

Early Resolution Conciliation Agreement
Between the
U.S. Department of Labor
Office of Federal Contract Compliance Programs
and
US Foods, Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (“OFCCP”) evaluated the US Foods, Inc. (US Foods) establishment located at 7801 Statesville Road, Charlotte, North Carolina 28269, beginning on May 6, 2021. OFCCP is alleging that US Foods failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), and its respective implementing regulations at Title 41 of the Code of Federal Regulations (CFR) Parts 60-1 through 60-3.

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

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

II. General Terms and Conditions

1. In exchange for US Foods’ fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, based on the violations alleged below. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if US Foods violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review US Foods’ compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. US Foods will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves US Foods of its obligation to fully comply with the requirements of E.O. 11246, 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), their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. US Foods and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246.

5. US Foods agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
8. This Agreement becomes effective on the day it is signed by the Director of the Southeast Region (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after US Foods submits its final progress report required in Section VI below, unless OFCCP notifies US Foods in writing before the expiration date that US Foods has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that US Foods has met all of its obligations under the Agreement.
11. If US Foods violates this Agreement:
 - a. The procedures at 41 CFR 60-1.34 will govern:
 - i. OFCCP will send US Foods a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. US Foods shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If US Foods is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
 - iv. In the event of a breach of this Agreement by US Foods, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms agreed to in the Agreement.
 - b. US Foods may be subject to the sanctions set forth in Section 209 of Executive Order, 41 CFR 60-1.27 and/or other appropriate relief for violating this Agreement.

12. This Agreement does not constitute an admission by US Foods of any violation of the Executive Order, nor has there been an adjudicated finding that US Foods violated the Executive Order.
13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
14. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than OFCCP.
15. Each party shall bear its own fees and expenses with respect to this matter.
16. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
17. All references to “days” in this Agreement, and in the Timeline included as Attachment B, are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

III. Discrimination Allegation

1. OFCCP alleges that during the period of January 1, 2020, through December 31, 2020, US Foods discriminated against female applicants who applied for Selector positions at the Charlotte, North Carolina establishment, in violation of 41 CFR 60-1.4(a)(1). Specifically, OFCCP found statistically significant differences in the hiring rates for female applicants when compared to male applicants, resulting in a shortfall of ten (10) female hires.

IV. Financial Remedy

1. Settlement Fund

The total Settlement Fund amount includes \$85,795.79 in back pay and \$10,603.97 in interest to resolve the alleged specific violation set forth above, for a total of \$96,399.76. The Settlement Fund is a negotiated amount that represents restitution for estimated back pay and accrued interest. US Foods’ share of taxes on the portion representing back pay, such as Federal Income Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) or other federal, state and/or local taxes, is not part of the Settlement Fund. US Foods will be responsible for any banking account fees.

2. Allocation

- a. **Total Amount to be Allocated.** The back pay and interest amount of the Settlement Fund will be distributed equally among the eligible applicants as explained in this Section. Individual shares will include appropriate deductions for each individual's share of payroll deductions required by law on the portion representing back pay only, such as federal (FICA), state or local insurance premiums or taxes.
- b. **Affected Applicants Eligible to Receive Payments.** The Settlement Fund will be distributed to all Affected Applicants (identified in Attachment A) who timely respond to the Notice Process as explained below, and whose eligibility is verified (hereinafter, Eligible Applicants). These individuals will be listed on the Final List of Eligible Applicants (Final List). The process of determining the Final List is explained below under Notice Process. All Eligible Applicants are entitled to their equal share of the monetary settlement regardless of whether they are currently interested in employment with US Foods.
- c. **Payments to Eligible Applicants.** US Foods will issue checks or make electronic payments to each Eligible Applicant, along with appropriate tax reporting forms (such as W-2 and Internal Revenue Service (IRS) Form 1099) by the date set forth on the Timeline. OFCCP will receive timely documentation of all payments made and any payments returned undelivered, or any checks not cashed, as set forth on the Timeline. Reasonable efforts will be made to ensure that all Eligible Applicants listed on the Final List have an opportunity to claim their portion of the settlement. Where it is determined that an Eligible Applicant did not receive a check or that a check was lost, OFCCP and US Foods will work together to provide a replacement check before any funds are redistributed to other class members. Any check that remains uncashed 120 days after the initial date the check was mailed to the Eligible Applicant will be void. With respect to any uncashed funds, US Foods will deposit the monies within thirty (30) days with the state agency responsible for unclaimed funds of the last known address for the Eligible Individual, in accordance with any and all applicable laws and regulations.¹ US Foods will notify each Eligible Applicant whose check is sent to the state agency in charge of unclaimed property. No portion of the settlement fund shall revert back, directly or indirectly, to US Foods or any affiliate.
- d. **Tax Payments, Forms and Reporting.** US Foods will pay the employer's share of social security withholdings, and any other tax payments required by law, from additional funds separate from the Settlement Fund. US Foods shall mail to each Eligible Applicant an IRS Form W-2 for that portion of the payment representing back pay and an IRS Form 1099 for that portion of the payment representing interest. These IRS forms will be provided to the Eligible Applicant either at the time of payment, or in the time required by law. No Eligible Applicant will be required to complete a W-4

¹ In North Carolina, the North Carolina Department of State Treasurer, Unclaimed Property Division.

or W-9 in order to receive payments under this settlement.² Pursuant to the Tax Cuts and Jobs Act (TCJA), OFCCP will report to the IRS via a form 1098-F when an employer (or individual) is required to pay fines, penalties, restitution, remediation, or other costs in excess of \$50,000 as a result of a violation of law or an investigation or inquiry into a violation of law.³

3. Notice Process

- a. **OFCCP and US Foods Obligations under the Notice Process.** The Notice Process set forth in this agreement is intended to provide Affected Applicants a meaningful opportunity to understand their rights and obligations and act on them in a timely manner. This includes providing notice in multiple relevant languages to the affected workers upon request and providing technical assistance to Affected Applicants seeking information about their rights and obligations under this Agreement. As specified in the Timeline and as otherwise necessary to fulfill this Agreement, US Foods and OFCCP will regularly meet and confer in person, by phone and/or by email on the notice process to determine how best to carry out the Notice provisions of this Agreement, and to decide whether any activity, deadline or document should be modified. OFCCP and US Foods agree not to unreasonably withhold consent to reasonable modifications proposed by either party.
- b. **Notice Documents.** US Foods will distribute Notice Documents to Affected Applicants identified in Attachment C consistent with the sample Notice Documents contained in Attachment C1, C2, and C3. The Notice Documents may include a Notice, Release of Claims and Information Verification Forms. The Notice Documents will make clear the information about the settlement is being provided by or on behalf of the U.S. Department of Labor. As specified in the Timeline and as otherwise necessary to fulfill this Agreement, the parties will meet and confer on any reasonable modifications of the sample Notice Documents or additions to the materials distributed by US Foods, if proposed by either party.
- c. **Timeline.** Attachment B sets forth the agreed Timeline for Notice and for the parties' other obligations under this Agreement. The parties will meet and confer on any reasonable modifications to the Timeline proposed by either party.
- d. **Search for Affected Applicants.** OFCCP shall provide US Foods with complete contact information in its possession or its authority to obtain on the Affected Applicants by the date set forth in the Timeline.

² IRS guidance states that an employer can assume a single deduction in the absence of a W-4 form. *See* 26 CFR 31.3402(f)(2)-1(a).

³ The IRS issued its implementing regulations in January 2021.

<https://www.federalregister.gov/documents/2021/01/19/2021-00741/denial-of-deduction-for-certain-fines-penalties-and-other-amounts-related-information-reporting>

- e. **Distribution of Mail Notice to Affected Applicants.** US Foods will provide initial notice by regular first-class mail. US Foods will send copies of all of the Notice Documents as defined above, including a postage-paid return envelope, by first class mail to the best available mailing address for each Affected Applicant, by the date set forth in the Timeline. If envelopes from the initial mail notice are returned with forwarding addresses, US Foods will re-mail the Notice Documents within five (5) days of receipt of the forwarding address.

Based on the response to the initial mail notice, the parties will meet and confer by the date set forth in the Timeline to assess the results of the initial mail notice and to ensure that the second round of mail notice maximizes the potential response rate. A second mail notice will be sent to Affected Applicants with valid addresses who fail to respond to the first mail notice unless the parties agree otherwise.

- f. **Notice Deadline.** The final deadline for any Affected Applicant to respond to the notice is set forth in the Timeline. The parties will prominently display this deadline on all materials they distribute in paper or online form regarding this Agreement and explain that failure to respond by this deadline will result in a forfeiture of any relief provided by this Agreement.
- g. **Technical Assistance.** The parties will timely respond to any inquiries from Affected Applicants using information consistent with this Agreement and the Notice Documents and will document all inquiries and the result. OFCCP will provide contact information for individuals to contact OFCCP regarding this Agreement. The parties will prominently display this contact information on all materials they distribute in paper or online form regarding this Agreement. US Foods will provide OFCCP contact information to any Affected Applicant with questions or concerns.
- h. **Exchange of Information Regarding Affected Applicants/Employees.** US Foods and OFCCP will timely exchange information regarding Affected Applicants, including updated contact information and the results of any technical assistance provided.
- i. **Final List of Eligible Applicants.** The Final List will include all Affected Applicants who timely respond to the Notice and submit the Information Verification Form and Release of Claims by the deadline set forth in the Timeline and whose eligibility is verified by OFCCP. The parties will establish the Final List by the date set forth in the Timeline. The parties will meet and confer on any outstanding issues or questions regarding the Final List. Either party may identify potentially eligible Applicants who may have been erroneously excluded from the original or any subsequent list. OFCCP shall make the final determinations of eligibility but will make every effort to negotiate in good faith to resolve any dispute about the Final List. US Foods will provide to OFCCP any information necessary to determine the Final List.
- j. **Documentation of Payments.** By the deadline set forth in the Timeline, US Foods will provide OFCCP with copies of cancelled checks or electronic documentation of all

payments to Eligible Applicants, including the amounts paid, the date payment was sent, the date payment was received, or the check cashed, and any uncashed or returned checks. In the event of any uncashed funds after the distribution, US Foods will submit documentation showing that uncashed funds have been deposited with the respective unclaimed state agency responsible for unclaimed funds.

- k. **US Foods' Expenses.** US Foods will pay all expenses associated with carrying out its duties pursuant to this Section, from funds separate and apart from the amount designated in this Agreement for the Settlement.

V. Additional Individual Relief

1. Job Opportunities

- a. **Description of Job Opportunities.** As vacancies occur in Selector positions, US Foods shall make bona fide job offers with retroactive seniority to Eligible Applicants who have expressed interest in employment and are not currently employed in the job at issue by US Foods, until ten (10) are hired or the list of Eligible Applicants is exhausted, whichever comes first. Until that time, these Eligible Applicants will have priority over all other candidates for hire into Selector positions. As vacancies occur in Selector positions, US Foods shall contact the Eligible Applicants with a written job offer in the order in which they applied to the requisition link provided by US Foods.

The report-to-work date for Eligible Applicants hired pursuant to this Agreement shall be no later than twenty-one (21) days after the date that the conditional offer of employment is accepted, and conditions satisfied, unless US Foods has good cause to delay the start date. The Eligible Applicant must report to work on the day designated or provide US Foods notice of good cause for their absence on or before that date.⁴ If good cause is provided, the Eligible Applicant must report to work within five (5) days of the original designated start date. Otherwise, US Foods may withdraw the job offer and shall be under no obligation to hire the Eligible Applicant under this Agreement but remains obligated to hire until 10 are filled or the list of Eligible Applicants is exhausted, whichever comes first.

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

⁴ An example of good cause could be an Eligible Applicant who provides their current employer with a two weeks' notice and notifies US Foods about this situation along with a request for a delayed start date.

- b. **Reporting.** US Foods will document the job offers and hires, including job offers made, reasons for rejection, and Eligible Applicants hired and terminated during the monitoring period as set forth in Section VI below.

2. Review of Policies and Procedures – Consultant

- a. **Engagement of Consultant.** US Foods retained the services of an outside consultant experienced in the areas of equal opportunity and employment discrimination law (Consultant). The Consultant will continue to monitor US Foods’ policies and procedures related to recruitment and hiring of females into Selector positions, including the following:
 - i. Evaluating US Foods’ policies, procedures and practices relating to recruitment and hiring for Selector positions at the Reviewed Establishment for neutral job recruitment, selection, and placement. This shall include, but not be limited to, evaluating:
 - 1. The use of centralized recruiters rather than local managers to screen, interview, and make offers of employment.
 - 2. Removing any unnecessary job requirements, including previous warehouse or pallet jack experience or the need to have previously worked a night shift.
 - ii. Evaluating US Foods’ methods of external recruitment, including developing additional outreach and recruitment resources, to help ensure equal access to job opportunities.
 - iii. Monitoring the impact of any changes to US Foods’ recruitment or hiring process on the company’s affirmative action and equal employment opportunity compliance.
 - iv. Evaluating workplace specific training for US Foods that addresses and enhances its affirmative action and equal employment opportunity compliance in US Foods’ recruitment and hiring process.
- b. **Modifications to the Selector Hiring Process.** OFCCP will review US Foods’ use of the revised hiring process, as well as any other recruitment, selection, and placement process, at the Reviewed Establishment, to determine if it’s a neutral process, and if it results in the improvement of the hiring rates for females in Selector positions.
- c. **Distribution and Training.** Where US Foods implements any of the suggestions from the Consultant, it will distribute new policies to all affected employees. US Foods, or the Consultant, shall also train affected employees regarding any new policies or procedures.

- d. **Continued Assessment.** US Foods, in consultation with the Consultant shall monitor the results of changes to policies and procedures on an annual basis for the duration of this Agreement and provide further recommendations to US Foods as necessary to ensure equal employment opportunity.
- e. **Reporting.** US Foods will provide reports to OFCCP as required by Section VI below. The reports will indicate whether the revised hiring process has been fully implemented and whether the individuals involved in the revised hiring process are following the revised policies and procedures. The monitoring reports will also include the recommendations, if any, made by the Consultant to alter or change the revised recruitment and hiring process, its implementation, or training, to ensure a nondiscriminatory hiring process.

3. **Adverse Impact Analyses and Associated Remedies**

- a. **Adverse Impact Analyses.** US Foods will conduct adverse impact analyses for Selector applicants on a semi-annual and annual basis for the duration of this Agreement and consistent with the requirements of 41 CFR 60-3.4 and 41 CFR 60-3.15. In conducting these analyses of future selection results, US Foods will not include hires made pursuant to this Agreement.
- b. **Investigating Causes for Disparities.** Where US Foods identifies a statistically significant disparity in the overall selection process for females, it will investigate the potential cause(s) of the disparities. This will include analyzing each phase of the selection process and each applicable employment screen or test for adverse impact.
- c. **Remedies.** Where adverse impact is identified in a 12-month monitoring period, and US Foods is unable to demonstrate that the cause of the impact is job-related and consistent with business necessity, US Foods will modify its policies or procedures accordingly to address the cause of the disparate impact. US Foods shall also discuss with OFCCP and implement appropriate job opportunities and remedial relief for affected individuals.
- d. **Reporting.** As part of its monitoring reports under this Agreement, US Foods will provide copies of the adverse impact analyses conducted pursuant to this Agreement, the underlying data used for the analyses, and copies of all subsequent investigation and analyses conducted pursuant to this Section. US Foods will also provide evidence of any actions taken to remedy unjustifiable disparities.

4. **Recordkeeping and Retention**

US Foods shall implement procedures to ensure that all expressions of interest for Selector positions are tracked, and selection decisions are documented at each step in the hiring process. US Foods shall maintain procedures to ensure that documents are retained in accordance with 41 CFR 60-1.12(a) and 41 CFR Part 60-3.

5. Training

Content - Within 12 months of the Effective Date of this Agreement, US Foods shall provide initial training, and design a system of ongoing training, for managers and all individuals involved in any way in recruiting, selecting, or tracking expressions of interest for Selector positions. The training shall focus on equal opportunity in hiring. The training will include (but is not limited to) instructions in: the implementation of US Foods' recruitment, tracking, and selection procedures; neutral application of the qualifications and criteria that will be used at each step in the hiring process; procedures to be used to document the decisions made at each step in the hiring process; and the procedures to be used to ensure that documents are retained in accordance with 41 CFR 60-1.12(a) and 41 CFR Part 60-3. US Foods shall provide the names and titles of all individuals responsible for creating training materials and conducting trainings, copies of all training agendas, and attendance records as part of the Reporting provisions of this Agreement.

VI. OFCCP Monitoring Period

1. **Recordkeeping.** US Foods agrees to retain all records relevant to the violations cited in Sections III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. US Foods will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **US Foods Reports.**
 - a. **Schedule and Instructions.** In addition to reports required under the Financial Remedies section of this Agreement, US Foods agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:
 - i. **Progress Report 1:** The first report will be due 14 months after the Effective Date and will cover the period from the Effective Date through 12 months after the Effective Date.
 - ii. **Progress Report 2:** The second report will be due 26 months from the Effective Date and will cover the period from 13 months through 24 months after the Effective Date.

US Foods will submit reports to George Rouse, III., District Director, Charlotte District Office at (b) (6), (b) (7)(C)@dol.gov; with a copy to Compliance Officer (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C)@dol.gov.

US Foods and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports US Foods provides in accordance with this Agreement are customarily kept private or closely

held, and US Foods believes should remain confidential in the event of a FOIA request, US Foods will provide such reports to OFCCP marked as “Confidential.” In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents to the extent permissible under law.

- b. **Reports on Job Offers.** In each Progress Report, US Foods will report on all job offers and hires made to date pursuant to the Agreement until all of the job opportunities for the reviewed establishment are filled or the list of Eligible Applicants expressing interest in Selector positions is exhausted. This includes:
 - i. Documentation of all job offers made to Eligible Applicants, including the names of individuals offered jobs, the date of their application, the date of the offer, the date the offer was accepted or rejected, and the starting pay.
 - ii. Documentation of Eligible Applicants who expressed interest in job offers who did not successfully complete the application process, including the names of these individuals, the date of their application, if any, and the reason US Foods determined they did not successfully complete the application process. This includes individuals who did not receive job offers because all available positions were filled.
 - iii. Documentation of the number of available positions remaining to be filled and the number of Eligible Applicants still on the list.
 - iv. Documentation of the start dates for Eligible Applicants who were hired.
 - v. If US Foods has not filled all of the positions specified in this Agreement by the Progress Report date or contacted all Eligible Applicants interested in the hiring relief, documentation of the reason this action is not complete and the good faith efforts being taken and planned for the next reporting period to complete it.
 - vi. If US Foods fails to meet its hiring obligations under this Agreement by the close of the Monitoring Period or exhausts the list of interested Eligible Applicants, OFCCP reserves its rights under Section II, Paragraphs 10 and 11 of this Agreement to extend the monitoring period or to pursue enforcement remedies.
- c. **Affirmative Action Programs.** US Foods will submit its current year AAP for E.O. 11246 for the reviewed establishment with the first Progress Report and annually thereafter while the CA monitoring period is in effect. The AAPs will contain required support data with the AAPs except for the applicant/hire data US Foods will have submitted earlier.
- d. **Reports from Policy Review.** In each Progress Report US Foods will provide:

- i. Copies of all reports and suggestions made by the Consultant pursuant to the terms of this Agreement;
 - ii. Copies of revised policies and descriptions of any revised procedures implemented as a result of the policy and procedural review required by this Agreement; and
 - iii. Copies of all training materials and attendance records for trainings conducted to explain new policies and procedures.
 - e. **Records of Adverse Impact Analyses and Remedies.** In each progress Report, US Foods will provide:
 - i. Copies of the adverse impact analyses conducted pursuant to this Agreement;
 - ii. The underlying data used for the adverse impact analyses, including a log of all applicants, the job(s) to which they applied, requisition number (if applicable), date of application, any final and intermediate dispositions, job hired into (if applicable), and start date (if applicable); and
 - iii. Copies of all subsequent investigations and analyses conducted pursuant to this Agreement.
 - f. **Training Records.** For all trainings conducted pursuant to the terms of this Agreement, US Foods will provide in each Progress Report:
 - i. The names and titles of all individuals responsible for creating training materials and conducting trainings;
 - ii. Copies of all training agendas; and
 - iii. Attendance records denoting the dates of the trainings, the attendees, the job titles of the attendees.
- 3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts US Foods' final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify US Foods in writing within sixty (60) days of the date of the final progress report that US Foods has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies US Foods within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines US Foods has met all of its obligations under the Agreement.

VIII. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and US Foods, Inc.

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

C78729360EA14FD

Andrew M. Johnstone
Interim General Counsel
US Foods, Inc.
399 W. Higgins Road, Suite 100
Rosemont, Illinois 60018

DATE: 9/29/2023

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

Aida Y. Collins
Regional Director
OFCCP—Southeast Region

DATE: _____

Attachments:

- A. List of Affected Applicants
- B. Timeline
- C. Notice Documents
 - 1. Notice to Affected Applicants
 - 2. Information Verification & Employment Interest Form
 - 3. Release of Claims Form

ATTACHMENT A: LIST OF AFFECTED APPLICANTS

#	Application Date	Candidate ID	Candidate Name	Gender
1	(b) (6), (b) (7)(C)			F
2				F
3				F
4				F
5				F
6				F
7				F
8				F
9				F
10				F
11				F
12				F
13				F
14				F
15				F
16				F
17				F
18				F
19				F
20				F
21				F
22				F
23				F
24				F
25				F
26				F
27				F
28				F
29				F
30				F
31				F
32				F
33				F
34				F
35				F
36				F
37				F
38				F
39				F

#	Application Date	Candidate ID	Candidate Name	Gender
40	(b) (6), (b) (7)(C)			F
41				F
42				F
43				F
44				F
45				F
46				F
47				F
48				F
49				F
50				F
51				F
52				F
53				F
54				F
55				F
56				F
57				F
58				F
59				F
60				F
61				F
62				F
63				F
64				F
65				F
66				F
67				F
68				F
69				F
70				F
71	F			
72	F			
73	F			
74	F			
75	F			
76	F			
77	F			
78	F			
79	F			
80	F			

#	Application Date	Candidate ID	Candidate Name	Gender
81	(b) (6), (b) (7)(C)			F
82				F
83				F
84				F
85				F
86				F
87				F
88				F
89				F
90				F
91				F
92				F
93				F
94				F
95				F
96				F
97				F
98				F
99				F
100				F
101				F
102	F			
103	F			
104	F			
105	F			
106	F			
107	F			
108	F			
109	F			
110	F			
111	F			
112	F			
113	F			
114	F			
115	F			
116	F			
117	F			
118	F			
119	F			
120	F			
121	F			

#	Application Date	Candidate ID	Candidate Name	Gender
122	(b) (6), (b) (7)(C)			F
123				F
124				F
125				F
126				F
127				F
128				F
129				F
130				F
131				F
132				F
133				F
134				F
135				F
136				F
137				F
138				F
139				F
140				F
141				F
142				F
143				F
144				F
145				F
146				F
147				F
148				F
149				F
150				F
151				F
152				F
153				F
154				F
155				F
156				F
157				F
158				F
159				F
160				F
161				F

#	Application Date	Candidate ID	Candidate Name	Gender
162	(b) (6), (b) (7)(C)			F
163				F
164				F
165				F
166				F
167				F
168				F
169				F
170				F
171				F
172				F
173				F
174				F
175				F
176				F
177				F
178				F
179				F
180				F
181	F			
182	F			
183	F			
184	F			
185	F			
186	F			

ATTACHMENT B: TIMELINE

Due Date	# of Days from Effective Date	Action Required
10/30/2023	30	US Foods will mail and email Notice Documents to Affected Applicants.
	-	On a bi-weekly basis, US Foods will notify OFCCP of all letters returned as undeliverable.
12/14/2023	75	Within 45 days from the first mailing of the Notice Documents, US Foods will provide OFCCP with a MS Excel file containing information about undeliverable letters, nonresponsive Affected Applicants, and the names of Affected Applicants who failed to return the Information Verification & Employment Interest Form or the Release of Claims Form or failed to sign one of these forms.
12/24/2023	85	Parties will meet and confer to assess the results of the first mailing to ensure the second mailing maximizes the potential response rate.
12/29/2023	90	OFCCP will provide updated contact information to US Foods within 15 days of OFCCP's receipt of the list of nonresponsive Affected Applicants.
01/03/2024	95	US Foods sends second mailing of Notice Documents via both mail and email to nonresponsive Affected Applicants.
02/17/2024	140	Response Deadline: Affected Applicants must respond within 140 days from the Effective Date to participate in the settlement.
03/03/2024	155	US Foods will provide OFCCP with the list of Affected Applicants who timely responded to the Notice Documents in accordance with the Agreement, along with copies of the Information Verification & Employment Interest and Release of Claims Forms.

Due Date	# of Days from Effective Date	Action Required
03/18/2024	170	OFCCP will approve the Final List of Class Members and distribution amounts.
04/02/2024	185	US Foods will disburse the settlement fund.
04/17/2024	200	US Foods will provide OFCCP with bank verification of payments made to Class Members.
06/01/2024	245	US Foods will provide a list of all Class Members' checks that were returned undeliverable or remain uncashed.
07/31/2024	305	First check deadline: Class Members must cash checks within 120 days after the initial date the check was mailed. Any uncashed checks are void, and the funds will be prepared to be deposited with the respective state agency responsible for unclaimed funds.
08/30/2024	335	US Foods will deposit any remaining uncashed distribution funds with the respective state agency responsible for unclaimed funds.
11/28/2024	14 MTH	The first progress report is due to OFCCP.
11/28/2025	26 MTH	The second progress report is due to OFCCP.

ATTACHMENT C.1

NOTICE TO AFFECTED APPLICANTS

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

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

ARE YOU AFFECTED?

Female applicants who applied and were not hired for Selector positions at US Foods’ 7801 Statesville Road, Charlotte, North Carolina 28269 location (establishment) during the period January 1, 2020, through December 31, 2020, are covered by this settlement.

WHAT IS THIS SETTLEMENT ABOUT?

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is the government agency responsible for enforcing the equal employment opportunity and affirmative action requirements that apply to federal contractors. US Foods, Inc. (Contractor) and the Department of Labor's OFCCP have entered into a Conciliation Agreement (Agreement) to remedy the violations of Executive Order 11246 (E.O. 11246), as amended, that OFCCP found during a compliance review of US Foods’ Charlotte, North Carolina establishment. Specifically, OFCCP’s preliminary analysis showed statistically significant disparities in the hiring rates of female applicants for Selector positions during the period of January 1, 2020 through December 31, 2020. US Foods has not admitted to any violation of E.O. 11246 and there has not been any adjudicated finding that US Foods violated any laws. OFCCP and US Foods entered into the Agreement to resolve the matter without resorting to further legal proceedings. You have been identified as an individual who applied for a Selector position during that time period but was not hired.

WHAT DOES THIS MEAN FOR YOU?

Because you applied for a Selector position during the period January 1, 2020, through December 31, 2020, and were not hired, this settlement may provide you with some specific benefits:

1. You may be eligible to receive a payment of at least \$xxxxxxx (before taxes). This payment represents your share of back wages and interest US Foods is

paying to settle the evaluation. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions. Under the terms of this Early Resolution Conciliation Agreement, it may take up to seven months from the date of this letter before you receive your distribution.

2. In addition to the monetary distribution, US Foods will be making job offers for Selector positions to a limited number of individuals receiving this notification. It is not certain that you will receive a job offer. If you are still interested in employment with US Foods, please check the box that says “Yes, I am interested in employment with US Foods in a Selector position” on the enclosed Information Verification & Employment Interest Form. Those receiving this notice will be sent a link to complete an employment application and considered for Selector positions in the order that they apply.⁵ All individuals hired pursuant to this Conciliation Agreement will be provided with retroactive seniority as a Selector back to the date of their original application for job retention purposes only, to the extent that seniority is a factor in layoff decisions.

To get these benefits, you will need to release (give up) certain legal claims and sign the enclosed Information Verification & Employment Interest and Release of Claims forms.

For applicants interested in a Selector position job offer, US Foods’ recruiting department will send an email from a US Foods’ email address containing a confidential link to the class member requisition. If you do not see the email, please check your junk or spam folder.

WHAT IS YOUR NEXT STEP?

You should read this Notice, the Information Verification & Employment Interest and Release of Claims forms, and any other information you received from the U.S. Department of Labor or the Settlement Administrator.

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

To be eligible for a payment and job, you must complete, sign, and return both the following enclosed documents, (1) Information Verification & Employment Interest Form and (2) Release of Claims Form by [DATE] to:

⁵ Eligible Applicants must submit the application for the purpose of providing updated information to Contractor.

Settlement Administrator
OFCCP – US Foods
(NAME)
(TITLE)
(ADDRESS)
(EMAIL ADDRESS)

The documents must be received by [insert actual date].

You may receive some or all of these benefits only if these forms confirm that you are one of the individuals covered by the settlement. After correct completion and submission of these documents, a final decision will be made about your eligibility.

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO US FOODS BY [insert date by which class members must respond], OR IF YOUR DOCUMENTS DO NOT VERIFY YOUR ELIGIBILITY, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT OR TO BE CONSIDERED FOR A JOB OFFER.

Your Social Security Number (SSN) or tax identification number (TIN) is required in order to process your payment for tax purposes, and it will not be used for any other purposes. If you feel uncomfortable providing your SSN or TIN in your response, you can call the US Department of Labor and we will obtain and secure your number using encryption and forward it to the appropriate officials for processing of your payment. You may call the OFCCP office in Charlotte, North Carolina at (704) 749-3380 and identify yourself as a class member on the US Foods case. You can verify the authenticity of our office at the link below.

<https://www.dol.gov/agencies/ofccp/contact/district-area-offices#NorthCarolina>

HOW CAN YOU GET MORE INFORMATION?

If you have any questions, you may contact [NAME] at US Foods at [PHONE NUMBER] or [EMAIL ADDRESS], or OFCCP Compliance Officer (b) (6), (b) (7)(C) at (803) (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C)@dol.gov. You can obtain additional information regarding this settlement on the official U.S. Department of Labor website at the link below.

<https://www.dol.gov/agencies/ofccp/classmembers>.

Enclosures

Information Verification & Employment Interest Form
Release of Claims Form

ATTACHMENT C.2

Information Verification & Employment Interest Form
("Verification & Interest Form") – Affected Applicants

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

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

DEADLINE TO RESPOND IS DATE

If you complete this Verification & Interest Form, you may be eligible for a money payment from the settlement and you can express interest in a job offer. You may receive a money payment even if you do not express interest in a job.

To receive any money that you are eligible for, a potential job offer, or both you must complete, sign, and return **both** this Verification & Interest Form **and** the enclosed Release of Claims Form. You may use the enclosed postage-paid return envelope to return the Verification & Interest Form and the Release of Claims Form. You may also submit these forms via email to the Settlement Administrator at the email address listed below. It is acceptable to submit PDF files or pictures of the fully completed and signed forms via email. The forms should be mailed or emailed by [DATE] to the address below.

Settlement Administrator
OFCCP – US Foods
(NAME)
(TITLE)
(ADDRESS)
(EMAIL ADDRESS)

If you do not submit a properly completed Verification & Interest Form and Release of Claims Form on or before [DATE], then your claim will not be on time, and **you will not receive any money from this settlement and you cannot be considered for a job offer.**

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

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

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

Step 1: Please confirm [or provide] the following contact information to process your payment (print legibly).

First Name: _____

Last Name: _____

Any other names you have used: _____

Home Phone: _____

Cell Phone: _____

Email: _____

Address: _____

Please provide your social security number (SSN) or tax identification number (TIN):

This information is required in order to process your payment for tax purposes. Your SSN or TIN will not be used for any other purpose.

Notify us at the address below if your contact information changes prior to receiving a settlement payment and potential job offer or contact us if you have any questions about this Verification & Interest Form, the Notice, or the settlement.

Settlement Administrator
OFCCP – US Foods
(NAME)
(TITLE)
(ADDRESS)
(PHONE NUMBER)
(EMAIL ADDRESS)

Step 2: Inform us if you are interested in a position. Please indicate below whether you are currently interested in employment in a Selector position with US Foods. If you complete, sign, and return this Verification & Interest Form and the Release of Claims Form, you remain eligible for the monetary payment whether or not you are interested in employment at this time.

- Yes, I am interested in employment with US Foods in a Selector position at their establishment located at 7801 Statesville Road, Charlotte, North Carolina 28269. I understand that US Foods' recruiting department will send an email from a US Foods email address containing a confidential link to the class member requisition, and that I will need to complete and submit the requested information through that requisition in order to be hired to a Selector position. I also understand that to be hired, I must pass US Foods' post-offer, pre-employment background check and drug screen. I understand that I should add @usfoods.com to my trusted email sender's list to ensure receipt of emails from US Foods. I understand that US Foods is not responsible for emails that go to my Spam, Junk, Clutter, or other quarantine email locations, and the timelines set forth by OFCCP will not be waived if I fail to respond to US Foods' conditional job offer within 7 calendar days of its issuance.
- No, I am not currently interested in employment with US Foods in a Selector position.
- I am currently employed by US Foods.

Step 3: Sign and return along with the Release of Claims Form.

IF YOU FAIL TO COMPLETE AND RETURN THIS VERIFICATION & INTEREST FORM AND THE RELEASE OF CLAIMS FORM TO THE ADDRESS BELOW BY [DATE], YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT OR TO BE CONSIDERED FOR A JOB OFFER.

Settlement Administrator
OFCCP-US Foods
(NAME)
(TITLE)
(ADDRESS)
(EMAIL ADDRESS)

I certify the above is true and correct.

Signature: _____

Printed Name: _____

Date: _____

ATTACHMENT C.3

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246, AS AMENDED (“Release of Claims Form”)

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY AND A POTENTIAL JOB OFFER FROM THE SETTLEMENT

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

In consideration of the payment of at least \$xxx (less deductions required by law) by US Foods to me, which I agree is acceptable, I agree to the following:

I.

I hereby waive, release and forever discharge US Foods, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have had which relate to my non-selection for employment in the Selector position on the basis of my gender at any time through the Effective Date of this Release. By signing this agreement, I agree that I have been made whole for any claim that could have been brought under Executive Order 11246, as amended, relating to my non-selection with US Foods through the Effective Date of this Release.

II.

I understand that US Foods denies that it treated me unlawfully or unfairly in any way and that US Foods entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) and agreed to make the payment described above to resolve alleged disparities in hiring and to resolve the matter without further legal proceedings in the compliance review initiated by OFCCP on May 6, 2021. I further agree that the payment of the aforesaid sum by US Foods to me is not to be construed as an admission of any liability by US Foods.

III.

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

IV.

I understand that if I do not sign this Release and return it to the contact listed on the enclosed Notice to Affected Applicants, by the deadline listed on the Notice, I will not be entitled to receive any payment (less deductions required by law) from US Foods.

IN WITNESS WHEREOF, I have signed this document of my own free will.

Signature: _____

Printed Name: _____

Date: _____