resulted in greater expenditure of time and money. Even a technical violation allegation—such as a contractor's alleged noncompliance with an affirmative action provision—would average over 14 months to resolve. Based on the cost-benefit analysis in Section IV(B) below, the elimination of these requirements will result in quantified annual savings and benefits of approximately $996.37 million per year.

Many commenters agreed that these burdens were significant and unnecessary. Commenters representing contractors, including Associated Builders and Contractors (ABC), generally agreed. ABC emphasized that the regulations implementing E.O. 11246 impose substantial compliance costs on contractors by requiring them to develop, implement, and continuously update detailed AAPs. These costs are ultimately passed on to the Federal government through higher contract prices. ABC further contended that these regulatory requirements operated as a barrier to entry for small businesses that lack the resources to hire specialized consultants, human resources personnel, or legal counsel to maintain compliant AAPs. According to ABC, increases in regulatory burden correlated with declining small-business participation in Federal contracting, reducing competition and driving up prices.

State attorneys general likewise commented that regulations implementing E.O. 11246 "create barriers to entry that newer or smaller market participants cannot surmount" because they "may simply not be sophisticated enough to make it through the complicated maze of affirmative action rules, plans, and audits or cannot afford the additional financial costs associated with compliance." The Department finds persuasive ABC's evidence that the regulations impose disproportionate burdens on smaller firms, reduce competition for government contracts, and increase costs to the government. The Department expects that rescinding these regulations would increase competition, which could result in cost savings to the government and taxpayers. Other commenters took the opposite view. For example, NWLC asserted that E.O. 11246 and its implementing regulations improve contracting efficiency because they are "critical mechanisms" for ensuring that contractors access a wider pool of talent. The Department disagrees. Contractors have strong incentives to recruit and retain qualified workers from the broadest possible labor pool. The Department finds no persuasive basis for concluding that contractors would otherwise forgo qualified talent absent race- or sex-based employment goals. And commenters have not identified any.[45]

To the contrary, the E.O. 11246 affirmative action regulations diminish the role of merit and job-related qualification in requiring contractors to consider sex- and race-based employment goals and related requirements. E.O. 14398 discusses the inefficiencies of consideration of race and sex as opposed to merit in Federal contractors' personnel decisions and the costs such inefficiencies pass on to the Federal Government.[46] The Department received over 300 similarly worded comments arguing that the regulations "have long forced federal contractors to make hiring and promotion decisions based on race and sex rather than merit." One woman who believes she was passed over for promotion based on her race stated that she has "seen many examples of incompetency and rampant costs simply because hiring and contracts were based on race or sex rather than qualifications." State attorneys general explained that when government mandates require employers to prioritize characteristics such as race or sex—characteristics unrelated to skills or aptitude—the relative importance of merit-based considerations is diminished, with attendant costs to productivity and efficiency.

Some commenters, including labor organization and advocacy groups, argued that rescinding regulations requiring contractors to take action to meet race- and sex-based employment goals will result in fewer qualified minorities and women being hired or promoted. The Department disagrees. There are many talented, hardworking women and minority workers who succeed based on their qualifications and merit and would be hired or promoted regardless of whether contractors are subject to race- or sex-based

[45] Unlawful discrimination remains prohibited and subject to enforcement under Federal civil rights statutes and E.O. 14173, which directs contracting agencies to enforce Federal nondiscrimination standards against contractors through the procurement process.
[46] Addressing DEI Discrimination by Federal Contractors, Sec. 1, 91 FR 16147 (Mar. 31, 2026).

employment goals. As noted above, the existence of race- and sex-based employment goals may undermine the standing of those individuals by calling into question whether their achievements are attributable to merit or to regulatory mandates.

NWLC relied in part on a General Services Administration survey purporting to show positive associations between diversity, equity, and inclusion efforts and workplace well-being. The Department finds this evidence unpersuasive. The survey is based on subjective self-reported responses, and it does not examine the specific regulatory requirements at issue here—namely, compliance with government-imposed race- and sex-based employment goals. It does not provide a reliable basis for evaluating the economic or competitive effects of the E.O. 11246 regulatory framework.

The AFL-CIO further warned that "[w]ith the removal of these procedures, contractors will have a much more complicated and potentially costly regulatory environment where they will need to be compliant with a host of state and local laws instead of the predictable federal requirements." But E.O. 11246 did not preempt state and local anti-discrimination laws with a common purpose. *See Colo. Anti-Discrimination Comm'n v. Cont'l Airlines*, 372 U.S. 714, 725 (1963) ("It is impossible for us to believe that the Executive intended for its orders to regulate air carrier discrimination among employees so pervasively as to preempt state legislation intended to accomplish the same purpose."). The regulations implementing E.O. 11246 do not displace State or local employment and contracting laws that do not conflict with them, and contractors are required to comply with those laws regardless of whether Federal regulations remain in effect. Moreover, as several state attorneys general explained, the Federal regulatory framework has increasingly conflicted with state law. States including Indiana, Ohio, Florida, and Texas prohibit employers contracting with those states to have race- or sex-based hiring preferences of any sort. Those anti-discrimination provisions conflict with E.O. 11246 regulations that require employers to apply every good faith effort to satisfy race- and sex-based employment goals. As a result, it is the continued existence of E.O. 11246 regulations that creates needless confusion and tension with state law.

3. Effects on Employment Discrimination

Some commenters asserted that rescinding the regulations implementing E.O. 11246 will result in increased employment discrimination against minorities and women by contractors, contending that the enforcement framework established under Title VII of the Civil Rights Act of 1964 is insufficient to deter or remedy such discrimination.

In particular, these commenters argued that E.O. 11246 nondiscrimination regulations are broader in scope and applicability than civil rights laws enacted by Congress. For instance, they noted that Title VII does not apply to small businesses with fewer than 15 employees, whereas the E.O. 11246 nondiscrimination regulations apply to such small businesses, as long as they have more than $10,000 in Federal contracts. Commenters also noted that E.O. 11246 had additional protections compared to Title VII. For example, the E.O. 11246 regulations included more details about what constitutes sex discrimination under the regulations and included sexual orientation and gender identity as protected bases.

As some commenters noted, the E.O. 11246 regulations also prohibit contractors from taking adverse employment actions against applicants or employees who inquire about, discuss, or disclose information about their pay or their co-workers' pay, subject to certain limitations. The E.O. 11246 regulations' administrative enforcement mechanism is also more expedient than Title VII's enforcement framework through the Federal courts, where the defendant has substantially greater rights. These points, however, only reinforce the Department's determination that many aspects of OFCCP's nondiscrimination regulations conflict with Title VII. *See* Section III(B)(3)(a).

The Federal Government will continue to enforce nondiscrimination requirements outside the Title VII framework through the procurement process. For example, E.O. 14173 directs agencies to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities. Executive Order 14398 requires procuring agencies to ensure that contractors do not engage in unlawful race-based discrimination, placing enforcement responsibility with the contracting agencies themselves rather than OFCCP. Violation of this clause can lead to contract cancellation or debarment. Further, Federal agencies have long enforced nondiscrimination requirements in analogous contexts, including under Title VI for recipients of Federal financial assistance. Agency oversight over their own programs has operated for decades and provides a familiar and workable mechanism for addressing unlawful discrimination. Accordingly, the Department concludes that rescission of the E.O. 11246 nondiscrimination regulations will not weaken protections against unlawful discrimination and will instead align Federal procurement enforcement with established statutory frameworks and principles of agency accountability.

Commenters also noted that while the EEOC investigates charges of discrimination under Title VII, the Department conducted E.O. 11246 compliance evaluations in addition to complaint investigations. During these compliance evaluations, the Department reviewed contractors' records and employment activity data (*e.g.*, pay and hiring data) to determine whether contractors were meeting their nondiscrimination and affirmative action requirements. The commenters believed that these compliance evaluations allowed the Department to uncover and remedy discrimination that would otherwise remain undetected.

The Department also received several comments which asserted rescinding the E.O. 11246 regulations' data collection and affirmative action requirements would weaken discrimination protections. Some commenters asserted that these requirements protected all workers, not just minorities and women. Commenters also believed that these requirements ensured that contractors were undertaking proactive, regular analyses of their workplace policies to identify and remedy discriminatory barriers to equal employment opportunity.

The Department carefully reviewed these comments and disagrees with these commenters. First, commenters' concerns about weakening protections and stopping E.O. 11246 compliance evaluations are unfounded. In addition to Title VII, contractors are subject to extensive employment discrimination laws at the local and state level. Further, while the Department conducted compliance evaluations pursuant to the E.O. 11246 regulations, it typically reviewed less than 2% of the contractor universe each year. As a matter of policy, the Department largely limited its compliance evaluations to larger contractors who already fall under Title VII's employee thresholds.[47] Despite the extensive burden imposed by these compliance evaluations, the Department issued E.O. 11246 discrimination findings in 3% of cases. Even when discrimination was alleged, contractors often disputed the findings, asserting, for example, that the Department failed to adequately account for non-discriminatory reasons for hiring or pay disparities.

The Department also notes that one of the reasons for rescinding the E.O. 11246 regulations is to ensure that contractors are not using the E.O. 11246 requirements to justify illegal discrimination against workers. While the E.O. 11246 nondiscrimination obligations were designed to cover all protected groups, the regulations required affirmative action regarding only women and minorities. In effect, these requirements induced contractors to create policies and programs designed to account for race and sex

[47] DOL's scheduling methodologies are available at https://www.dol.gov/agencies/ofccp/scheduling/Methodologies. (Per DOL's most recent methodology, "Methodology for Developing the Supply and Service Scheduling List FY 2025, Release – 1," employee count was one of numerous criterion used to determine the eligible pool of contractors. Specifically, for each parent company with at least one contract of $50,000 anywhere in the organization, all U.S. establishments with at least 400 employees and US territories with at least 50 employees were included in the eligible pool of contractors.).

in hiring and personnel decisions. In addition to being unlawful, using race- and sex-based preferences diminishes the importance of individual merit when making employment decisions. Several commenters agreed with this position, stating that the E.O. 11246 regulations conflicted with prohibitions against race and sex-based decision making or required contractors to prioritize demographic targets over individual merit and qualifications, ultimately undermining the foundational American principle of equal treatment.[48] By rescinding the E.O. 11246 regulations, the Department is restoring merit-based opportunity for the Federal contractor workforce and is ensuring that contractors are not engaging in discriminatory race- and sex-based preferences in their employment processes. Rather than weakening protections, the rescission is ensuring that civil rights protections extend to all workers.

4. Regulatory Alternative and Reliance Interests

The Department considered as a regulatory alternative rescinding the affirmative action requirements of the E.O. 11246 regulations while retaining OFCCP-administered nondiscrimination requirements that are consistent with Federal civil rights law and that could be authorized under the Procurement Act's authority to promote economy and efficiency in Federal contracting. Under this approach, OFCCP would have continued to enforce prohibitions on unlawful discrimination through the use of procurement remedies despite the elimination of affirmative action obligations. The Department also considered as an alternative modifying the regulations to state that the utilization goals are purely aspirational and contractors have no obligation to take action to meet race- and sex-based goals.

[48] Note that some commenters were similarly concerned about the impact of the regulations on Federal contracting more broadly, noting concerns about race- and sex-based preferences in awarding contracts. While the E.O. 11246 regulations did contain some pre-award provisions at 41 CFR 60-1.29, DOL's enforcement focused on the nondiscrimination and affirmative action requirements for existing contractors.

The Department concludes, however, that these alternatives are not available. Executive Order 14173 expressly revoked E.O. 11246 and withdrew the President's prior sub-delegation of Procurement Act authority to the Department of Labor for enforcement of nondiscrimination requirements in Federal contracting. Because the Department no longer possesses delegated authority under the Procurement Act to generally enforce contractor nondiscrimination obligations, it lacks a lawful basis to retain any piece of the OFCCP-administered nondiscrimination regulatory framework tied to E.O. 11246. Accordingly, partial rescission is not a legally viable alternative.

The Department also considered potential reliance interests implicated by rescission of the E.O. 11246 regulations. But E.O. 11246 has been revoked and there can be no legitimate reliance on authorities that are no longer in force.

To the extent employees and applicants of contractors have a legitimate reliance interest in continued protection from unlawful employment discrimination, that interest is preserved because Title VII provides a comprehensive and well-established framework prohibiting employment discrimination. In addition, E.O. 14173 directs Federal procuring agencies to ensure that contractors do not engage in unlawful discrimination, and those agencies retain authority to enforce nondiscrimination requirements within their respective procurement programs. The Department therefore concludes that rescission will not diminish protections against unlawful discrimination. To the extent any individual may claim a reliance interest in being hired or promoted because of the E.O. 11246 affirmative action regulations, the Department concludes that such an individual has no cognizable reliance interest in having his or her race or sex be a consideration in employment opportunities.

5. Other Comments

The Department received several comments that generally supported or opposed the rescission without providing substantive comments on the proposal. The Department also received a comment requesting guidance on how contractors can comply with E.O. 14173's requirement to certify compliance with all applicable Federal anti-discrimination laws as well as guidance on how to ensure that employment practices are non-discriminatory. In response, the Department notes that the E.O. 11246 regulations were not promulgated pursuant to E.O. 14173 and that, in any event, compliance with E.O. 14173 is outside the scope of this rulemaking.

Some commenters presented alternatives to the rescission, including modifying E.O. 11246 rather than rescinding it altogether or replacing E.O. 11246 with a new Executive Order. The Department also received a comment claiming that the severability clause located at 41 CFR 60-1.48 should allow the Department to maintain the regulations related to pay transparency, despite the Department's proposed rescission of the remaining regulations, as pay transparency is facially neutral on the subjects of race, color, religion, sex, sexual orientation, gender identity, and national origin. The Department declines to adopt these recommendations. With the revocation of E.O. 11246, the Department no longer has legal authority to enforce the E.O. 11246 implementing regulations. Therefore, the Department is rescinding the E.O. 11246 implementing regulations in their entirety. The pay transparency provisions at 41 CFR 60-1.4(a)(3), 60-1.4(b)(1)(3) and 60-1.35 are also part of this rescission, as they were issued as amendments to the E.O. 11246 regulations.[49]

Alliance Defending Freedom (ADF) asserted that E.O. 11246 and its implementing regulations raised concerns for religious organizations seeking to serve as Federal contractors and subcontractors. Specifically, ADF asserted that many religious organizations' sincerely held beliefs precluded them from complying with certain aspects of E.O. 11246 and its implementing regulations, particularly those related to sex

[49] The pay transparency regulations were adopted pursuant to an amendment to section 202 of E.O. 11246. 80 FR 54934 (Sept. 11, 2015).

discrimination, sexual orientation, and gender identity. ADF believed that the Department's past rulemaking removed religious organizations' protections to exercise their religious beliefs when it came to personnel decisions and caused confusion about the scope of E.O. 11246's religious exemption provision. ADF also believed that rescinding the regulations would help address these concerns for religious organizations. Although the NPRM did not directly address these issues, the Department agrees that rescinding the E.O. 11246 implementing regulations will address confusion and uncertainty about the scope of the regulations and their alignment with other laws. It is the Department's view that the revocation of E.O. 11246 and the rescission of its implementing regulations eliminate the need for a religious employer exemption from E.O. 11246 in the first place. Since E.O. 11246 regulations no longer have the force of law, religious employers who are contractors do not need an exemption and may continue to exercise their sincerely held religious beliefs in the employment of individuals in their businesses, consistent with existing Federal civil rights law.

Another commenter also suggested that the Department revise its regulatory definition of "minority" at 41 CFR 60-4.3(a)1(d) because it believed that the criteria about who belongs in this group is unclear, specifically as to who belongs to a Hispanic minority group. In response, the Department notes that this definition will be rescinded, as it is part of the E.O. 11246 regulations. To the extent that this definition needs to be revisited in other parts of the agency's programs, such changes will be addressed separately from this rulemaking.

The commenter also recommended that the Department conduct a review of all rules to ensure compliance with the policy objectives of the current administration. In response, the Department notes that it has and will continue to review its rules for consistency with the policy objectives of the current administration. To the extent that the

Department determines that additional regulatory changes are necessary, those changes will be pursued in a separate rulemaking.

Another commenter suggested that the Department reconsider rescinding the UGESP provisions at 41 CFR part 60-3. This commenter believed that UGESP promotes meritocracy in hiring and promotions, as it provides guidelines for determining which practices are job related and consistent with business necessity. In response, the Department notes that 41 CFR part 60-3 will be rescinded in its entirety, as these guidelines are part of the E.O. 11246 regulations. However, as noted in the NPRM and in this final rule, this rescission does not affect other agencies' application and interpretation of the UGESP provisions.[50]

IV. Procedural Issues and Regulatory Review

A. Overview of Executive Orders

Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits; (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior,

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[50] The Department of Justice's Office of Legal Counsel issued a memorandum on June 9, 2026, concluding that the UGESP "embrace an unconstitutional reading of Title VII." DOJ, *Constitutionality of Disparate-Impact Liability Under Title VII*, 50 Op. O.L.C. __, at 2 (June 9, 2026). Although the Department relied on different grounds in the NPRM for proposing to rescind part 60-3, namely the revocation of E.O. 11246, the OLC opinion further supports the Department's decision to do so.

such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to the Office of Information and Regulatory Affairs (OIRA) for review. In accordance with E.O. 12866, the Department has determined that this final rule constitutes a “significant regulatory action” because it would have an annual effect on the economy of $100 million or more. *See* E.O. 12866 sec. 3(f)(1). Accordingly, this final rule was submitted to OIRA for review under E.O. 12866. Below is an overview of the Department’s regulatory impact analysis conducted pursuant to E.O. 12866.

Executive Order 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011), directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits.

Executive Order 14192, “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025.[51] This rule is considered a deregulatory action under E.O. 14192. Using a perpetual time horizon to allow for cost comparisons under that order, the Department estimates that the annualized cost savings amount to $996.37 million in 2024 dollars, using a 7 percent discount rate.

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this rule as a “major rule,” as defined by 5 U.S.C. 804(2).

B. Review Under E.O. 12866

[51] 90 FR 9065 (Feb. 6, 2025).

1. Executive Summary of Analysis

This final rule rescinds regulations implementing E.O. 11246, consistent with E.O. 14173's revocation of that authority. Executive Order 14173, issued on January 21, 2025, revoked E.O. 11246 in its entirety and provided a 90-day transition period for compliance with existing regulations. That transition period has now expired. The rescission eliminates compliance obligations that previously applied to 107,165 supply and service entities and 9,982 construction contractors, employing approximately 32 million workers. The benefits apply most directly to 9,982 construction contractors and a subset of supply and service contractors (101,850 entities) that meet the affirmative action thresholds (totaling approximately 111,832 contractor entities).[52]

In the NPRM, the Department estimated annual cost savings of $996.37 million based on an estimated reduction of 9,875,221 hours related to the E.O. 11246 requirements (*e.g.*, recordkeeping, reporting, and compliance costs). *See* 90 FR 28477. Commenters, however, identified additional sources of cost savings and related benefits not fully captured in that estimate. For example, some commenters, including ABC and several state attorneys general, asserted that rescission would increase participation among contractors, particularly small and medium-sized entities, thereby enhancing competition and generating downstream cost savings in Federal procurement. Other commenters emphasized difficult-to-quantify benefits, including improved hiring efficiency and productivity gains resulting from a renewed focus on merit-based employment decisions rather than efforts to conform workforces to demographic benchmarks. In light of these comments, the Department recognizes that the benefits of the final rule are likely broader than the quantified NPRM savings alone and, therefore,

[52] As noted above, the affirmative action thresholds for non-construction contractors are at least 50 employees and a Federal contract of at least $50,000 and for construction contractors, a Federal contract of more than $10,000 and any number of employees.

considers a wider range of economic and operational benefits as illustrative in its final analysis.

The Department maintains its estimate of $996.37 million in quantifiable annual cost savings from reduced compliance burdens, as set forth in the NPRM.[53] At the same time, the Department believes that the overall cost savings associated with rescission are in all likelihood substantially greater. For example, commenters identified additional categories of economic effects not captured in the paperwork burden estimate, including (1) reduced litigation liability and risk; (2) improved hiring efficiency and labor productivity; and (3) reduced Federal procurement costs through increased competition.

The Department lacks sufficient data to quantify these additional effects with a reasonable degree of confidence. Accordingly, the Department discusses these impacts qualitatively and, where appropriate, provides illustrative calculations based on stated assumptions to convey their potential magnitude.

The only cost of the final rule is rule familiarization, which is likely negligible because the Department has not enforced the regulations for over a year following the revocation of E.O. 11246 in January 2025. Regulated entities have already adjusted their behavior and have no need to review this final rule.

a. Need for Regulatory Actions

The rescission of the E.O. 11246 implementing regulations is necessary to implement President Trump's mandate in E.O. 14173, which revoked the E.O. 11246 authority. In addition to E.O. 14173's revocation of E.O. 11246, the Department identified several other reasons for rescinding the regulations, including legal vulnerabilities related to the affirmative action requirements, improving the efficiency of the Federal contracting process, decreasing employer burden, and providing regulatory

[53] Specifically, this final rule estimates $996,373,776 in annual cost savings. This total differs slightly from the NPRM estimate of $996,373,735 due to rounding.

certainty to contractors and other stakeholders by aligning the regulations with recent executive orders impacting the Department's enforcement. *See* 90 FR 28472, 28474–28477 (July 1, 2025).

b. Regulatory Alternatives

This final rule imposes the least regulatory burden on contractors, as it rescinds all of the E.O. 11246 requirements (*see* estimated cost savings below). Alternatives include maintaining the E.O. 11246 implementing regulations or rescinding the affirmative action provisions while maintaining the nondiscrimination provisions. The Department considered these alternatives but concluded that these alternatives were not permissible because E.O. 14173 revoked the underlying E.O. 11246 authority in its entirety. Executive Order 14173 also only provided for a 90-day period in which contractors could continue to comply with the current regulatory scheme. *See* E.O. 14173 at Sec. 3(b)(i). This 90-day period has since passed. For that reason, rescinding the E.O. 11246 implementing regulations is the most appropriate regulatory action, as it aligns the regulations with the agency's legal authority and will provide clarity to stakeholders about their current obligations.

c. Baselines

The baseline for this analysis assumes continued compliance with the rescinded regulations, including requirements to prepare and maintain annual AAPs, conduct demographic and statistical analyses, implement compliance-related practices across personnel processes (*e.g.*, hiring, promotion, compensation, and recordkeeping), respond to compliance evaluations, and bear associated legal and operational risks.

The entities affected by the final rule include supply and service contractors, construction contractors, and federally assisted construction contractors and subcontractors meeting applicable employee and contract dollar thresholds, across a wide range of industries. Compliance burdens are particularly significant for contractors operating multiple entities and for firms with limited administrative capacity relative to fixed regulatory costs.

Affected Universe: The affected universe includes 107,165 supply and service entities and 9,982 construction contractors. Employment at covered entities is estimated at approximately 32 million workers. These estimates are derived from available EEO-1 and USA Spending data.[54] The benefits apply most directly to 9,982 construction contractors and a subset of supply and service contractors (101,850 entities) that meet the affirmative action thresholds (totaling approximately 111,832 contractor entities). While construction contractors do not develop written AAPs, they are subject to the affirmative action requirements at 41 CFR part 60-4. Our analysis assumes that implementing and documenting these requirements imposes similar burdens as developing and maintaining a written AAP.

d. Potential Effects on Contract and Employment Distribution

The rescission of the E.O. 11246 implementing regulations may affect the distribution of Federal contract awards across firms and, correspondingly, employment opportunities across workers. Reducing affirmative action compliance obligations may lower barriers to entry for some firms that were previously deterred from pursuing Federal contracting opportunities due to the costs, administrative complexity, or perceived litigation risks associated with the regulations.

These effects may be especially relevant for smaller firms and firms with more limited human resources, legal, or compliance infrastructure. As ABC and other commenters noted, preparing written affirmative action programs, conducting utilization analyses, maintaining documentation systems, and managing related compliance

[54] U.S. Equal Employment Opportunity Commission, EEO-1 Employer Information Report Statistics, available at https://www.eeoc.gov/data/eeo-1-employer-information-report-statistics (estimates based on available 2020-2022 EEO-1 data); USA Spending Database, available at https://www.usaspending.gov/ (estimates based on 2021-2023 USA Spending data). Following the revocation of E.O. 11246, OFCCP no longer has any use for EEO-1 data.

activities impose proportionally larger fixed costs on smaller entities. Such a pattern is consistent with empirical research finding that fixed regulatory compliance costs disproportionately reduce market participation by smaller firms.[55] To the extent smaller firms previously elected not to compete for Federal contracts, or limited their participation in covered contracting markets, rescission may increase their willingness or ability to participate in Federal procurement. As a result, some contract awards may shift toward firms that were previously less likely to compete under the E.O. 11246 regulatory framework.

Any such shifts could also affect the distribution of employment opportunities among workers employed by participating firms. For example, because minority- and women-owned businesses are disproportionately concentrated among smaller firms, barriers that fall most heavily on small businesses may also disproportionately limit minority- and women-owned enterprises' participation in Federal contracting.[56] The Department lacks sufficient data to quantify the magnitude of any resulting shifts in contract awards or employment outcomes.

e. Benefits of Rescission

This final rule rescinds the regulations implementing E.O. 11246, consistent with the revocation of the underlying Executive Order. The Department has examined the economic effects of this action and concludes that the rescission will result in substantial

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[55] *See, e.g.*, Shikhar Singla, "Regulatory Costs and Market Power" (2023) (finding that increases in regulatory costs cause small firms to become smaller and large firms to become larger, contributing to increased concentration and reduced small firm participation); U.S. Senate Committee on Small Business and Entrepreneurship, "A Troubling Trend" (2023) (documenting an approximately 50 percent decline in the number of small business vendors participating in the Federal marketplace, from roughly 144,000 in FY2008 to between 65,000 and 75,000 by the early 2020s).

[56] *See* U.S. Census Bureau, Annual Business Survey (2025 release, reporting 2023 business ownership data), available at https://www.census.gov/programs-surveys/abs.html, and U.S. Census Bureau, Nonemployer Statistics (2023), available at https://www.census.gov/data/datasets/2023/econ/nonemployer-statistics/2023-ns.html. The data indicate that women-owned and minority-owned firms are disproportionately concentrated within smaller business size classes and among nonemployer businesses.

cost savings for contractors, as well as downstream benefits to Federal procurement markets and taxpayers.

The anticipated benefits of the rule go beyond quantifiable PRA-based cost savings for contractors. By eliminating the regulatory burdens of affirmative action requirements, the Department expects to foster increased competition and participation among contractors, particularly benefiting small and medium-sized businesses. This shift is expected to lead to lower Federal contracting costs, improved contractor performance, and a more efficient labor market, ultimately enhancing value for taxpayers while maintaining adherence to essential nondiscrimination laws.

2. Quantifiable Compliance Cost Savings

The July 1, 2025 NPRM estimated that the regulations implementing E.O. 11246 imposed approximately $996.37 million[57] in quantifiable annual compliance costs, based on an estimated annual time burden of 9,875,221 hours. *See* 90 FR 28477.

The Department retains this estimate in the final rule as a measure of direct, quantifiable compliance costs. Commenters did not dispute the underlying methodology or the resulting estimate. This estimate derives from case data covering FY 2022 through 2024 and reflects the estimated time burden for the regulated community associated with preparing and maintaining written AAPs, demographic and statistical analyses, recordkeeping and reporting obligations, third-party disclosure and data submission requirements, audit response and investigation costs, and monetary remedies associated with conciliation agreements.

In computing the value of contractor time, the Department generally used a fully loaded hourly wage rate of $99.11, which is consistent with prior analyses.[58] A higher

[57] This final rule estimates $996,373,776 in quantifiable annual cost savings. This total differs slightly from the NPRM estimate of $996,373,735 due to rounding.
[58] The calculations are based on Bureau of Labor Statistics wage estimates of $77.15 per hour for Human Resources Managers and $55.15 per hour for Management Analysts. The calculation uses a 60/40 split

rate of $105.49 per hour is applied to the AAP certification and Functional Affirmative Action Program (FAAP) burdens, consistent with prior analyses.[59]

a. Supply and Service Contractors

The final rule eliminates requirements applicable to approximately 101,850 covered supply and service contractor establishments.

Recordkeeping. Contractors are no longer required to develop, update, and maintain written E.O. 11246 AAPs. Prior to the revocation of E.O. 11246, first-time contractors (approximately 1,019 annually) spent an estimated 108 hours developing an E.O. 11246 AAP, while existing contractors (approximately 100,832 establishments) spent 47 hours annually updating their programs. All covered establishments also incurred ongoing maintenance burdens (47 hours annually). In addition, contractors with 1 to 14 employees incurred limited recordkeeping obligations under 41 CFR part 60-3 (approximately 1,019 establishments at 2 hours each). In total, rescission eliminates approximately 9,638,144 hours of annual recordkeeping burden, valued at $955,236,452.

Reporting. Historically, OFCCP conducted approximately 845 supply and service compliance evaluations each year. Each such compliance evaluation imposed an estimated 37.5 hours of burden on the contractor to respond to the scheduling letter. Applying a proportional attribution to E.O. 11246 requirements, rescission eliminates approximately 22,182 hours of reporting burden, valued at $2,198,458 annually.

AAP Certification. New contractors (approximately 1,019 annually) previously spent approximately 0.42 hours certifying their compliance with the AAP requirements,

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between Human Resources Managers and Management Analysts, which equals $68.35. Fringe benefits and overhead costs are calculated as 45 percent of wages. $68.35 x 1.45 = $99.11. *See* Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, May 2024, https://www.bls.gov/oes/current/oes_nat.htm.

[59] The AAP certification and FAAP calculations described below assume Human Resources Managers will play a larger role in these compliance activities and use an 80/20 split between Human Resources Managers and Management Analysts, which equals $72.75. Fringe benefits and overhead costs are calculated as 45 percent of wages. $72.75 x 1.45 = $105.49. *See* Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, May 2024, https://www.bls.gov/oes/current/oes_nat.htm.

while existing contractors (approximately 100,832 establishments) spent approximately 0.13 hours annually recertifying. The final rule eliminates approximately 13,536 hours of burden, valued at approximately $1,427,913 annually (at $105.49 per hour).

Conciliation Costs. Contractors resolving compliance findings through E.O. 11246 conciliation agreements incurred monetary costs. Based on recent agreements, the Department estimates approximately $17,443,922 in annual conciliation-related costs associated with E.O. 11246 requirements that would be eliminated. Additional E.O 11246 complaint-related conciliation costs are estimated at $104,059 annually.

Complaint Investigations. Approximately 15 E.O. 11246 complaint investigations annually imposed an estimated 192.4 hours of burden per case, resulting in 2,950 hours eliminated, valued at $292,408 annually.

Operating Costs. Paper submission costs associated with supply & service compliance evaluations (copying and mailing) are estimated at $9,603 annually.

Total supply and service contractor cost savings: **$976,712,815 annually**.

b. Construction Contractors

The final rule eliminates compliance requirements applicable to approximately 9,982 construction contractors.

Recordkeeping. Contractors are no longer required to maintain documentation demonstrating compliance with affirmative action obligations, including incorporation of contract clauses, solicitation notices, employment record retention, and compliance with equal opportunity specifications. These changes eliminate approximately 102,875 hours of annual burden, valued at $10,195,941.

Reporting. Compliance evaluation reporting burdens are reduced by approximately 3,660 hours annually, valued at $362,783. In addition, contractors are no longer subject to the construction award notification requirements at 41 CFR 60-4.2, removing approximately 18,125 hours of burden, valued at $1,796,369.

Operating Costs. Paper submission costs associated with construction award notifications and compliance evaluations are reduced by approximately $3,376 annually.

Total Construction Savings: $12,358,469 annually.

c. Functional Affirmative Action Program Requirements

The E.O. 11246 regulations at 41 CFR 60-2.1(d)(4) permitted contractors to establish an AAP based on functional or business units rather than establishments, provided they enter into an agreement with OFCCP on the use of this functional AAP (FAAP) structure. Costs related to entering or renewing these FAAP agreements previously imposed approximately 1,160 hours of burden annually, valued at approximately $122,368.

d. Pre-Complaint Inquiry and Complaint Submissions

OFCCP estimates an average of 1,125 annual E.O. 11246 pre-complaint inquiry and complaint intake submissions and estimates that it takes an individual 0.26 hours to provide the intake information. This amounts to 295 total hours eliminated, valued at approximately $15,132.

e. Supply & Service and Construction Compliance Evaluations

Compliance Evaluation Investigations. Approximately 56 annual technical violation cases imposed 588.8 hours of additional burden per case, resulting in 33,090 hours eliminated, valued at $3,279,550. And approximately 32 annual discrimination cases imposed 1,238 hours per case, resulting in 39,203 hours eliminated, valued at approximately $3,885,442.

f. Total Quantified Compliance Cost Savings

Across all affected parties, based on the above analysis, the Department estimates that the final rule eliminates approximately 9,875,221 hours of annual burden. The 10-year quantifiable cost savings amount to $8,499,270,061 at a 3% discount rate or $6,998,112,173 at a 7% discount rate. Using a perpetual time horizon to allow for cost comparisons under E.O. 14192, the Department estimates that the annualized cost savings amount to $996,373,776 in 2024 dollars, using a 7 percent discount rate.[60]

3. Illustrative Cost-Savings and Benefits

The Department also considered three additional categories of cost savings identified by commenters as illustrative of additional savings: (1) reduced litigation liability and risk; (2) improved hiring efficiency and labor productivity; and (3) reduced Federal procurement costs through increased competition. The Department does not have sufficient data to quantify these effects with precision but nonetheless believes they may be substantial. In the absence of comprehensive data, the Department relies on stated assumptions and provides illustrative estimates based on those assumptions to convey the potential magnitude of these beneficial effects.

a. Legal Liability and Litigation Risk Reduction

The affirmative action regulatory regime created exposure to private litigation risk under Title VII of the Civil Rights Act of 1964 and analogous state laws. The Department believes that the required use of demographic classifications, placement goals, and race- or sex-conscious decision-making create additional avenues for legal challenge since these types of actions have been subject to judicial scrutiny and litigation alleging discrimination against non-minority or male employees.

Recent legal developments further increase forward-looking exposure. In *SFFA*, the Supreme Court applied strict scrutiny to race-conscious decision-making, and courts and commenters have recognized that similar reasoning may be applied in employment contexts under Title VII and Section 1981. Early post-*SFFA* litigation and enforcement trends reflect increased challenges to employer diversity, equity, and inclusion programs and race-conscious employment practices. For instance, the Department of Justice filed a lawsuit against Minnesota's race-and sex-based affirmative action laws and regulations,

[60] This total differs slightly from the NPRM estimate of $996,373,735 due to rounding.

which use similar underutilization analysis and employment goals. Complaint, *United States v. Minnesota*, case no. 26-cv-00273, Doc. 1 (D. Minn. Jan. 14, 2026).

Industry estimates further suggest that the typical U.S. firm faces approximately a 12 percent probability of being subject to an employment-related lawsuit each year.[61] The Department lacks sufficient data to quantify the extent to which this rule would reduce litigation risk and costs. Nonetheless, the Department believes the rule may reduce certain categories of litigation exposure and legal uncertainty.

b. Hiring Delays, Labor Misallocation, and Productivity Effects

Commenters, including ABC, Independent Women, and CEI, reported that AAP compliance requirements lengthen hiring workflows by introducing additional procedural steps and documentation obligations, particularly in time-sensitive or deadline-driven occupations where managers would otherwise prefer speed. Commenters also reported that the requirements constrain managerial discretion in candidate selection and internal mobility.

These requirements may impose economic costs through three primary channels:

- Extended vacancies, resulting in foregone output or increased reliance on overtime;
- Delayed production or project completion, particularly in capital-intensive and project-based operations; and
- Labor misallocation, in which hiring frictions or procedural constraints lead to suboptimal worker-job matches and reduced productivity.

To estimate the scale of hiring subject to potential delay, the Department relies on data from the Bureau of Labor Statistics (BLS) Job Openings and Labor Turnover Study (JOLTS).

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[61] Hiscox, "Guide to Employee Lawsuits: Employee Charge Trends Across the United States" (2015), at 4.

In 2024, the annual average hires rate (hires in a month as a percentage of employment) was 3.4%.[62]

- Interpreted on an annual basis, this implies:

  0.034 × 12 = 0.408 hires per worker per year

- Applying this rate to covered employment yields:

  32,000,000 × 0.408 = 13,056,000 hires annually

This figure represents the baseline annual flow of hires at covered establishments potentially affected by regulation-induced hiring frictions.

Industry benchmarking indicates that median time-to-fill for non-executive positions is approximately 44 days, with average values above 50 days.[63] However, AAPs tend to encompass substantive elements that alter contractors' hiring processes. Part 60-2 provides that an AAP is a "management tool" and is "more than a paperwork exercise;" it encompasses policies, practices, and procedures throughout the employment process. Proponents and opponents of written AAP requirements can generally agree that several commonly recommended AAP best practices tend to increase recruiting costs and often lengthen time-to-fill relative to a "post-and-select" process.

These practices include: (1) expanding outreach beyond passive job postings to additional sourcing channels (*e.g.*, targeted career fairs and recruitment programs at institutions with more diverse candidate pools, including HBCUs); (2) relationship-based pipeline development with underrepresented communities; (3) assembling more diverse candidate slates, which may require additional sourcing when initial applicant pools or shortlists are not diverse; (4) increased use of structured interviews, panels, standardized rubrics, and related training for hiring managers; and (5) additional monitoring, self-

[62] U.S. Bureau of Labor Statistics, Annual average hires rates by industry and region, not seasonally adjusted, available at https://www.bls.gov/news.release/jolts.t18.htm.
[63] SHRM, "Talent Trends Report, 2025," available at https://www.shrm.org/topics-tools/research/2025-talent-trends.

analysis, and documentation steps associated with written AAP compliance. Each step can add calendar time to a standard hiring workflow.

Indeed, to comply with affirmative action obligations related to E.O. 11246 and prepare for potential OFCCP compliance evaluations, covered contractors are advised to undertake a number of time-intensive activities during recruitment. These include devoting additional time and resources to race-conscious recruitment efforts intended to increase the representation of particular demographic groups in applicant pools.[64] Before a contractor can start recruiting for a vacant position, they are advised to establish and document basic qualifications for the position and train interviewers on compliance requirements.[65] During recruitment, contractors are further advised to devote substantial time to tracking and documenting applicant information, consideration decisions, and disposition outcomes at each stage of the process, including for minimally qualified applicants who have little realistic prospect of being hired.[66] Taken together, these additional steps delay the initiation of recruitment efforts, slow the progression of candidates through the hiring pipeline, and lengthen the overall time required to fill vacant positions.

The Department does not assume that any single practice is required in every hiring decision; rather, the incremental delay estimates reflect the combined effect of compliance-oriented recruiting, screening, documentation, and review practices that E.O. 11246 regulations describe as integral to AAPs, and that contractors report implementing in order to satisfy those requirements in practice. For illustrative purposes, if, in the aggregate, these practices result in just one additional calendar day to fill each of the

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[64] *See*, *e.g.* Temple University Affirmative Action Program (Nov. 1, 2023), available at: https://diversity.temple.edu/about-ideal/units/equal-opportunity-compliance/university-policies-resources/affirmative-action?utm_source=chatgpt.com (adverting in publications that target Black and Hispanic audiences).

[65] *See* Berkshire, Affirmative Action Planning: How to Ensure a Compliant Recruiting Process (Nov. 16, 2023), available at: https://www.berkshireassociates.com/blog/how-to-ensure-a-compliant-recruiting-process.

[66] *Id.*

13,056,000 annual hires among the approximately one-fifth of the U.S. workforce covered by the E.O. 11246 implementing regulations, there would result in 13,056,000 employee-days of extended vacancies.

To contextualize the magnitude of potential hiring delays, the Department converts median earnings into an implied daily labor value. The median weekly earnings for full-time wage and salary workers are $1,235 in 2026.[67] Assuming a five-day workweek, this corresponds to an implied daily wage of approximately $247. Under the Department's illustrative assumption that compliance-related hiring practices extend time-to-fill by one additional calendar day for each of the estimated 13,056,000 annual hires at covered establishments, the resulting 13,056,000 employee-days of extended vacancies would correspond to approximately $3.2 billion in delayed labor utilization on an undiscounted basis. This estimate is illustrative and is intended to contextualize the scale of potential delay, rather than quantify a precise economic loss. If hiring delays are shorter or longer than one day, this loss estimate would increase or decrease proportionally.

Earnings is an intermediate result toward the goal of estimating worker surplus, which is a net value amount that accounts for the opportunity cost of time and effort. Bartik (2013)[68] estimates such net value to range from 8 to 32 percent of earnings. Based on this finding, we assign a midpoint value of 20 percent to total earnings to quantify the social benefit derived from increased earnings. Applying the 20 percent estimate of societal value to the additional earnings increase of $3.2 billion yields a societal benefit

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[67] U.S. Bureau of Labor Statistics, Usual Weekly Earnings of Wage and Salary Workers First Quarter 2026 (Apr. 16, 2026), available at: https://www.bls.gov/news.release/pdf/wkyeng.pdf.

[68] Bartik, T., "Social Costs of Jobs Lost Due to Environmental Regulations,'' Upjohn Institute Working Paper 13-193, Kalamazoo, MI: W.E. Upjohn Institute for Employment Research (2013); https://doi.org/10.17848/wp13-193. A revised version of this paper has been published as Bartik, T., ''The Social Value of Job Loss and Its Effect on the Costs of U.S. Environmental Regulations,'' Review of Environmental Economics and Policy 9, No. 2 (2015). Illustration of use of estimates from the revised version appears in and near Table 26 of the Food and Drug Administration's Nicotine Preliminary Regulatory Impact Analysis, https://www.fda.gov/media/185035/download?attachment.

of $654 million annually. Moreover, a benefit accruing to broader society, in the form of taxes collected on the additional earnings, is estimated as 17 percent of those additional earnings, or $548 million annually.[69]

Beyond vacancy duration, commenters, including state attorneys general, claimed that hiring practices that do not focus on merit can reduce match quality. Economic research suggests that mismatches between workers and job requirements can impose meaningful productivity costs. Empirical research on CEO-firm matching finds that mismatches between a firm's needs and the skills of its chief executive officer are associated with large productivity losses: in a sample of approximately 4,800 manufacturing firms across 42 countries, firms that had leaders whose skills were poorly aligned with firm needs exhibited productivity up to 20 percent lower than well-matched firms.[70] While such extreme outcomes are not assumed here, the evidence indicates that even modest distortions in hiring decisions can impose real economic costs.

Public comments similarly described perceived inefficiencies associated with employment decisions based on demographic considerations rather than qualifications. Although these accounts are anecdotal and do not provide systematic evidence, they reflect broader concerns that hiring processes that deemphasize merit may lead to suboptimal worker-job matches and cause productivity losses. The Department does not attempt to quantify these losses but believes that they will be mitigated by this final rule.

c. Reduced Competition and Federal Procurement Market Effects

Compliance obligations associated with AAP requirements impose fixed and quasi-fixed costs that do not scale proportionally with firm size. As ABC and other commenters noted, such regulatory costs tend to weigh more heavily on small and

[69] The source for the 17 percent input is https://aspe.hhs.gov/sites/default/files/documents/639756a60fbe7e51786bcec176ad52f1/Standard- RIA-Values-2025.pdf.

[70] Axel Dahlstrand, David László, Helena Schweiger, Oriana Bandiera, Andrea Prat, and Raffaella Sadun, "CEO-Firm Matches and Productivity in 42 Countries," NBER Working Paper No. 33324 (Jan. 2025), available at https://www.nber.org/papers/w33324.

medium-sized firms, for which compliance expenses represent a larger share of revenues and managerial capacity. Economic theory and regulatory guidance recognize that such fixed costs can discourage entry and participation by smaller firms and may alter market structure over time.[71]

When OFCCP established the written E.O. 11246 AAP thresholds in the late 1960s and early 1970s, the $50,000 contract threshold and 50-employee threshold were intended to exempt small businesses from detailed AAP requirements while focusing enforcement resources on larger contractors.[72] However, the E.O. 11246 AAP thresholds have never been adjusted for inflation. A $50,000 contract in 1968—when the contract threshold was first established—would be equivalent to approximately $450,000 in 2024 dollars.[73] Similarly, a $50,000 contract in 1971—when Revised Order No. 4 formalized the written AAP requirements—would be equivalent to approximately $385,000 in 2024 dollars.[74] This failure to index the thresholds to inflation has dramatically expanded regulatory coverage over time, bringing many small and medium-sized businesses within the scope of AAP requirements that would have been considered exempt under the original regulatory design.

Public comments submitted during the rulemaking process suggest that regulatory burden has contributed to a decline in the number of small business contractors over the past decade.[75] The Department does not attribute this decline to AAP requirements alone

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[71] Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A-4, Regulatory Analysis (Sept. 17, 2003), available at https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf.
[72] Office of Federal Contract Compliance Programs, Revised Order No. 4, Affirmative Action Programs, 36 FR 23152, 23153 (Dec. 4, 1971) (explaining that written AAP requirements apply to contractors "of a specified size" to focus enforcement on larger contractors while recognizing administrative limitations of smaller entities).
[73] U.S. Bureau of Labor Statistics, CPI Inflation Calculator, available at https://www.bls.gov/data/inflation_calculator.htm (converting $50,000 in 1968 to 2024 dollars yields approximately $450,000).
[74] *Id.* (converting $50,000 in 1971 to 2024 dollars yields approximately $385,000).
[75] Comment of Associated Builders and Contractors at 2.

but evaluates how fixed compliance costs may contribute to reduced participation and bidding intensity in Federal procurement markets.

A substantial body of empirical and theoretical research in auction theory and public procurement economics finds that reduced competition leads to higher prices, and that bidder participation is a central determinant of procurement outcomes. McAfee and McMillan (1987) establish in their foundational literature survey that increasing the number of bidders intensifies competition and reduces expected procurement costs across auction formats,[76] while Klemperer (1999) provides a comprehensive review confirming this relationship holds across diverse auction mechanisms.[77]

The Department cannot estimate a constant elasticity of price with respect to bidder participation because empirical studies reveal important nonlinear patterns in this relationship. Brannman, Klein, and Weiss (1987) demonstrate in their analysis of timber auctions that the price reduction from adding a second or third bidder substantially exceeds the effect of adding additional bidders beyond that point.[78] Li and Perrigne (2003) find similar nonlinear competition effects in timber sale auctions.[79] This body of evidence indicates that preserving competition has the greatest price impact when preventing bidder counts from falling to very low levels. Federal oversight bodies have similarly recognized that small business participation increases bidder counts and competitive pressure in procurement markets.[80]

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[76] R. Preston McAfee and John McMillan, "Auctions and Bidding," 25 Journal of Economic Literature 699 (1987).

[77] Paul Klemperer, "Auction Theory: A Guide to the Literature," 13 Journal of Economic Surveys 227 (1999).

[78] Lance Brannman, J. Douglas Klein, and Leonard W. Weiss, "The Price Effects of Increased Competition in Auction Markets," 69 Review of Economics and Statistics 24 (1987).

[79] Tong Li and Isabelle Perrigne, "Timber Sale Auctions with Random Reserve Prices," 85 Review of Economics and Statistics 189 (2003).

[80] U.S. Government Accountability Office, Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received, GAO-10-833 (2010).

In recent fiscal years, total Federal contract obligations have averaged approximately $750 billion annually.[81] Federal law establishes a goal that 23 percent of Federal contract obligations be awarded to small businesses.[82] This yields an affected procurement volume of approximately $172.5 billion per year in markets where small and medium-sized firms are plausible competitors.

To the extent that fixed compliance costs reduce small business participation in Federal contracting, procurement prices may increase through reduced competitive pressure. Given the nonlinear relationship between bidder participation and prices documented in the empirical literature, even modest reductions in competition among marginal bidders can generate measurable price effects.

4. Costs of the Final Rule; Rule Familiarization Costs

The Department expects that Human Resources Managers or Management Analysts at each contractor establishment may spend time becoming familiar with the provisions in the final rule. The Department estimates that it will take one hour for a Human Resources Manager or Management Analyst to read the final rule. This estimate likely overstates the actual burden of rule familiarization. Since the revocation of E.O. 11246 in January 2025, the Department has ceased enforcing the regulations. As a result, this final rule largely maintains the status quo, and in many cases may not require any review by regulated entities.

The Department estimates an average hourly wage rate of $99.11 based on a 60/40 split between Human Resources Managers ($77.15) and Management Analysts ($55.15), resulting in an average hourly wage of $68.35. The Department applies a 45

[81] U.S. Government Accountability Office, Federal Government Contracting: FY 2024 Snapshot, GAO-25-105538 (2024).

[82] Small Business Administration, Small Business Procurement Scorecard (2024), available at https://www.sba.gov/federal-contracting/contracting-data/small-business-procurement-scorecard.

percent rate for fringe benefits and overhead costs, leading to a total hourly wage rate of $99.11 (= $68.35 × 1.45).[83]

Consequently, the estimated burden for rule familiarization is 117,147 hours (= 107,165 supply and service establishments + 9,982 construction contractors × 1 hour). The total estimated cost is $11,610,439 (= 117,147 hours × $99.11/hour) in the first year. Over the 10-year analysis period, the annualized rule familiarization costs are estimated at:

- **$1.3 million at a discount rate of 3 percent**
- **$1.5 million at a discount rate of 7 percent**

The Department does not anticipate significant adjustment costs beyond rule familiarization, as rescission eliminates obligations rather than imposing new requirements. Contractors may choose to maintain certain employment practices previously undertaken for AAP compliance, but such practices would be voluntary and presumably maintained only where contractors judge them to be cost-effective.

5. Net Benefits and Distribution

The Department estimates quantifiable cost savings of approximately $996.37 million annually from reduced paperwork and compliance burdens. Over a 10-year period, these savings are estimated at $8.5 billion using a 3 percent discount rate and $7.0 billion using a 7 percent discount rate. As discussed above, this estimate likely understates total compliance-related cost savings. In addition, the Department provides illustrative estimates of further economic benefits associated with rescission.

[83] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2024 National Occupational Employment and Wage Estimates, available at https://www.bls.gov/oes/current/oes_nat.htm (reporting mean hourly wage of $77.15 for Human Resources Managers (SOC 11-3121) and $55.15 for Management Analysts (SOC 13-1111)). The blended rate applies a 60/40 weighting to these occupations, yielding a weighted average hourly wage of $68.35. U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation, December 2024, available at https://www.bls.gov/news.release/ecec.toc.htm (fringe benefits and overhead costs equal 45 percent of wages). Loaded blended rate: $68.35 × 1.45 = $99.11.

Costs associated with this rule are limited to rule familiarization, which the Department estimates at a one-time cost of $11.6 million. Annualized over a 10-year period, these costs are approximately $1.3 million at a 3 percent discount rate and $1.5 million at a 7 percent discount rate.

Overall, the Department concludes that the rule will generate substantial net benefits, even when considering only quantifiable savings, with additional unquantified benefits reinforcing this conclusion.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The Department reviewed this final rule under the provisions of the Regulatory Flexibility Act. The Department has determined that a Final Regulatory Flexibility Analysis is not required because this rule is not expected to have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act. The Act directs agencies, where such impacts exist, to consider steps "to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes," 5 U.S.C. 604(a)(6), reflecting Congress's concern with regulatory compliance burdens imposed on small entities. *Cf. Mid-Tex Electric Cooperative v. FERC*, 773 F.2d 327, 343 (D.C. Cir. 1985) (explaining that "the costs of compliance with uniform regulations to small businesses were the focus of congressional concern"). "Congress envisioned that the relevant 'economic impact' was the impact of compliance with the [agency's] rule on regulated small entities." *Id.* at 348.

This final rule has no compliance impacts on small entities and instead rescinds existing regulatory burdens, thereby eliminating associated reporting, recordkeeping, compliance, and administrative costs. Small entities, including small Federal contractors and subcontractors, within the scope of the rescinded requirements may experience economic effects from this rule. However, those effects are expected to be beneficial due to burdens and barriers to participation being eliminated. Because the rule does not impose compliance obligations or associated costs of the type the RFA is designed to address and that agencies must take steps to "minimize," the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Department will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

The purpose of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, includes minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and it displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. 3512.

To comply with E.O. 14173, the Department modified OMB # 1250-0002, "Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor."[84] The modifications removed E.O. 11246 elements from the agency's pre-complaint inquiry and complaint forms. The information collection still covers complaints under Section 503 and VEVRAA.

E. Review Under E.O. 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. E.O. 13132 requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. E.O. 13132 also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.

The Department has examined this final rule and has determined that it would not

[84] Following the revocation of E.O. 11246, the Department sought emergency approval from OMB to remove items related to E.O. 11246 from OFCCP's pre-complaint inquiry and complaint forms. OMB approved the request on July 2, 2025. The Department also responded to public comments on the changes and received OMB approval for the revised collection on Feb. 23, 2026. *See* 91 FR 168 (Jan. 2, 2026); Notice of Action at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202512-1250-001.

have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Review Under E.O. 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether the applicable standards are met or if it is unreasonable to meet one or more of these standards. The Department has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Sec. 201, Pub. L. 104–4 (codified at 2 U.S.C.

1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a)–(b). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ‘‘significant intergovernmental mandate,’’ and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them.

The Department examined this final rule according to UMRA and its statement of policy and determined that the final rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under E.O. 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988), the Department has determined that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002). The Department has reviewed this final rule under the OMB guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under E.O. 13175

The Department has examined this final rule and determined that it does not have any tribal implications under E.O. 13175 that would require a tribal summary impact statement. It does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

L. Review Under Additional Executive Orders and Presidential Memoranda

This final rule ensures compliance with E.O. 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," which directs OFCCP within the Department to immediately cease promoting "diversity," holding Federal contractors and subcontractors responsible for taking "affirmative action," and allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin. This final rule also ensures compliance with E.O. 14398, "Addressing DEI Discrimination by Federal Contractors." E.O. 14398 prohibits contractors from racial discrimination in connection with work performed on contracts and places enforcement responsibility with procuring agencies rather than with the Department. This final rule is also consistent with E.O. 14168, "Defending Women from Gender Ideology Extremism and Restoring Biological

Truth to the Federal Government," which directs Federal agencies to modify regulations or policies that use the terms "gender" and "gender identity." This final rule also aligns with E.O. 14281, "Restoring Equality of Opportunity and Meritocracy," which directs Federal agencies to deprioritize enforcement of all statutes and regulations to the extent they include disparate impact liability. Further, it supports the objectives of E.O. 14192, "Unleashing Prosperity Through Deregulation," E.O. 14275, "Restoring Common Sense to Federal Procurement," E.O. 14267, "Reducing Anti-Competitive Regulatory Barriers," and Presidential Memorandum, "Directing the Repeal of Unlawful Regulations,"[85] by alleviating unnecessary regulatory burdens, amending the Federal Acquisition Regulations to ensure they contains only provisions required by statute or are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests, and removing regulatory requirements that could have created barriers to entry for contractors who are new market participants. This final rule is designated as an E.O. 14192 deregulatory action.

List of Subjects

41 CFR Part 60-1

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Labor, Reporting and recordkeeping requirements.

41 CFR Part 60-2

Equal employment opportunity, Government procurement, Reporting and recordkeeping requirements.

41 CFR Part 60-3

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[85] Presidential Memorandum on Directing the Repeal of Unlawful Regulations, 2025 Daily Comp. Pres. Doc. 466 (Apr. 9, 2025).

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government property, Government property management, Individuals with disabilities, Labor, Reporting and recordkeeping requirements, Veterans.

41 CFR Part 60-4

Construction industry, Equal employment opportunity, Government procurement, Reporting and recordkeeping requirements.

41 CFR Part 60-20

Civil rights, Equal employment opportunity, Government procurement, Labor, Sex discrimination, Women.

41 CFR Part 60-30

Administrative practice and procedure, Civil rights, Equal employment opportunity, Government contracts, Government procurement, Government property management, Individuals with disabilities, Reporting and recordkeeping requirements, Veterans.

41 CFR Part 60-40

Freedom of information, Reporting and recordkeeping requirements.

41 CFR Part 60-50

Equal employment opportunity, Government procurement, Religious discrimination, Reporting and recordkeeping requirements.

41 CFR Part 60-999

Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of E.O. 14173, 90 FR 8633 (Jan. 31, 2025), the Department amends chapter 60 in title 41 of the Code of Federal Regulations as follows:

PART 60-1 [REMOVED AND RESERVED]

1. Under the authority of E.O. 14173, remove and reserve 41 CFR part 60-1.

PART 60-2 [REMOVED AND RESERVED]

2. Under the authority of E.O. 14173, remove and reserve 41 CFR part 60-2.

PART 60-3 [REMOVED AND RESERVED]

3. Under the authority of E.O. 14173, remove and reserve 41 CFR part 60-3.

PART 60-4 [REMOVED AND RESERVED]

4. Under the authority of E.O. 14173, remove and reserve 41 CFR part 60-4.

PART 60-20 [REMOVED AND RESERVED]

5. Under the authority of E.O. 14173, remove and reserve 41 CFR part 60-20.

6. Revise 41 CFR part 60-30 to read as follows:

PART 60-30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS

General Provisions

Sec.

Authority: 29 U.S.C. 793, as amended and 38 U.S.C. 4212, as amended.

General Provisions

§ 60-30.1 Applicability of this part.

This part provides the rules of practice for all administrative proceedings instituted by the Office of Federal Contract Compliance Programs (OFCCP), including but not limited to proceedings instituted against construction contractors or subcontractors, which relate to the enforcement of equal opportunity under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended, and section 503 of the Rehabilitation Act of 1973 (section 503), as amended. In the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure.

§ 60-30.2 Waiver, modification.

Upon notice to all parties, the Administrative Law Judge may, with respect to matters pending before him, modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

§ 60-30.3 Computation of time.

In computing any period of time under this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government in which event it includes the next business day.

§ 60-30.4 Form, filing, service of pleadings and papers.

(a) *Form*. The original of all pleadings and papers in a proceeding conducted under the regulations in this part shall be filed with the Administrative Law Judge assigned to the case or with the Chief Administrative Law Judge if the case has not been assigned. Every pleading and paper filed in the proceeding shall contain a caption setting forth the name of the agency instituting the proceeding, the title of the action, the case file number assigned by the Administrative Law Judge, and a designation of the pleading or paper (*e.g.*, complaint, motion to dismiss, etc.). The pleading or papers shall be signed and shall contain the address and telephone number of the person representing the party or the person on whose behalf the pleading or paper was filed. Unless otherwise ordered for good cause by the Administrative Law Judge regarding specific papers and pleadings in a specific case, all such papers and pleadings are public documents.

(b) *Service*. Service upon any party shall be made by the party filing the pleading or document in accordance with 29 CFR part 26. When a party is represented by an attorney, the service shall be upon the attorney.

(c) *Proof of service*. A certificate of the person serving the pleading or other document, setting forth the manner of service, shall be proof of the service.

Prehearing Procedures

§ 60-30.5 Administrative complaint.

(a) *Filing*. The Solicitor of Labor, Associate Solicitor for Labor Relations and Civil Rights Regional Solicitors and Regional Attorney upon referral from OFCCP, are authorized to institute enforcement proceedings by filing a complaint and serving the complaint upon the contractor which shall be designated as the defendant. The Department of Labor, OFCCP, shall be designated as the plaintiff.

(b) *Contents*. The complaint shall contain a concise jurisdictional statement, and a clear and concise statement sufficient to put the defendant on notice of the acts or practices it is alleged to have committed in violation of the order, the regulations, or its contractual obligations. The complaint shall also contain a prayer regarding the relief being sought, a statement of whatever sanctions the Government will seek to impose and the name and address of the attorney who will represent the Government.

(c) *Amendment*. The complaint may be amended once as a matter of course before an answer is filed, and the defendant may amend its answer once as a matter of course not later than 10 days after the filing of the original answer. Other amendments of the complaint or of the answer to the complaint shall be made only by leave of the Administrative Law Judge or by written consent of the adverse party; and leave shall be freely given where justice so requires. An amended complaint shall be answered within 14 days of its service, or within the time for filing an answer to the original complaint, whichever period is longer. An amended answer shall be responded to within 14 days of its service.

§ 60-30.6 Answer.

(a) *Filing and service*. Within 20 days after the service of the complaint, the defendant shall file an answer with the Chief Administrative Law Judge if the case has not been assigned to an Administrative Law Judge. The answer shall be signed by the defendant or its attorney, and served on the Government in accordance with § 60-30.4(b).

(b) *Contents; failure to file*. (1) The answer shall:

(i) Contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the defendant is without knowledge, in which case the answer shall so state; or

(ii) State that the defendant admits all the allegations of the complaint.

(2) The answer may contain a waiver of hearing; and if not, a separate paragraph in the answer shall request a hearing.

(3) The answer shall contain the name and address of the defendant, or of the attorney representing the defendant.

(4) Failure to file an answer or to plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) *Procedure, upon admission of facts*. The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge, without further hearing, may prepare his decision in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint. The parties shall be given an opportunity to file exceptions to his decision and to file briefs in support of the exceptions.

§ 60-30.7 Notice of prehearing conference.

The Administrative Law Judge shall respond to defendant's request for a hearing within 15 days and shall serve a notice of prehearing conference on the parties. The notice shall contain the time and place of the conference.

§ 60-30.8 Motions; disposition of motions.

(a) *Motions*. Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the Administrative Law Judge. If made before or after the hearing itself, the motions shall be in writing. If made at the hearing, motions may be stated orally; but the Administrative Law Judge may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Unless otherwise ordered by the Administrative Law Judge, written motions shall be accompanied by a supporting memorandum. Within 10 days after a written motion is served, or such other time period as may be fixed, any party may file a response to a motion.

(b) *Disposition of motions*. The Administrative Law Judge may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing, but may overrule or deny such motion without awaiting response: Provided, That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions.

§ 60-30.9 Interrogatories, and admissions as to facts and documents.

(a) *Interrogatories*. Not later than 25 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the Administrative Law Judge may order, any party may serve upon an opposing party written interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless objected to. Answers are to be signed by the person making them and objections by the attorney or by whoever is representing the party. Answers and objections shall be filed and served within 25 days of service of the interrogatory.

(b) *Admissions*. Not later than 14 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the Administrative Law Judge may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within 25 days after service, the party to whom the request is directed serves upon the requesting party a sworn statement either:

(1) Denying specifically the matter as to which an admission is requested; or

(2) Setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

(c) *Objections or failures to respond*. The party submitting the interrogatory or request may move for an order with respect to any objection or other failure to respond.

§ 60-30.10 Production of documents and things and entry upon land for inspection and other purposes.

(a) After commencement of the action, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any unprivileged documents, phonorecords, and other compilations, including computer tapes and printouts which contain or may lead to relevant information and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(b) After commencement of the action, any party may serve on any other party a request to permit entry upon designated property which may be relevant to the issues in the proceeding and, which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object or area.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time and place for making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 25 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection shall be stated. The party submitting the request may move for an order with respect to any objection or to other failure to respond.

§ 60-30.11 Depositions upon oral examination.

(a) *Depositions; notice of examination*. After commencement of the action, any party may take the testimony of any person, including a party, having personal or expert knowledge of the matters in issue, by deposition upon oral examination. A party desiring to take a deposition shall give reasonable notice in writing to every other party to the proceeding, and may use an administrative subpoena. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice shall also set forth the categories of documents the witness is to bring with him to the deposition, if any. A copy of the notice shall be furnished to the person to be examined unless his name is unknown.

(b) *Production of witnesses; obligation of parties; objections*. It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Unless the parties agree otherwise, depositions shall be held within the county in which the witness resides or works. The party or prospective witness may file with the Administrative Law Judge an objection within 5 days after notice of production of such witness is served, stating with particularity the reasons why the party cannot or ought not to produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness. All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

(c) *Before whom taken; scope of examination; failure to answer*. Depositions may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the deposition is held. At the time and place specified in the notice, each party shall be permitted to examine and cross-examine the witness under oath upon any matter which is relevant to the subject matter of the proceeding, or which is reasonably calculated to lead to the production of relevant and otherwise admissible evidence. All objections to questions, except as to the form thereof, and all objections to evidence are reserved until the hearing. A refusal or failure on the part of any person under the control of a party to answer a question shall operate to create a presumption that the answer, if given, would be unfavorable to the controlling party, unless the question is subsequently ruled improper by the Administrative Law Judge or the Administrative Law Judge rules that there was valid justification for the witness' failure or refusal to answer the question: Provided, That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused to answer, and state his intention to invoke the presumption if no answer is forthcoming.

(d) *Subscription; certification; filing*. The testimony shall be reduced to typewriting, either by the officer taking the deposition or under his direction, and shall be submitted to the witness for examination and signing. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be noted in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver the original copy of the transcript, together with his certificate, in person or by mail to the Administrative Law Judge. Copies of the transcript and certificate shall be furnished to all persons desiring them, upon payment of reasonable charges, unless distribution is restricted by order of the Administrative Law Judge for good cause shown.

(e) *Rulings on admissibility; use of deposition*. Subject to the provisions of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying. Any part or all of a deposition, so far as admissible in the discretion of the Administrative Law Judge, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or was designated to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by the adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Administrative Law Judge finds:

(i) That the witness is dead; or

(ii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iii) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(iv) Upon application and notice, that such exceptional circumstances exist as to make it desirable to allow the deposition to be used.

(4) If only part of a deposition is introduced in evidence by a party, any party may introduce any other parts by way of rebuttal and otherwise.

(f) *Stipulations*. If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

§ 60-30.12 Prehearing conferences.

(a) Upon his own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact and of contents and authenticity of documents;

(4) Limitation of number of witnesses;

(5) Scheduling dates for the exchange of witness lists and of proposed exhibits; and

(6) Such other matters as may tend to expedite the disposition of the proceedings.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

§ 60-30.13 Consent findings and order.

(a) *General*. At any time after the issuance of a complaint and prior to or during the reception of evidence in any proceeding, the parties may jointly move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the Administrative Law Judge after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content*. Any agreement containing consent findings and an order disposing of a proceeding shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) That any further procedural steps are waived; and

(4) That any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement is waived.

(c) *Submission*. On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the Administrative Law Judge for his consideration; and

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition*. In the event an agreement containing consent findings and an order is submitted within the time allowed, the Administrative Law Judge, within 30 days, shall accept such agreement by issuing his decision based upon the agreed findings, and his decision shall constitute the final Administrative order.

Hearings and Related Matters

§ 60-30.14 Designation of Administrative Law Judges.

Hearings shall be held before an Administrative Law Judge of the Department of Labor who shall be designated by the Chief Administrative Law Judge of the Department of Labor. After commencement of the proceeding but prior to the designation of an

Administrative Law Judge, pleadings and papers shall be filed with the Chief Administrative Law Judge.

§ 60-30.15 Authority and responsibilities of Administrative Law Judges.

The Administrative Law Judge shall propose findings and conclusions to the Secretary of Labor (Secretary) on the basis of the record. In order to do so, he shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to those ends, including, but not limited to, the power to:

(a) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding by consent of the parties or upon his own motion;

(b) Require parties to state their position with respect to the various issues in the proceeding;

(c) Require parties to produce for examination those relevant witnesses and documents under their control; and require parties to answer interrogatories and requests for admissions in full;

(d) Administer oaths;

(e) Rule on motions, and other procedural items or matters pending before him;

(f) Regulate the course of the hearing and conduct of participants therein;

(g) Examine and cross-examine witnesses, and introduce into the record documentary or other evidence;

(h) Receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(i) Fix time limits for submission of written documents in matters before him and extend any time limits established by this part upon a determination that no party will be prejudiced and that the ends of justice will be served thereby;

(j) Impose appropriate sanctions against any party or person failing to obey an order under this part which may include:

(1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence;

(2) Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party having control over him; and

(3) Expelling any party or person from further participation in the hearing;

(k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice;

(l) Recommend whether the respondent is in current violation of the order, regulations, or its contractual obligations, as well as the nature of the relief necessary to insure the full enjoyment of the rights secured by the order;

(m) Issue subpoenas; and

(n) Take any action authorized by this part.

§ 60-30.16 Appearances.

(a) *Representation*. The parties or other persons or organizations participating pursuant to this part have the right to be represented by counsel.

(b) *Failure to appear*. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the Administrative Law Judge. Failure to appear at the hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's recommended decision and to file exceptions to it.

§ 60-30.17 Appearance of witnesses.

(a) A party wishing to procure the appearance at the hearing of any person having personal or expert knowledge of the matters in issue shall serve on the prospective witness a notice, which may be accomplished by an administrative subpoena, setting forth the time, date, and place at which he is to appear for the purpose of giving testimony. The notice shall also set forth the categories of documents the witness is to bring with him to the hearing, if any. A copy of the notice shall be filed with the Administrative Law Judge and additional copies shall be served upon the opposing parties.

(b) It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Due regard shall be given to the convenience of witnesses in scheduling their testimony so that they will be detained no longer than reasonably necessary.

(c) The party or prospective witness may file an objection within 5 days after notice of production of such witness is served stating with particularity the reasons why the party cannot produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness.

§ 60-30.18 Rules of evidence.

In any hearing, decision, or administrative review conducted pursuant to this part, all evidentiary matters shall be governed by Office of Administrative Law Judges' Rules of evidence at 29 CFR part 18, subpart B.

§ 60-30.19 Objections; exceptions; offer of proof.

(a) *Objections*. If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made on the record may be relied upon subsequently in the proceedings.

(b) *Exceptions*. Formal exception to an adverse ruling is not required. Rulings by the Administrative Law Judge shall not be appealed prior to the transfer of the case to the Secretary, but shall be considered by the Secretary upon filing exceptions to the Administrative Law Judge's recommendations and conclusions.

(c) *Offer of proof*. An offer of proof made in connection with an objection taken to any ruling excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 60-30.20 Ex parte communications.

The Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. No employee or agent of the Federal Government engaged in the investigation and prosecution of this case shall participate or advise in the rendering of the recommended or final decision in the case, except as witness or counsel in the proceeding.

§ 60-30.21 Oral argument.

Any party shall be entitled upon request to a reasonable period between the close of evidence and termination of the hearing for oral argument. Oral arguments shall be included in the official transcript of the hearing.

§ 60-30.22 Official transcript.

The official transcripts of testimony taken, together with any exhibits, briefs, or memorandums of law, shall be filed with the Administrative Law Judge. Transcripts of testimony may be obtained from the official reporter by the parties and the public as provided in section 11(a) of the Federal Advisory Committee Act (86 Stat. 770). Upon notice to all parties, the Administrative Law Judge may authorize such corrections to the transcript as are necessary to reflect accurately the testimony.

§ 60-30.23 Summary judgment.

(a) *For the Government*. At any time after the expiration of 20 days from the commencement of the action, or after service of a motion for summary judgment by the respondent, the Government may move with or without supporting affidavits for a summary judgment upon all claims or any part.

(b) *For defendant*. The defendant may, at any time after commencement of the action, move with or without supporting affidavits for summary judgment in its favor as to all claims or any part.

(c) *Other parties*. Any other party to a formal proceeding under this part may support or oppose motions for summary judgment made by the Government or respondent, in accordance with this section, but may not move for a summary judgment in his own behalf.

(d) *Statement of uncontested facts*. All motions for summary judgment shall be accompanied by a "Statement of Uncontested Facts" in which the moving party sets forth all alleged uncontested material facts which shall provide the basis for its motion. At least 5 days prior to the time fixed for hearing on the motion, any party contending that any material fact regarding the matter covered by the motion is in dispute, shall file a "Statement of Disputed Facts." Failure to file a "Statement of Disputed Facts" shall be deemed as an admission to the "Statement of Uncontested Facts."

(e) *Motion and proceedings*. The motion shall be served upon all parties at least 15 days before the time fixed for the hearing on the motion. The adverse party or parties may serve opposing affidavits prior to the day of hearing. The judgment sought shall be rendered forthwith if the complaint and answer, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Summary judgment rendered for or against the Government or the respondent shall constitute the findings and recommendations on the issues involved. Hearings on motions made under this section shall be scheduled by the Administrative Law Judge.

(f) *Case not fully adjudicated on motion*. If on motion under this section judgment is not rendered upon the whole case or for all the relief asked and a final hearing is necessary, the Administrative Law Judge at the hearing of the motion, by examining the notice and answer and the evidence before him and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which relief is not in controversy, and directing such further proceedings as are just. At the hearing on the merits, the facts so specified shall be deemed established, and the final hearing shall be conducted accordingly.

§ 60-30.24 Participation by interested persons.

(a)(1) To the extent that proceedings hereunder involve employment of persons covered by a collective bargaining agreement, and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party.

(2) Other persons or organizations shall have the right to participate as parties if the final Administrative order could adversely affect them or the class they represent, and such participation may contribute materially to the proper disposition of the proceedings.

(3) Any person or organization wishing to participate as a party under this section shall file with the Administrative Law Judge and serve on all parties a petition within 25 days after the commencement of the action or at such other time as ordered by the

Administrative Law Judge, so long as it does not disrupt the proceeding. Such petition shall concisely state:

(i) Petitioner's interest in the proceedings;

(ii) Who will appear for petitioner;

(iii) The issues on which petitioner wishes to participate; and

(iv) Whether petitioner intends to present witnesses.

(4) The Administrative Law Judge shall determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the Administrative Law Judge may request all such petitioners to designate a single representative to represent all such petitioners: Provided, That the representative of a labor organization qualifying to participate under paragraph (a)(1) of the section must be permitted to participate in the proceedings. The Administrative Law Judge shall give each petitioner written notice of the decision on his petition; and if the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The Administrative Law Judge shall give written notice to each party of each petition granted.

(b)(1) Any other interested person or organization wishing to participate as amicus curiae shall file a petition before the commencement of the final hearing with the Administrative Law Judge. Such petition shall concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner; and

(iii) The issues on which petitioner intends to present argument. The Administrative Law Judge may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, and that such participation may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this section.

(2) An amicus curiae may present a brief oral statement at the hearing at the point in the proceeding specified by the Administrative Law Judge. He may submit a written statement of position to the Administrative Law Judge prior to the beginning of a hearing and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs and exceptions, and he shall serve a copy on each party.

Post-Hearing Procedures

§ 60-30.25 Proposed findings of fact and conclusions of law.

Within 20 days after receipt of the transcript of the testimony, each party and amicus may file a brief. Such briefs shall be served simultaneously on all parties and amici, and a certificate of service shall be furnished to the Administrative Law Judge. Requests for additional time in which to file a brief shall be made in writing, and copies shall be served simultaneously on the other parties. Requests for extensions shall be received not later than 3 days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

§ 60-30.26 Record for recommended decision.

The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, including briefs, but excepting the correspondence section of the docket, shall constitute the record for decision.

§ 60-30.27 Recommended decision.

Within a reasonable time after the filing of briefs, the Administrative Law Judge shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record for recommended decision, to the Administrative Review Board, United States Department of Labor, for a final Administrative order. The recommended findings, conclusions, and decision shall be served on all parties and amici to the proceeding.

§ 60-30.28 Exceptions to recommended decisions.

Within 14 days after receipt of the recommended findings, conclusions, and decision, any party may submit exceptions to said recommendation. These exceptions may be responded to by other parties within 14 days of their receipt by said parties. All exceptions and responses shall be filed with the Administrative Review Board, United States Department of Labor. Service of such briefs or exceptions and responses shall be made simultaneously on all parties to the proceeding. Requests to the Administrative Review Board, United States Department of Labor, for additional time in which to file exceptions and responses shall be in writing and copies shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due.

§ 60-30.29 Record.

After expiration of the time for filing briefs and exceptions, the Administrative Review Board, United States Department of Labor, shall make a decision, which shall be the Administrative order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and briefs filed subsequent to the Administrative Law Judge's decision.

§ 60-30.30 Administrative order.

After expiration of the time for filing, the Administrative Review Board, United States Department of Labor, shall make a decision which shall be served on all parties. If the Administrative Review Board, United States Department of Labor, concludes that the defendant has violated VEVRAA, section 503, the equal opportunity clauses at 41 CFR 60-300.5 or 60-741.5, the VEVRAA regulations in 41 CFR part 60-300, or section 503 regulations in 41 CFR part 60-741, an Administrative order shall be issued enjoining the violations, and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative order shall result in the immediate cancellation, termination, and suspension of the respondent's contracts and/or debarment of the respondent from further contracts.

Expedited Hearing Procedures

§ 60-30.31 Expedited hearings—when appropriate.

Expedited hearings may be used, inter alia, when a contractor or subcontractor has violated a conciliation agreement; has not adopted and implemented an acceptable affirmative action program; has refused to give access to or to supply records or other information as required by the equal opportunity clause; or has refused to allow an on-site compliance review to be conducted.

§ 60-30.32 Administrative complaint and answer.

(a) Expedited hearings shall be commenced by filing an administrative complaint in accordance with § 60-30.5. The complaint shall state that the hearing is subject to these expedited hearing procedures.

(b) The answer shall be filed in accordance with § 60-30.6(a) and (b).

(c) Failure to request a hearing within the 20 days provided by § 60-30.6(a) shall constitute a waiver of hearing, and all the material allegations of fact contained in the complaint shall be deemed to be admitted. If a hearing is not requested or is waived, within 25 days of the complaint's filing, the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint, and shall order the appropriate sanctions and/or penalties sought in the complaint. The Administrative Law Judge's findings and order shall constitute a final Administrative order, unless the Office of the Solicitor, U.S. Department of Labor, files exceptions to the findings and order within 10 days of receipt thereof. If the Office of the Solicitor, U.S. Department of Labor, files exceptions, the matter shall proceed in accordance with § 60-30.36.

(d) If a request for a hearing is received within 20 days as provided by § 60-30.6(a), the hearing shall be convened within 45 days of receipt of the request and shall be completed within 15 days thereafter, unless more hearing time is required.

§ 60-30.33 Discovery.

(a) Any party may serve requests for admissions in accordance with § 60-30.9(b) and (c).

(b) Witness lists and hearing exhibits will be exchanged at least 10 days in advance of the hearing.

(c) For good cause shown, and upon motion made in accordance with § 60-30.8, the Administrative Law Judge may allow the taking of depositions. Other discovery will not be permitted.

§ 60-30.34 Conduct of hearing.

(a) At the hearing, the Government shall be given an opportunity to demonstrate the basis for the request for sanctions and/or remedies, and the contractor shall be given an opportunity to show that the violation complained of did not occur and/or that good cause or good faith efforts excuse the alleged violations. Both parties shall be allowed to present evidence and argument and to cross-examine witnesses.

(b) The hearing shall be informal in nature, and the Administrative Law Judge shall not be bound by formal rules of evidence.

§ 60-30.35 Recommended decision after hearing.

Within 15 days after the hearing is concluded, the Administrative Law Judge shall recommend findings, conclusions, and a decision. The Administrative Law Judge may permit the parties to file written post-hearing briefs within this time period, but the Administrative Law Judge's recommendations shall not be delayed pending receipt of such briefs. These recommendations shall be certified, together with the record, to the Administrative Review Board, United States Department of Labor, for a final Administrative order. The recommended decision shall be served on all parties and amici to the proceeding.

§ 60-30.36 Exceptions to recommendations.

Within 10 days after receipt of the recommended findings, conclusions and decision, any party may submit exceptions to said recommendations. Exceptions may be responded to by other parties within 7 days after receipt by said parties of the exceptions. All exceptions and responses shall be filed with the Administrative Review Board, United States Department of Labor. Briefs or exceptions and responses shall be served simultaneously on all parties to the proceeding.

§ 60-30.37 Final Administrative order.

After expiration of the time for filing exceptions, the Administrative Review Board, United States Department of Labor, shall issue an Administrative order which shall be served on all parties. Unless the Administrative Review Board, United States Department of Labor, issues an Administrative order within 30 days after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this section, § 60-30.30 shall be applicable to this section.

§ 60-30.38 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60-40 [REMOVED AND RESERVED]

7. Under the authority of E.O. 14173, remove and reserve 41 CFR part 60-40.

PART 60-50 [REMOVED AND RESERVED]

8. Under the authority of E.O. 14173, remove and reserve 41 CFR part 60-50.

PART 60-999 [REMOVED AND RESERVED]

9. Under the authority of E.O. 14173, remove and reserve 41 CFR part 60-999.

Dated: August 19, 2026.

Kenneth Wolfe,

Director, Office of Federal Contract Compliance Programs.

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