

118TH CONGRESS
1ST SESSION

S. 973

To prohibit Federal contractors from imposing racial hiring quotas, benchmarks, or goals.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2023

Mr. COTTON (for himself, Mr. SCOTT of Florida, Mr. HAGERTY, and Mr. HAWLEY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To prohibit Federal contractors from imposing racial hiring quotas, benchmarks, or goals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Equal Op-
5 portunity from ESG Act”.

6 **SEC. 2. PURPOSE.**

7 Acknowledging that distinctions between citizens
8 solely because of their ancestry are, by their very nature,
9 odious to a free people whose institutions are founded
10 upon the doctrine of equality, and recognizing that exist-

1 ing regulations have failed to eradicate the use of racial
2 hiring quotas among Federal contractors, the purpose of
3 this Act is to require contracts with the Federal Govern-
4 ment to include an equal opportunity clause prohibiting
5 racial hiring quotas, benchmarks, or goals.

6 **SEC. 3. DEFINITIONS.**

7 For purposes of this Act:

8 (1) CONTRACTOR.—The term “contractor”—

9 (A) means any person that is awarded a
10 contract with the Federal Government or a sub-
11 contract under such a contract, including any
12 subcontractor (at any tier) of such person; and

13 (B) includes a person that—

14 (i) is a lessor or lessee; or

15 (ii) is an employer of a worker per-
16 forming work on a contract with the Fed-
17 eral Government whose wages are cal-
18 culated pursuant to a special certificate
19 issued under section 14(c) of the Fair
20 Labor Standards Act of 1938 (29 U.S.C.
21 214(c)).

22 (2) EMPLOYMENT PRACTICES.—The term “em-
23 ployment practices”—

24 (A) means all terms and conditions of em-
25 ployment (including of any paid or unpaid fel-

1 lowship or internship), including all practices
2 relating to the screening, recruitment, referral,
3 nomination, selection, training, appointment,
4 promotion, demotion, and assignment of per-
5 sonnel; and

6 (B) includes advertising, hiring, assign-
7 ments, classification, discipline, layoff and ter-
8 mination, upgrading, transfer, leave practices,
9 rate of pay, fringe benefits, or other forms of
10 pay or credit for services rendered and use of
11 facilities.

12 (3) EXECUTIVE AGENCY.—The term “executive
13 agency” has the meaning given that term in section
14 133 of title 41, United States Code.

15 (4) NATIONAL INTEREST.—The term “national
16 interest”—

17 (A) means a national security interest, eco-
18 nomic interest, or public health and welfare in-
19 terest; and

20 (B) does not include any purported inter-
21 est in—

22 (i) racial or social justice objectives,
23 affirmative action agendas, or any other
24 race-based considerations; or

1 (ii) promoting, enabling, or excusing
 2 any policy, initiative, or practice of an em-
 3 ployer concerning—

4 (I) environmental, social, and
 5 governance (commonly known as
 6 “ESG”);

7 (II) diversity, equity, and inclu-
 8 sion (commonly known as “DEI”); or

9 (III) corporate social responsi-
 10 bility (commonly known as “CSR”).

11 (5) SECRETARY.—The term “Secretary” means
 12 the Secretary of Labor.

13 **SEC. 4. PROHIBITION ON IMPOSING RACIAL HIRING**
 14 **QUOTAS.**

15 (a) IN GENERAL.—The head of each executive agency
 16 shall, except as provided in subsection (b), ensure that
 17 each contract entered into by the executive agency on or
 18 after the date of enactment of this Act includes require-
 19 ments that the contractor shall—

20 (1) certify that, during the 5-year period imme-
 21 diately preceding the date on which the contract is
 22 entered into, the contractor did not initiate, carry
 23 out, or enforce any system of quotas, benchmarks,
 24 or goals in regard to employment practices that en-

1 courage or require any discrimination on the basis of
2 race; and

3 (2) not, during the performance of the contract,
4 initiate, carry out, or enforce any system of quotas,
5 benchmarks, or goals in regard to employment prac-
6 tices which encourage or require any discrimination
7 on the basis of race.

8 (b) EXCEPTION FOR LOOKBACK REQUIREMENT.—

9 Notwithstanding subsection (a), the Secretary may exempt
10 the head of an executive agency from the requirement to
11 include the certification described in subsection (a)(1) in
12 a specific contract, subcontract, or purchase order if the
13 Secretary determines that special circumstances in the na-
14 tional interest so require.

15 **SEC. 5. REGULATIONS AND IMPLEMENTATION.**

16 (a) REGULATIONS REQUIRED.—

17 (1) DEPARTMENT OF LABOR.—Not later than
18 90 days after the date of enactment of this Act, the
19 Secretary shall issue such regulations as are nec-
20 essary to implement this Act.

21 (2) FEDERAL ACQUISITION REGULATION.—Not
22 later than 90 days after the date on which the Sec-
23 retary issues regulations under paragraph (1), the
24 Federal Acquisition Regulatory Council shall amend
25 the Federal Acquisition Regulation, consistent with

1 such regulations, to provide for inclusion in any
2 Federal procurement solicitation or contract the re-
3 quirements under section 4.

4 (b) AGENCY IMPLEMENTATION.—Not later than 90
5 days after the date on which the Secretary issues any reg-
6 ulations under subsection (a)(1) and except as provided
7 in section 4(b), the head of each executive agency shall
8 ensure that any contract entered into by the executive
9 agency complies with the requirements set forth in section
10 4(a).

11 **SEC. 6. ENFORCEMENT.**

12 (a) IN GENERAL.—The Secretary shall have the au-
13 thority to investigate potential violations of this Act and
14 obtain compliance, including as provided in subsection (b).

15 (b) PENALTIES FOR NONCOMPLIANCE.—In the case
16 of a contractor that violates a contract requirement under
17 section 4—

18 (1) the relevant executive agency may cancel,
19 terminate, or suspend (in whole or in part) the ap-
20 plicable contract; and

21 (2) the Secretary may initiate a debarment pro-
22 ceeding with respect to the contractor.

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