

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 5445 Spellmire Drive, Cincinnati, Ohio 45246, beginning on September 27, 2021. OFCCP is alleging that US Foods failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), and their respective implementing regulations at Title 41 of the Code of Federal Regulations (C.F.R.) 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, as amended (Section 503), and the Vietnam Era Veterans’ Readjustment Assistance Act, 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 Regional Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after US Foods submits its final progress report required in Section VII 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 C.F.R. § 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's 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 C.F.R. § 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 Allegations

1. OFCCP alleges that during the period of January 1, 2020, through June 30, 2021, US Foods discriminated against female applicants who applied for positions in Job Group 7A at the Cincinnati, Ohio 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 nine (9) female hires.

IV. Financial Remedy

1. Settlement Fund

The total Settlement Fund amount includes \$117,533.59 in back pay and \$8,480.76 in interest to resolve the alleged specific violation set forth above, for a total of \$126,014.35. 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. Any check that remains uncashed 180 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. 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 or W-9 in order to receive payments under this settlement. 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,

¹ 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).

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.²

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 A consistent with the sample Notice Documents contained in Attachment C, D, and E. 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.
- 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

² 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>

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 Job Group 7A, 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 nine (9) 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 Job Group 7A. As vacancies occur in Job Group 7A, 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 Individuals 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 the conditions satisfied, unless US Foods has good cause to delay the start date. The Eligible Individual must report to work on the day designated or provide US Foods notice of good cause for their absence on or before that date. If good cause is provided, the Eligible Individual must report to work on the next scheduled 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 9 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 based on applicants' qualifications for the applicable position in Job Group 7A and provide all regular and on-the-job training currently provided to employees in that job group. 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.

- 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 VII, OFCCP Monitoring Period, 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 positions in EEO Job Category 7 (Operatives), including the following:

- i. Evaluating US Foods' policies, procedures and practices relating to recruitment and hiring for positions in EEO Job Category 7 (Operatives), including positions in Job Group 7A (Warehouse), 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 Recruiter Led Hiring (RLH) 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 EEO Job Category 7 (Operatives).
- 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 Part VII 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.

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

- a. **Adverse Impact Analyses** US Foods will conduct adverse impact analyses for applicants for Job Group 7A on a semi-annual and annual basis for the duration of this Agreement and consistent with the requirements of 41 C.F.R. §§ 60-3.4 and 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.

5. **Recordkeeping and Retention**

US Foods shall implement procedures to ensure that all expressions of interest for Operatives 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 C.F.R. §§ 60-1.12(a) and 60-3.

6. **Training**

- a. **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 Operatives 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 C.F.R. §§ 60-1.12(a) and 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. Alleged Technical Violation and Remedy

VIOLATION: During the period of January 1, 2020 to June 30, 2021, US Foods failed to develop and implement an internal audit and reporting system that periodically measures the effectiveness of its E.O. 11246 Affirmative Action Programs (AAP), as required by 41 C.F.R. § 60.2.17(d). Specifically, US Foods did not monitor its hiring processes, nor did it internally report on or review results with all levels of management.

REMEDY: US Foods will develop and implement an internal audit and reporting system that periodically measures the effectiveness of its AAPs as required by 41 CFR § 60- 2.17(d). US Foods shall evaluate the individual components of the selection process after determining the total selection process for a job has adverse impact. US Foods shall make this evaluation in accordance with the requirements of 41 C.F.R. § 60-3.4C.

VII. OFCCP Monitoring Period

1. **Recordkeeping.** US Foods agrees to retain all records relevant to the violations cited in Sections III and VI 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 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 under Exemption 4 of the Freedom of Information Act (FOIA) 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 possible under the 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 Job Group 7A 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 9 and 10 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 or she is fully authorized to do so, that US Foods, Inc. 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 JOHNSONE
Interim General Counsel
US Foods, Inc.

DATE: 9/29/2023

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

CARMEN NAVARRO
Regional Director
Midwest Region

9/29/23
Date

Attachments:

- A. List of Affected Applicants
- B. Timeline
- C. Notice to Affected Applicants
- D. Information Verification & Employment Interest Form
- E. Release of Claims

Attachment A: List of Affected Applicants

Number	Candidate ID	Candidate Name	Application Date
1	(b) (6), (b) (7)(C)		4/6/2021
2			9/18/2020
3			9/21/2020
4			1/26/2020
5			8/17/2020
6			3/2/2021
7			5/7/2021
8			12/14/2019
9			1/1/2020
10			12/11/2019
11			12/28/2020
12			11/20/2019
13			6/9/2021
14			2/7/2020
15			1/16/2020
16			8/21/2020
17			1/13/2020
18			3/7/2021
19			12/11/2019
20			12/29/2019
21			3/2/2021
22			1/4/2021
23			5/26/2021
24			12/27/2019
25			9/15/2020
26			1/3/2021
27			12/29/2019
28			1/15/2020
29			11/21/2019
30			11/19/2020
31			1/8/2021
32			9/20/2020
33			4/16/2021
34			1/13/2020
35			2/4/2020
36			2/4/2020
37			7/15/2020
38			1/13/2020
39			8/21/2020
40			1/14/2020
41			2/6/2020
42			6/21/2020
43			12/29/2019
44			12/8/2019

Attachment A: List of Affected Applicants

Number	Candidate ID	Candidate Name	Application Date
45	(b) (6), (b) (7)(C)		6/22/2021
46			6/19/2020
47			7/30/2020
48			12/28/2019
49			12/29/2019
50			2/6/2020
51			1/28/2021
52			12/30/2019
53			1/13/2020
54			1/14/2020
55			6/10/2021
56			11/20/2019
57			4/26/2021
58			2/1/2021
59			1/22/2020
60			6/23/2020
61			12/11/2019
62			3/11/2021
63			10/30/2020
64			1/14/2020
65			1/3/2021
66			6/10/2021
67			2/17/2021
68			6/22/2020
69			8/20/2020
70			12/15/2020
71			12/27/2019
72			8/11/2020
73			5/21/2021
74			2/5/2020
75			12/27/2019
76			6/9/2021
77			1/20/2020
78			1/14/2020
79			12/15/2020
80			1/27/2020
81			12/28/2019
82			1/16/2020
83			1/14/2020
84			4/15/2021
85			2/4/2020
86	12/27/2019		
87	9/16/2020		
88	4/7/2021		

Attachment A: List of Affected Applicants

Number	Candidate ID	Candidate Name	Application Date
89	(b) (6), (b) (7)(C)		8/22/2020
90			7/16/2020
91			1/27/2021
92			12/16/2020
93			6/4/2021
94			1/26/2021
95			7/16/2020
96			1/14/2020
97			12/29/2019
98			12/27/2019
99			6/3/2021
100			8/18/2020
101			4/5/2021
102			7/15/2020
103			6/17/2021
104			8/18/2020
105			7/22/2020
106			1/16/2020
107			2/28/2021
108			6/2/2021
109			6/25/2020
110			4/21/2021
111			1/15/2020
112			11/21/2019
113			6/28/2020
114			11/25/2019
115			1/13/2020
116			1/13/2020
117			6/27/2020
118			9/19/2020
119			2/6/2020
120			12/27/2019
121	6/4/2021		
122	10/8/2020		
123	6/6/2021		
124	2/5/2020		
125	6/18/2021		
126	1/2/2020		
127	3/24/2021		
128	1/15/2021		
129	12/29/2019		
130	6/10/2021		
131	1/7/2021		
132	6/16/2021		

Attachment A: List of Affected Applicants

Number	Candidate ID	Candidate Name	Application Date
133	(b) (6), (b) (7)(C)		11/21/2019
134			1/16/2020
135			1/2/2020
136			6/3/2021
137			1/1/2020
138			8/20/2020
139			1/15/2020
140			4/25/2021
141			6/26/2020
142			4/30/2021
143			8/9/2020
144			1/14/2021
145			6/19/2020
146			2/6/2020
147			8/18/2020
148			1/6/2020
149			6/7/2021
150			1/2/2020
151			11/4/2020
152			1/12/2021
153			11/20/2019
154			5/29/2021
155			6/22/2020
156			1/19/2020
157			12/29/2020
158			6/23/2020
159			6/8/2021
160	2/1/2021		
161	6/17/2021		
162	2/4/2020		
163	8/17/2020		
164	4/26/2021		
165	1/20/2020		
166	6/27/2020		
167	9/18/2020		
168	10/7/2020		
169	7/22/2020		
170	11/21/2019		
171	7/15/2020		
172	7/16/2020		
173	12/7/2019		
174	4/6/2021		
175	2/4/2021		
176	8/13/2020		

Attachment A: List of Affected Applicants

Number	Candidate ID	Candidate Name	Application Date
177	(b) (6), (b) (7)(C)		1/6/2020
178			1/2/2020
179			1/15/2020
180			9/15/2020
181			1/11/2021
182			6/23/2020
183			11/21/2019
184			1/23/2020
185			12/29/2020
186			8/20/2020
187			5/18/2021
188			1/11/2021
189			2/18/2021
190			1/11/2021
191			1/5/2021
192			9/20/2020
193			12/28/2019
194			12/6/2019
195			9/15/2020
196			1/7/2020
197			6/20/2021
198			6/19/2020
199	6/4/2021		
200	11/20/2019		
201	6/1/2021		
202	5/13/2021		
203	6/4/2021		
204	6/4/2021		
205	1/9/2021		
206	3/1/2021		
207	1/7/2021		
208	5/13/2021		
209	6/20/2021		
210	11/25/2020		
211	6/25/2021		
212	3/1/2021		
213	8/19/2020		
214	1/6/2020		
215	8/21/2020		
216	1/14/2020		
217	6/22/2021		
218	1/8/2021		
219	12/9/2019		
220	10/12/2020		

Attachment A: List of Affected Applicants

Number	Candidate ID	Candidate Name	Application Date
221	(b) (6), (b) (7)(C)		1/6/2020
222			9/14/2020
223			11/21/2019
224			4/26/2021
225			6/11/2021
226			1/6/2020
227			11/22/2019
228			10/16/2020
229			12/11/2019
230			10/1/2020
231			2/17/2021
232			9/22/2020
233			12/9/2020
234			6/22/2020
235			3/29/2021
236			6/22/2021
237			1/13/2020
238			12/10/2019
239			7/16/2020
240			1/13/2020
241			6/24/2020
242			6/25/2021
243			11/20/2019
244			1/13/2020
245			3/3/2021
246			12/27/2019
247			6/15/2021
248			4/21/2021
249			1/22/2021
250			8/5/2020
251			1/6/2021
252			1/27/2021
253			2/18/2021
254			1/2/2021
255			8/20/2020
256			6/8/2021
257			12/28/2019
258			1/28/2021
259			6/22/2020
260			12/14/2019
261	2/7/2020		
262	9/22/2020		
263	2/21/2021		
264	2/21/2021		

Attachment A: List of Affected Applicants

Number	Candidate ID	Candidate Name	Application Date
265	(b) (6), (b) (7)(C)		11/22/2019
266			11/22/2019
267			5/29/2021
268			2/6/2020
269			11/20/2019
270			1/15/2020
271			1/2/2020
272			8/18/2020
273			7/16/2020
274			6/27/2020
275			2/7/2020
276			3/9/2021
277			1/15/2020
278			6/24/2020
279			1/2/2021
280			1/1/2021
281			5/2/2021
282			9/20/2020
283			6/18/2021
284			6/4/2021
285	1/14/2020		
286	12/30/2019		

Establishing Eligible Applicant List (Final List)			
Estimated Due Date	# of Days	Total # of Days from ED	Action Required
10/28/2023	30	30	Contractor provides initial notice by regular first class mail to Affected Applicants.
TBD	5		If envelopes from the initial mail notice are returned with forwarding addresses, Contractor will re-mail the Notice Documents within 5 days of receipt of the forwarding address.
biweekly			Contractor notifies OFCCP of all letters returned as undeliverable. If a Notice is returned with a forwarding address, the contractor will re-mail the Notice Documents within 5 days of receipt of the forwarding address.
12/27/2023	60	90	Parties will meet and confer to assess the results of the initial mail notice and to ensure that the second round of mail notice maximizes the potential response rate.
1/11/2024	15	105	Within 15 days of receipt of this list, OFCCP will attempt to locate the Affected Applicants whose letters were returned as undeliverable or who did not respond.
1/26/2024	30	120	Contractor will send second mailing within 30 days after meeting with OFCCP.
3/26/2024	150	180	Final deadline for Affected Applicants to respond to the notice.
4/10/2024	15	195	Contractor provides list of Eligible Class Members who will participate in the settlement fund as well as the priority employment list.
4/25/2024	15	210	OFCCP reviews and approves final Eligible Class Member List and the priority employment list.
Disbursement of Settlement Fund			
Estimated Due Date	# of Days	Total # of Days from ED	Action Required
5/25/2024	30	240	Contractor disburses the settlement fund based on amounts provided by OFCCP with the final Eligible Class Member list.
Varies	7		Contractor will notify OFCCP within 7 calendar days of payments that were returned as undeliverable.
Varies	15		OFCCP will provide alternate address to contractor.
Varies	15		Contractor will re-mail checks with new address provided by OFCCP.

ATTACHMENT B: Timeline

8/23/2024	90	330	Preliminary Documentation of Payments: Contractor will notify OFCCP of any checks uncashed after 90 days. Contractor will provide OFCCP with copies of cancelled checks or electronic documentation of all payments to Eligible Class Members, including the amounts paid, the date payment was sent, the date payment was received or the check cashed, and any uncashed or returned checks.
11/21/2024	180	420	Eligible Class Members have 180 days to cash their checks, after which the checks become void.
1/5/2025	45	465	Final Documentation of Payments: Contractor will provide OFCCP with an update on payments since the preliminary documentation of payments showing 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.
Job Opportunities			
Varies			As positions become available, Contractor shall make at least two attempts to reach Eligible Class Members by phone to invite to apply to positions. See CA for reporting requirements.
Closing the Settlement Fund			
Estimated Due Date	# of Days	Total # of Days from ED	Action Required
1/5/2025	45	465	In the event of any uncashed funds after the distribution, Contractor will submit documentation showing that uncashed funds have been deposited with the Ohio Department of Commerce Division of Unclaimed Funds within 450 days from the Effective Date and that Contractor has notified each Eligible Applicant that their money has been sent to the Ohio Department of Commerce Division of Unclaimed Funds.

Monitoring and Progress Reports					
Reporting Activity				Days	Due Date
Provide information on the Recruiter Led Process for EEO Job Category 7 (Operatives).				60	11/27/2023
Report #	Days covered by report	Covering		Days to provide report	Estimated Report Due Dates
1	365	9/28/2023	9/27/2024	60	11/26/2024
2	365	9/28/2024	9/28/2025	60	11/27/2025

ATTACHMENT C

NOTICE TO AFFECTED CLASS

Dear [name]:

US Foods, Inc. (US Foods) and the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) have entered into a Conciliation Agreement (Agreement) to remedy alleged violations of Executive Order (E.O. 11246), as amended, that OFCCP found during a compliance review of US Foods' facility, located at 5445 Spellmire Drive, Cincinnati, Ohio 45246.

OFCCP's preliminary analysis showed statistically significant disparities in the hiring rates of female applicants for Night Order Selector positions during the period of January 1, 2020 through June 30, 2021. 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. Additional information on the agreement and a link to the Conciliation Agreement can be found on OFCCP's website at www.dol.gov/agencies/ofccp/classmembers.

You have been identified as an individual who applied for a Night Order Selector position during that time period but was not hired. As part of this Agreement, you are eligible to receive a distribution of at least \$[XXX] less lawful payroll deductions. Under the terms of this Agreement, it may take up to [number] months from the date of this letter before you receive your distribution. In order to be eligible for a payment, you must complete, sign, and return the enclosed Information Verification and Employment Interest Form Verification and Release of Claims Form. The form(s) should be mailed as soon as possible to the address below. **In order for you to be eligible to participate in the settlement, your documents must be received by [insert date by which class members must respond].**

[Name]
[Position]
US Foods
[Address]

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

In addition to the monetary distribution, US Foods will be making job offers for Night Order 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 appropriate box on the enclosed Information Verification and Employment Interest Form. Those receiving this notice will be considered for Night Order Selector positions in the order that US Foods receives the Information Verification and Employment Interest Form expressing an interest in employment. All individuals hired pursuant to this Agreement will be provided with 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. If you have any questions you may call **[name]** at US Foods at **[phone number]**, or OFCCP Compliance Officer **(b) (6), (b) (7)(C)** at **(b) (6), (b) (7)(C)**. Your call will be returned as soon as possible.

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

Sincerely,

[Name]

Enclosures

Information Verification and Employment Interest Form

Release of Claims Form

ATTACHMENT D

INFORMATION VERIFICATION & EMPLOYMENT INTEREST FORM

You must complete this form in order to be eligible for the monetary payment and/or employment opportunities under the terms of the Conciliation Agreement (“Agreement”) between US Foods and the Department of Labor’s Office of Federal Contract Compliance Programs. Please print legibly, except for the signature.

Name: _____

Address: _____

Telephone Nos.: Home: _____ Cell: _____ Work: _____

Email: _____

Notify US Foods at the address below if your address, email address or phone number changes within the next twelve months.

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

Please indicate below whether you are currently interested in employment as a Night Order Selector with US Foods. If you complete, sign, and return this Information Verification and Employment Interest Form, you remain eligible for the monetary payment whether or not you are interested in employment at this time.

- Yes, I am still interested in employment with US Foods as a Night Order Selector.
- No, I am not currently interested in employment with US Foods as a Night Order Selector.

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE ADDRESS BELOW BY *[date class members must respond]*, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT OR TO BE CONSIDERED FOR A JOB OFFER.

[Name]
[Address]

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

Signature

Date

ATTACHMENT E

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY 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 Night Order Selector positions. It also says that US Foods does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money.

In consideration of the payment of at least \$[XXX] (less deductions required by law) by US Foods to me, which I agree is acceptable, I, (print name) _____, 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 nonselection for employment for a Night Order 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 nonselection 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 September 27, 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 Class Members, 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 on this ____ day of _____, 20__.

Printed Name

Signature