



March 4, 2011

**Officers**  
**Interim Chairperson**  
Judith L. Lichtman  
National Partnership for Women  
& Families  
**Vice Chairperson**  
Karen K. Narasaki  
Asian American Justice Center  
**Secretary**  
Barry Rand  
AARP  
**Treasurer**  
Lee A. Saunders  
American Federation of State,  
County & Municipal Employees

Debra Carr  
Director, Division of Policy, Planning, and Program Development  
Office of Federal Contract Compliance Programs  
U.S. Department of Labor  
200 Constitution Avenue, NW, Room N3422  
Washington, DC 20210

**Executive Committee**  
Barbara Arnwine  
Lawyer's Committee For  
Civil Rights Under Law  
Arlene Holt Baker  
AFL-CIO  
Marcia Greenberger  
National Women's Law Center  
Linda D. Hallman  
American Association of  
University Women  
Mary Kay Henry  
Service Employees  
International Union  
Andrew J. Imparato  
American Association of People  
with Disabilities  
Benjamin Jealous  
NAACP  
Michael B. Keegan  
People For The American Way  
Floyd Mori  
Japanese American Citizens  
League  
Marc H. Morial  
National Urban League  
Janet Murguia  
National Council of La Raza  
Debra Ness  
National Partnership for Women  
And Families  
Terry O'Neill  
National Organization for Women  
Jacqueline Johnson Pata  
National Congress of  
American Indians  
John Payton  
NAACP Legal Defense and  
Educational Fund, Inc.  
Dennis Van Roekel  
National Education Association  
Anthony Romero  
American Civil Liberties Union  
Thomas A. Saenz  
Mexican American Legal Defense  
& Educational Fund  
David Saperstein  
Religious Action Center for  
Reform Judaism  
Shanna L. Smith  
National Fair Housing Alliance  
Joe Solmonese  
Human Rights Campaign  
Randi Weingarten  
American Federation of Teachers  
Mary G. Wilson  
League of Women Voters  
Sara Najjar-Wilson  
American-Arab Anti-  
Discrimination Committee

**Compliance/Enforcement  
Committee Chairperson**  
Karen K. Narasaki  
Asian American Justice Center  
**President & CEO**  
Wade J. Henderson  
**Executive Vice President & COO**  
Karen McGill Lawson

Re: RIN 1250-ZNE  
Comments in Support of OFCCP's Notice of Proposed Rescission of 2006 Guidance  
Documents on Compensation Discrimination

Dear Ms. Carr:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, the undersigned organizations write to comment on the Office of Federal Contract Compliance Programs' proposed rescission of two 2006 guidance documents regarding compensation discrimination. We strongly support the proposed rescission, which will strengthen efforts to combat the persistent problem of pay discrimination.

Millions of workers are paid less for the same work due to discrimination. Women and minority workers, in particular, continue to face significant pay disparities merely due to their sex or the color of their skin. This pernicious form of discrimination impacts not only the workers themselves, but their families and the nation's economy.

With jurisdiction over millions of workers--nearly a quarter of the civilian workforce--OFCCP can and should play a pivotal role in combating unlawful discrimination. OFCCP enforces Executive Order 11246, which requires federal government contractors and subcontractors to provide equal employment opportunity. Identifying and remedying compensation discrimination has been an important part of OFCCP compliance efforts for many years. The agency must be equipped with the tools it needs to carry out this important mission.

OFCCP proposes the rescission of two guidance documents addressing compensation discrimination: (1) Interpreting Nondiscrimination Requirements of Executive Order 11246 with respect to Systemic Compensation Discrimination Standards (the Interpretive Standards), and (2) Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance with Executive Order 11246 with respect to Systemic Compensation Discrimination (the Voluntary Guidelines). We support the proposed rescission of these guidance documents because they have unnecessarily limited the ability of OFCCP to effectively investigate, analyze, identify, and rectify compensation discrimination. The rescission of the Interpretive Standards and the Voluntary Guidelines will reinstitute flexibility in OFCCP's investigative approaches and contribute to a more effective



enforcement strategy, while adhering to the principles of Title VII of the Civil Rights Act of 1964.

**The Interpretive Standards should be rescinded because they have unnecessarily limited OFCCP's ability to effectively identify and remedy compensation discrimination.** The Interpretive Standards prescribed rigid procedures to be followed by OFCCP compliance officers when conducting investigations of systemic compensation discrimination in all cases, by prescribing how to group similarly situated employees to compare compensation, requiring anecdotal evidence of compensation discrimination except in unusual cases, and requiring the use of a multiple regression analysis when deciding whether wage differences between groups are discriminatory. These procedures were to be followed regardless of the facts of a particular case. The Standards minimized OFCCP's flexibility in investigating compensation discrimination, thereby making it harder for the agency to combat discriminatory practices in an effective manner. For these reasons, we support the rescission of the Interpretive Standards. OFCCP must be permitted to exercise discretion to investigate compensation discrimination cases in the same manner that it exercises discretion in other types of cases. Rescission of the Interpretive Standards will normalize OFCCP's treatment of compensation cases with other types of discrimination investigations. We are confident that OFCCP will continue to follow Title VII principles in investigating and analyzing pay discrimination.

**The Voluntary Guidelines should be rescinded because they have gone largely unused by the contracting community and have not contributed to an effective enforcement strategy.** We support the rescission of the Voluntary Guidelines. First and foremost, the Guidelines have proven to be an ineffective method for verifying that a contractor's compensation system is not discriminatory. As with the Interpretive Standards, the Voluntary Guidelines attempted to establish a rigid set of criteria to determine "Similarly Situated Employee Groupings." The analytical model set forth in the Voluntary Guidelines also established rigid numerical thresholds of similarly situated employees in order to examine compensation disparities. For some contractors, these thresholds of similarly situated employees would be exceedingly difficult to meet. Finally, experience has demonstrated that the Voluntary Guidelines failed to provide an effective incentive for contractors. If the Guidelines are rescinded, contractors will still be obligated to conduct self-evaluations of compensation practices as required by 41 CFR 60-2.17(b)(3). OFCCP has indicated that it will continue to provide any needed compliance assistance through various means, including webinars and answering frequently asked questions on the website.

We appreciate this opportunity to submit comments on this important issue. If you have any questions, please contact Sarah Crawford, Director of Workplace Fairness at the National Partnership for Women & Families, at 202-238-4852 or Lisa Bornstein, Senior Counsel at The Leadership Conference on Civil and Human Rights, at 202-263-2856.

Sincerely,

9to5, National Association of Working Women  
AARP  
American Association for University Women (AAUW)  
American Civil Liberties Union (ACLU)  
Asian American Justice Center, a member of the Asian American Center for Advancing Justice  
Association for Women in Science (AWIS)  
Coalition of Labor Union Women  
Disciples Justice Action Network  
Equal Rights Advocates

March 4, 2011

Page 3 of 3



Federally Employed Women (FEW)  
Labor Project for Working Families  
Lawyers' Committee for Civil Rights Under Law  
The Leadership Conference on Civil and Human Rights  
Legal Momentum  
MomsRising  
NAACP Legal Defense & Educational Fund, Inc.  
National Coalition – Black Women's Roundtable  
National Council of Women's Organizations (NCWO)  
National Employment Lawyers Association  
National Employment Law Project  
National Gay and Lesbian Task Force  
National Partnership for Women & Families  
National Women's Law Center  
Wider Opportunities for Women  
Women Employed  
Women of Color Policy Network, NYU Wagner Graduate School of Public Service  
Women of Reform Judaism