April 10, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

RE: Office of Federal Contract Compliance March 17, 2020 Memorandum

Dear Secretary Scalia:

I am writing to express the concern of the American Bar Association regarding Office of Federal Contract Compliance Programs (OFCCP) Director Leen’s March 17, 2020 Memorandum granting limited waivers from some of the federal contract compliance requirements that would otherwise be applicable to contracts for Coronavirus relief efforts. We recognize that in this time of national emergency, the federal government needs to move quickly to acquire life-saving necessary goods and services. Nonetheless, the American Bar Association has repeatedly, for decades, supported affirmative action, and even in these trying times we urge the Department to remain steadfastly and visibly committed to affirmative action and equal opportunity for minorities, women, the disabled, and veterans. Unfortunately, many workers who may be potentially affected by these waivers are already likely to be the most vulnerable to economic dislocation during the current crisis. Furthermore, to deny them participation in the national emergency response through affirmative action measures also may deny our nation their talent, intellect, skills, and commitment.

We are gratified that the waivers apply only to contracts “entered into specifically to provide Coronavirus relief” and that the waivers do not exempt covered contractors from obligations to comply with other civil rights laws. Likewise, we recognize that the waivers apply only for a period of three months. Nonetheless, the implementation of these extraordinary should be undertaken only under the gravest of circumstances where no other alternative is available to assure delivery of goods and services necessary to assure public safety during the pandemic. If not, our nation not only turns its back on the demonstrated historical benefit our country has derived from your agency’s affirmative action mandate, but it may deprive our nation of the untapped talent of individuals who we all can anticipate have the capacity to contribute for decades to come.
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Thank you for your leadership of the Department in these challenging times. The ABA appreciates your consideration of our comments.

Sincerely,

Judy Perry Martinez

cc: Craig E. Leen, Director
Office of Federal Contract Compliance Programs

United States Department of Labor