

**From:** [Narcho, Herman J - OFCCP](#)  
**To:** [Mehta, Parag V - OFCCP](#)  
**Subject:** FW: Request for you to search for documents in response to a Geidner FOIA 746760  
**Date:** Monday, May 19, 2014 11:50:26 AM  
**Attachments:** [image001.png](#)

---

Parag-

My apologies.

I should have sent this to you as well.

---

**From:** Narcho, Herman J - OFCCP  
**Sent:** Monday, May 19, 2014 11:16 AM  
**To:** Shiu, Patricia A - OFCCP; Jin, Les - OFCCP; Dowd, Tom M - OFCCP; Lenhoff, Donna R - OFCCP; Coukos, Pamela - OFCCP  
**Cc:** Litras, Marika - OFCCP; Horak, Forrest - OFCCP; Washington, Antony R - OFCCP  
**Subject:** Request for you to search for documents in response to a Geidner FOIA 746760

Folks-

Good morning.

As many of you may know, Mr. Geidner of the Buzz Feed has submitted a FOIA request for the following documents:

All records related to:

1. the Equal Employment Opportunity Commission's decision in *Mia Macy v. Eric Holder*, Appeal No. 0120120821 (April 20, 2012), and
2. any documents relating to a review of or implementation discussion relating to the effect and/or consequences of the Macy decision on the implementation of Executive Order 11246, and
3. any communications between OFCCP officials with the Office of the Secretary regarding the implementation of Executive Order 11246 in light of the Macy decision, and
4. any communications between OFCCP officials (or other Department of Labor officials) and any EEOC or White House employees regarding the implementation of Executive Order 11246 in light of the Macy decision.

If you have documents in electronic form (e-mails, .pdf files, Word files, Excel files etc. . . .) that are responsive to this FOIA request, please create a folder and put all responsive documents in the folder.

I will stop by on Friday and move the folder over to SharePoint so that Antony and I can start reviewing/redacting the documents. If you are going to be away on Friday due to the holiday, I will collect the documents upon your return next week.

If you have hard copy documents, please give me a call and I will copy them for you.

In the event that you have any questions, please call me.

Thanks.

Herman J. Narcho  
Branch Chief  
Enforcement  
Tel: 202-693-0835



**From:** [Mehta, Parag V - OFCCP](#)  
**To:** [McGinnis, Laura K - OPA \(McGinnis.Laura.K@dol.gov\)](#)  
**Subject:** FW: Secretary's Memo re: Implementation EO 11246 after Macy v. Holder  
**Date:** Monday, May 19, 2014 11:06:00 AM  
**Attachments:** [742308-18.pdf](#)  
[Geidner FOIA 746760.pdf](#)  
[OSEC response to Geidner FOIA 746760.pdf](#)  
**EXEMPTION 5**

Here are the attachments. Will call you shortly.

**From:** Narcho, Herman J - OFCCP  
**Sent:** Monday, May 19, 2014 7:00 AM  
**To:** Hayes, Charlotte - ASAM; Oliver, Ramona - SOL; Plick, Joseph - SOL  
**Cc:** Goshi, Allen K - SOL; Litras, Marika - OFCCP; Dowd, Tom M - OFCCP; Pinto, Consuela - SOL; Dankowitz, Beverly - SOL; Audette, Rose - SOL; Mehta, Parag V - OFCCP; Lenhoff, Donna R - OFCCP; Horak, Forrest - OFCCP; Pinto, Consuela - SOL; Wilkinson, Christopher - SOL; Fink, Alicia - ETA JC CTR; Fink, Shannon - SOL  
**Subject:** FW: Secretary's Memo re: Implementation EO 11246 after Macy v. Holder

Charlotte, Ramona, and Joe-

**EXEMPTION 5**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Herman J. Narcho  
 OFCCP  
 Branch Chief  
 Enforcement  
 Tel: 202-693-0835

---

**From:** Goshi, Allen K - SOL  
**Sent:** Friday, May 16, 2014 5:18 PM  
**To:** Narcho, Herman J - OFCCP  
**Cc:** Oliver, Ramona - SOL; Audette, Rose - SOL; Hayes, Charlotte - ASAM; Dankowitz, Beverly - SOL; Plick, Joseph - SOL  
**Subject:** FW: Secretary's Memo re: Implementation EO 11246 after Macy v. Holder

Herman,

**EXEMPTION 5**  
[Redacted text block]

Aloha,  
Al

*This message may contain legally privileged, confidential, or otherwise disclosure-exempt information. Do not disclose without consulting with me or with the Office of the Solicitor, U.S. Department of Labor. If you think you received this email in error, please notify the sender immediately.*

---

**From:** Hukill, Craig - SOL  
**Sent:** Friday, May 16, 2014 5:09 PM  
**To:** Goshi, Allen K - SOL  
**Subject:**

SECRETARY OF LABOR  
WASHINGTON, D.C. 20210

MAR 21 2014

The Honorable George Miller  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Miller:

Thank you for the March 5, 2014, letter from you and your colleagues seeking updated information on the efforts of the Department of Labor (DOL) to ensure fair and equal treatment of lesbian, gay, bisexual and transgender (LGBT) individuals in the workplace. As you know, President Obama and his Administration have taken many steps to enhance equal protection and treatment for the LGBT community. I appreciate your recognition of the Department of Labor's contributions to these efforts and my longstanding commitment to civil rights. Under my leadership, the Department will continue to play a significant role in helping to achieve workplace equality for the LGBT community. In the meantime, I want to take the opportunity to highlight some of the actions we have taken to reach this goal after the Supreme Court's landmark decision in *U.S. v. Windsor*, which struck down Section 3 of the Defense of Marriage Act (DOMA), as well as other actions that are pending.

Immediately after *Windsor*, the Department undertook a thorough review of all of its policies and programs to determine where we needed to make revisions to conform to the holding of that case. I directed Agency Heads within the Department to look for every opportunity to ensure that we are implementing *Windsor* in a way that provides maximum protection for workers and their families. On August 9, 2013, I sent an email to all DOL employees to inform them of the availability of Federal benefits to employees in same-sex marriages and to share with them my direction to Agency Heads.

Working with the Department of Justice to assure consistent implementation of *Windsor* across the Executive Branch, we have made changes to a range of the Department's programs and policies. For example, on August 9, 2013, the Wage and Hour Division (WHD) issued updates to several subregulatory guidance documents implementing the Family and Medical Leave Act (FMLA) to remove references to DOMA. WHD then publicized that guidance with a post on the Department's blog. The Administration's fall 2013 Regulatory Agenda states that the Department will propose to revise the definition of "spouse" in light of *Windsor* in March 2014. The Department also collaborated with the Office of Personnel Management (OPM) on the agencies' revisions to their respective FMLA regulations to ensure consistent post-*Windsor* guidance.

On September 18, 2013, the Employee Benefit Security Administration (EBSA), which administers and enforces the Employee Retirement Income Security Act (ERISA), released Technical Guidance that clarified that legally married same-sex couples enjoy the same federal rights as other married couples when it comes to pensions, 401(k) plans, health plans and other similar employee benefits, even if they live in states that do not recognize their union.

EBSA continues to work with and review guidance by the Department of Health and Human Services and the Department of the Treasury on issues that also implicate ERISA.

The Employment and Training Administration (ETA) is preparing a draft Training and Education Guidance Letter (TEGL) to address the definition of family for services provided under grants funded by ETA. Separately, ETA plans to initiate a broad review of Job Corps' Program Requirements Handbook (PRH), which sets forth the day-to-day obligations of Job Corps contractors. This initiative will provide ETA with an opportunity to examine its guidance to Job Corps contractors with respect to LGBT and gender non-conforming youth and make appropriate revisions.

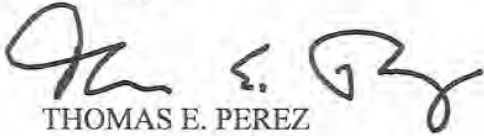
The Department's Office of Workers' Compensation Programs (OWCP) has taken a number of steps to ensure application of *Windsor* to the Federal Employees' Compensation Act (FECA). For instance, in August, OWCP announced that it will apply a state-of-celebration rule for determining marital status, which is consistent with current regulations, and no longer rely on DOMA Section 3 as a limitation on the definition of marriage. In order to establish post-*Windsor* principles in FECA eligibility cases litigated before the Employment Compensation Appeals Board (ECAB), OWCP asked ECAB to reverse and remand a case in which OWCP had denied augmented compensation to an employee with a same-sex spouse under DOMA section 3. On November 8, 2013, ECAB reversed and remanded the case and OWCP has now awarded benefits. OWCP has issued a FECA Bulletin providing thorough guidance to examiners and has also made revisions to the FECA procedure manual. Similar to what it has done in the FECA program, OWCP has issued an updated circular for the Energy Employees Occupational Illness Compensation Act consistent with *Windsor*.

The Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246, which prohibits employment discrimination by federal government contractors and subcontractors on the basis of race, color, religion, sex, and national origin. OFCCP follows Title VII principles when interpreting the Executive Order, including when it investigates and enforces complaints of employment discrimination by members of the LGBT community. Under Title VII, courts have held that discrimination on the basis of gender stereotyping is unlawful. In *Macy v. Holder*, the Equal Employment Opportunity Commission (EEOC) concluded that intentional discrimination against a transgender individual because that person is transgender is discrimination based on sex that violates Title VII. Several weeks ago, in response to a question I received at a press conference, I stated that I had directed the Department to expedite its review of how *Macy* might apply to DOL's programs and policies. That review is ongoing.

In addition, the Department recognizes that OFCCP's sex discrimination regulations, which were last updated in 1978, are out of date and do not reflect established law on such issues as sexual harassment, sex stereotyping, and pregnancy discrimination. Therefore, the fall 2013 Regulatory Agenda includes the issuance of a Notice of Proposed Rulemaking to revise and update OFCCP's sex discrimination regulations.

Thank you for your steadfast commitment to equal rights. As the Department continues its ongoing efforts to ensure equal treatment of members of the LGBT community, exemplified by the initiatives discussed above, we welcome the opportunity to engage in dialogue with Members of Congress, LGBT advocates, and businesses.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', written in a cursive style. The signature is positioned above the printed name 'THOMAS E. PEREZ'.

THOMAS E. PEREZ