

**From:** [Maxwell Mary Beth - OSEC](#)  
**To:** [Orr Dylan - ODEP](#); [Bishop Jeremy - OSEC](#); [Mehta Parag V - OFCCP](#); [Shiu Patricia A - OFCCP](#); [Lenhoff Donna R - OFCCP](#); [Carr Debra A - OFCCP](#); [Barry-Perez Naomi - OASAM CRC](#)  
**Cc:** [Ma Ana M. - OSEC](#); [Fillichio Carl - OPA](#); [Greenfield Deborah - SOL](#); [Alexander Elizabeth N - OPA](#)  
**Subject:** Re: Obama Labor Department May Be Ignoring Protections For Transgender Contractors  
**Date:** Friday, July 27, 2012 11:13 59 AM  
**Attachments:** [image004.jpg](#)  
[image003.jpg](#)

**EXEMPTION 5**

**From:** Orr, Dylan - ODEP  
**Sent:** Friday, July 27, 2012 10:52 AM  
**To:** Bishop, Jeremy - OSEC; Mehta, Parag V - OFCCP; Shiu, Patricia A - OFCCP; Lenhoff, Donna R - OFCCP; Carr, Debra A - OFCCP; Barry-Perez, Naomi - OASAM CRC  
**Cc:** Maxwell, Mary Beth - OSEC; Ma, Ana M. - OSEC  
**Subject:** Obama Labor Department May Be Ignoring Protections For Transgender Contractors

**EXEMPTION 5**

<http://www.buzzfeed.com/chrisgeidner/obama-labor-department-may-be-ignoring-protections>

## Obama Labor Department May Be Ignoring Protections For Transgender Contractors

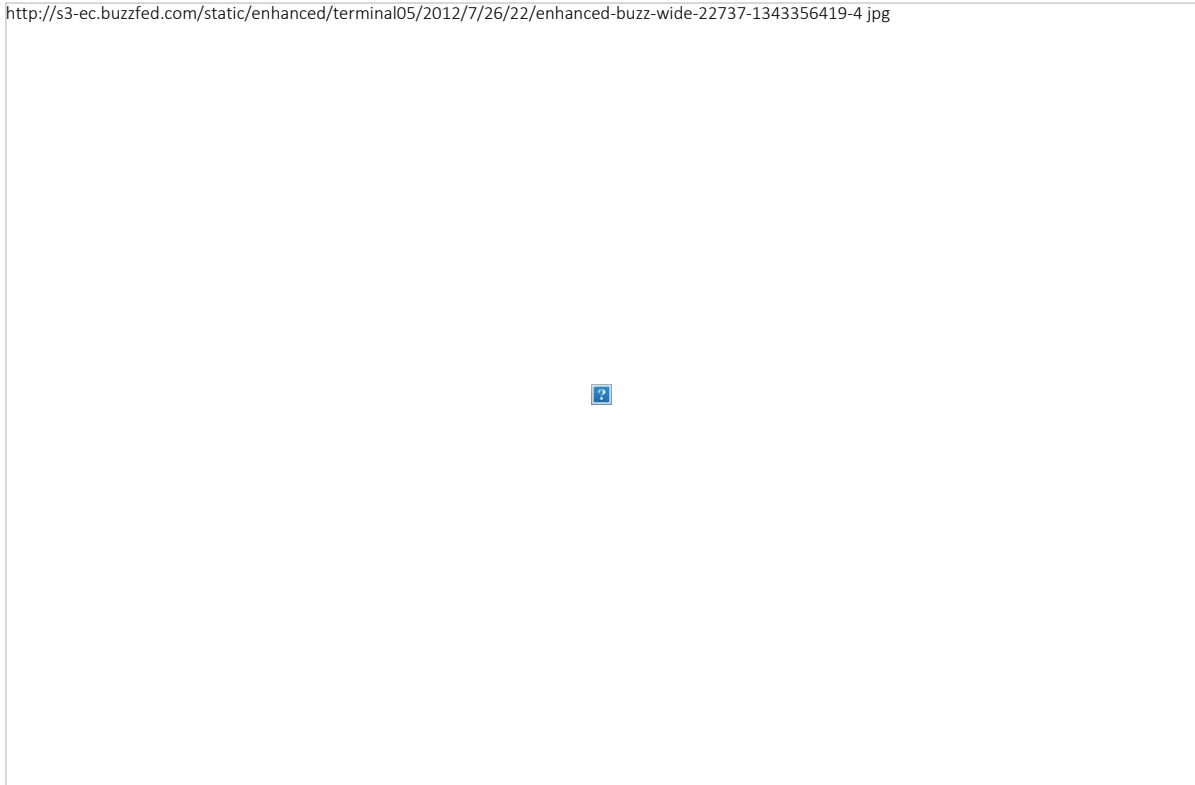
Although Secretary Solis pushed the question to a subordinate on Thursday, months of questions to the Labor Department have gone unanswered. Despite the silence, Solis told BuzzFeed that they have “been working on this issue for a long time.”



[Chris Geidner](#) BuzzFeed Staff

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<http://s3-ec.buzzfed.com/static/enhanced/terminal05/2012/7/26/22/enhanced-buzz-wide-22737-1343356419-4.jpg>



Department of Labor Secretary Hilda Solis speaks during a Urban Economic Forum on March 22, 2012 in Los Angeles, California. Image by Kevork Djansezian / Getty Images  
Posted Jul 27, 2012 8 53am EDT

The Department of Labor may not be enforcing protections for transgender employees of federal contractors — despite a three-month-old ruling by the

Equal Employment Opportunity Commission that should be applied to such workers under current Labor policies.

According to an investigation by BuzzFeed, in the past month alone the federal government has granted hundreds of millions of dollars of contracts subject to the Labor Department's oversight with companies that have not put in place rules protecting workers from discrimination based on gender identity.

Of the 10 federal contractors that received the most money in federal contracts in the past fiscal year, three do not have nondiscrimination policies that include gender identity. All three — Northrop Grumman, SAIC and L-3 Communications — have boasted of multi-million dollar contracts awarded this month.

Despite numerous requests for comment over the past three months, Labor officials have thus far refused to comment directly on the issue, including Labor Secretary Solis, who told BuzzFeed on Thursday that while she was familiar with the issue she could not comment because she has been traveling extensively.

"I know we've been working on this issue for a long time," Solis said, but, when pressed for her view of whether the EEOC decision was correct, she deferred to her subordinate, the head of the Office of Federal Contract Compliance Programs, saying, "I direct you to [Patricia] Shiu, on my staff, my director there, because I'm just coming back from extensive traveling."

On April 23, *Metro Weekly* [broke the news](#) of the EEOC's ruling in the case brought by Mia Macy, a transgender woman in California who believes that the federal government discriminated against her based on her gender identity. The case, which tracked recent federal case law on the question of whether Title VII's sex discrimination prohibitions protect against discrimination against transgender people based on their gender identity, was hailed as "a big leap forward" by Masen Davis of the Transgender Law Center, which brought the claim.

Although employees of federal contractors aren't covered directly by the EEOC's ruling on Title VII, they are protected from discrimination based on Executive Order 11246, which was signed by President Lyndon B. Johnson. Since that time, the Labor Department's Office of Federal Contract Compliance Programs has been tasked with ensuring that all federal contractors doing any significant amount of federal work comply with the executive order, which prohibits discrimination based on race, color, religion, sex, or national origin.

Since that time, however, this reporter — then reporting for *Metro Weekly* — has been seeking information from the Labor Department about whether the contract compliance office would be applying the reasoning of the decision in Macy's case to its interpretation of the executive order's ban on sex discrimination by federal contractors. Neither *Metro Weekly* nor, since July 23, BuzzFeed have received any answer to that question, among others.

After receiving [no initial response](#) from the Labor Department back in May, *Metro Weekly* sought information from outside experts about the applicability of the EEOC decision to the federal contractor provision.

The Williams Institute — a research institute based out of the University of California, Los Angeles — released [a report](#) on May 4 addressing the issue, with Nan D. Hunter, Christy Mallory, and Brad Sears writing that the Labor Department federal contract compliance office "has an explicit policy of interpreting the nondiscrimination requirements of [Executive Order] 11246 in a manner consistent with Title VII principles, and has followed EEOC regulations and guidance in enforcing [Executive Order] 11246." The report also noted that the office's Federal Contract Compliance Manual states that the office's policy is to interpret the executive order "in a manner consistent with" Title VII.

Labor spokespersons have not responded in nearly three months to questions asking about the implications for the executive order's enforcement or, after the Williams Institute's report was issued, further questions asking whether the contract compliance office concurred in the Williams Institute report's findings.

Tico Almeida, the founder and executive director of Freedom to Work, has been critical of the Obama administration's failure to take more action to protect LGBT workers from discrimination.

He told BuzzFeed, "Freedom to Work believes that the federal government should give current contractors — and any other employers who may at some point apply for federal contracts — clear and fair notice of any new rules for workplace fairness."

Asked if she had been involved in any decisions about the issue, Solis said, "We've been talking about it, yes. Policy-wise, yes." But, pressed for specifics, she directed questions to Shiu because of her recent "extensive traveling."

While Solis was traveling, however, Northrop Grumman on July 23 [detailed](#) that the Air Force had awarded it "two contract modifications totaling \$156 million," SAIC on July 17 [stated](#) that the General Services Administration's Federal Systems Integration and Management Center awarded it a "task order [that] has ... a total contract value of approximately \$76 million," and L-3 Communications on July 10 [announced](#) that U.S. Special Operations Command had awarded it a contract whose "value is up to \$500 million over the next five years."

Further conversations with Labor Department officials on Thursday resulted in no response as to whether the federal contract compliance office was, for example, advising federal contractors — like the three major contractors awarded new contracts recently — that they could be violating Executive Order 11246 if they discriminate against an employee based on gender identity, which would be the case if the executive order is interpreted in alignment with the EEOC's ruling in Macy's case.

To contrast, Justine Lisser, a senior attorney-advisor in the EEOC's communications office, told BuzzFeed on Thursday that the director of the Office of Federal Operations confirmed that "the Macy decision was shared with all [agency and department Equal Employment Opportunity] directors at one of our periodic [Equal Employment Opportunity] Directors meetings." Lisser also noted that the decision, among other issues would be discussed at an upcoming EEOC conference at the end of this month that "brings together people from agencies' EEO offices, stakeholder groups, HR personnel from federal agencies and the private bar for a major annual training conference."

Freedom to Work's Almeida pointed out, though, that the Labor Department's failure to respond to any inquiries about the issue means that "it is not yet clear that the Labor Department's approximately 800 investigators who enforce Executive Order 11246 have been given the same kind of notice, training,

and guidance regarding their expanded jurisdiction to protect transgender Americans from discrimination by federal contractors."