January 27, 2020

Craig E. Leen, Director
Harvey D. Fort, Deputy Director, Division of Policy and Program Development
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210


Dear Mr. Leen and Mr. Fort:

The Leadership Conference on Civil and Human Rights and the undersigned 31 organizations request that the Department of Labor ("the Department") extend the comment period for responding to the Notice of Proposed Rulemaking (NPRM), RIN 1250-AA10, Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination, by 30 days.

The Department issued the above-referenced NPRM on December 30, 2019, during the holiday season, and set January 29, 2020 as the deadline for public comment. This truncated timeframe, which includes two major federal holidays and encompassed several days when many members of the public are traveling or are otherwise occupied, is insufficient for gathering meaningful public comment on this proposal.

The NPRM potentially affects the right of federal contract workers to be free from unlawful employment discrimination by setting out new standards for when the Office of Federal Contract Compliance Programs (OFCCP) will issue a Predetermination Notice or a Notice of Violation after conducting a compliance evaluation. As the Department notes, statistical evidence plays a crucial role in OFCCP enforcement, and the Department appropriately requests comments on setting parameters for statistical evidence. For this complex undertaking, however, that implicates the basic civil rights of millions of workers, the Department gives the public effectively less than 30 days to respond.

OFCCP’s enforcement powers are critical to ensuring nondiscrimination, supporting legal requirements to take affirmative action, and securing proactive compliance with Executive Order 11246 and federal civil rights laws that prohibit discrimination in employment based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Millions of individuals who work for federal contractors and subcontractors rely on OFCCP to protect the civil rights that provide access to economic security for themselves and their families. It is critical, then, that the Department provide
ample time to the public, including advocacy groups, to evaluate and respond to any proposed clarifications or changes to how OFCCP identifies or resolves potential employment discrimination.

Extending the comment period by 30 days would not unduly delay or harm OFCCP, but a truncated comment period does potentially harm millions of working people and casts a shadow on the integrity of the comment process. Executive Order 13563 calls on agencies to base their proposed regulations on input provided by affected stakeholders and the public. Section 2 of Executive Order 13563 specifically requires agencies, “to the extent feasible and permitted by law,” to “afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days.” OFCCP provides no reason in its NPRM why a comment period of 60 days is not feasible or would be contrary to law.

As organizations committed to protecting the civil rights of all working people in the United States, we respectfully request that the Department of Labor extend the comment period for this NPRM by 30 days. For questions, please contact Gaylynn Burroughs, Senior Policy Counsel at The Leadership Conference on Civil and Human Rights, at (202) 466-3311 or burroughs@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
Alianza Nacional de Campesinas, Inc
American Association for Access, Equity and Diversity
Asian Pacific American Labor Alliance, AFL-CIO
Economic Policy Institute
Equal Rights Advocates
Freedom Network USA
Futures Without Violence
Government Information Watch
Kentucky Equal Justice Center
Lawyers’ Committee for Civil Rights Under Law
Legal Aid at Work
Legal Aid Society of MFS
Mississippi Workers’ Center for Human Rights
NAACP
National Association of Government Employees
National Center for Transgender Equality
National Disability Rights Network
National Employment Law Project
National Employment Lawyers Association (NELA)
National Organization for Women
National Partnership for Women & Families
National Urban League
National Women’s Law Center
People's Parity Project
Restaurant Opportunities Centers United
Service Employees International Union
Shriver Center on Poverty Law
Women Employed
Women’s Law Project
Workplace Fairness
Worksafe

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