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THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, CA 90802-4210
(562) 951-4425

Date: January 9, 2006 **Code:** **HR 2006-01**

To: CSU Presidents

From: Jackie R. McClain
Vice Chancellor
Human Resources

Subject: **Executive Order 13201: Notice of Employee Rights Concerning Payment of Union Dues (Beck Poster)**

Executive Order 13201 (EO 13201), signed into law on February 17, 2001, requires employers, who are nonexempt government contractors and subcontractors, to post notices informing their employees that under federal law, those employees have certain rights related to union membership and use of union dues and fees.[1] In addition, EO 13201 requires covered employers to include the language of the required notice in their nonexempt subcontracts and purchase orders, so that the provisions will be binding upon each subcontractor or vendor. Effective June 20, 2005, the Office of Federal Contract Compliance Programs (OFCCP) began conducting compliance inspections under EO 13201 when the agency goes on-site to review an employer's Affirmative Action Program.

To comply with EO 13201, each campus must (1) post the notice in conspicuous places throughout its facilities; and (2) include the notice or a reference to 29 CFR Part 470 (the regulations implementing EO 13201) in all of its subcontracts and purchase orders that exceed $100,000 and were entered into or modified (i.e., amended, re-negotiated or renewed) on or after April 28, 2004.

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[1] Labor relations matters at the CSU are governed by state law (HEERA) rather than federal law. However, because the rights described in the notice are recognized under both state and federal laws, compliance with EO 13201 would not cause a legal conflict while ensuring the CSU's eligibility for federal contracts.

Distribution:

Chancellor
Vice Presidents, Administration
Associate Vice Presidents/Deans, Faculty Affairs
Human Resources Directors
Equal Employment Opportunity Directors

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A copy of the notice is provided for your use (Attachment A). The two-page notice must be pasted or taped together to form an 11"x17" poster when you post it. You may reproduce the attachment for use or obtain additional copies from The Division of Interpretations and Standards, U.S. Department of Labor (1-866-4-USA-DOL) or any field office of the Office of Labor-Management Standards (olms-public@dol.gov) or of the OFCCP or by downloading at http://www.dol.gov/esa/regs/compliance/olms/EO13201_PosterWithoutNLRB.pdf.

The notice must also be printed on each of the campus' covered subcontracts and purchase orders. Campuses may choose to print verbatim the employee notice clause provided at 29 CFR § 470.2 (Attachment B) or incorporate the notice by reference to 29 CFR Part 470 with a statement such as: "The contractor agrees to comply with the provisions of 29 CFR Part 470."

Questions regarding this HR letter should be addressed to Employee Relations at (562) 951-4425. This HR letter is available via Human Resources Administration's Web page at: http://www.calstate.edu/HRAdm/memos.shtml.

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EMPLOYEES

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

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NOTICE TO

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

U.S. Department of Labor
Employment Standards Administration
Washington, D.C. 20210

This Notice is required to be posted by Executive Order 13201, which was signed by President George W. Bush on February 17, 2001.

You can download copies of this poster from www.olms.dol.gov, send a request to OLMS-Public@dol.gov, or call 1-866-4-USA-DOL.

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Federal Register

Monday,
March 29, 2004

Part IV

Department of Labor

Office of Labor-Management Standards

29 CFR Part 470

Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees; Final Rule

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16376 Federal Register / Vol. 69, No. 60 / Monday, March 29, 2004 / Rules and Regulations

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 470

RIN 1215–AB33

Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Office of Labor-Management Standards ("OLMS") is publishing this final rule to implement Executive Order 13201, which was signed by President George W. Bush on February 17, 2001. The final rule contains minor changes made as a result of comments received regarding the notice of proposed rule-making ("proposed rule" or "NPRM") published on October 1, 2001. *See* 66 FR 50010.

Executive Order 13201 ("the Executive Order," "the Order," or "EO 13201") requires non-exempt government contractors and subcontractors to post notices informing their employees that under Federal law, those employees have certain rights related to union membership and use of union dues and fees. The Order also provides the text of contractual provisions that Federal Government contracting departments and agencies must include in every government contract, except for collective bargaining agreements and contracts for purchases under the Simplified Acquisition Threshold. These provisions include the language of the required notices, and explain the sanctions, penalties, and remedies that may be imposed if the contractor or subcontractor fails to comply with its obligations under the Order. Covered government contractors and subcontractors must include these same provisions in their nonexempt subcontracts and purchase orders, so that the provisions will be binding upon each subcontractor or vendor.

The final rule provides the text of the required contractual provisions, explains exemptions, and sets forth procedures for ensuring compliance with the Order; it also contains other related requirements.

EFFECTIVE DATE: April 28, 2004.

FOR FURTHER INFORMATION CONTACT: Don Todd, Deputy Assistant Secretary for Labor-Management Programs, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, 202–693–0122 (voice) (this is not a toll-free number) or 800–877–8339 (TTY/TDD). Copies of this final rule, including copies in alternative formats, may be obtained by calling OLMS at 202–693–0123 (voice) or 800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The preamble to the final rule is organized as follows:

I. Background—provides a brief description of the development of the final rule, including a list of documents connected to the rule that OLMS has published

II. Authority—cites the legal authority supporting the final rule, Departmental redelegation authority, and interagency coordination authority

III. Overview of the Rule—summarizes pertinent aspects of the regulatory text, including a section-by-section analysis that discusses any comments received about each section and explains any changes made to the text as a result of those comments.

IV. Regulatory Procedure—sets forth the applicable regulatory requirements.

I. Background

As described in detail in the preamble to the NPRM, Executive Order 13201 (66 FR 11221, February 22, 2001) is designed to promote economy and efficiency in government procurement by requiring government contractors to inform their workers that Federal labor laws give those workers certain rights related to union membership and use of union dues and fees. The Order provides the text of a contract clause that government contracting departments and agencies must include in all nonexempt government contracts and subcontracts. That clause requires contractors to post a notice, the exact language of which is included in the clause. The clause also requires contractors to include the same clause in their nonexempt subcontracts and purchase orders, and describes generally the sanctions, penalties, and remedies that may be imposed if the contractor fails to satisfy its obligations under the Order and the clause.

The text of the notice informs employees that they cannot be required to join, or maintain membership in, a union in order to keep their jobs; that under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay dues and fees to the union; and that, even where such union-security agreements exist, employees who are not union members can only be required to pay their share of union costs relating to certain specific activities. The notice also provides a general description of the remedies to which employees may be entitled if these rights have been violated, and provides contact information for further information about those rights and remedies.

In April 2001, the Department of Labor ("DOL" or "the Department") issued an Interim Procedural Notice ("IPN") to provide guidance to contractors and subcontractors about how to comply with Executive Order 13201 pending the publication of a final rule implementing the Order. 66 FR 19988 (April 18, 2001). The IPN authorized covered contractors to fulfill their posting obligations under the Order by replicating the text of the notice set forth in the Order and posting it in conspicuous places in and about their plants and offices, including all places where notices to employees are customarily posted.

As noted above, OLMS published an NPRM on October 1, 2001, proposing regulations to implement Executive Order 13201. *See* 66 FR 50010. The NPRM set a deadline of November 30, 2001, for receipt of public comments about the proposed rule. However, because of anthrax-related problems with mail delivery, OLMS published a notice in the **Federal Register** on December 18, 2001, listing the six commenters from whom comments had been received by the deadline, and asking any other commenters who might have submitted comments via U.S. mail before the deadline to supply duplicate copies of such comments. 66 FR 65163. The notice set a deadline of January 2, 2002, for receipt of such duplicate copies. Two additional sets of comments were received. However, neither set appeared to be a duplicate copy of comments submitted before the original deadline; rather, both sets appeared to be new comments. As a result, the Department determined that these comments would not be analyzed and considered in the development of this final rule. The six timely comments that were analyzed and considered came from various nonprofit, public policy, and trade association groups, as well as a group of Members of Congress. No comments were received from labor unions.

As described in detail in the NPRM, Executive Order 13201 contains requirements similar, but not identical, to those included in Executive Order 12800, issued on April 13, 1992, by then-President George H. W. Bush. *See* 57 FR 12985 (April 14, 1992); 57 FR 13413 (April 16, 1992). Executive Order

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arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term "nonpersonal services" as used in this section includes, but is not limited to, the following services: utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federally assisted contracts.

(k) Labor organization means any organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(l) Modification of a contract means any alteration in the terms and conditions of that contract, including amendments, renegotiations, and renewals.

(m) Order or Executive Order means Executive Order 13201 (66 FR 11221, February 22, 2001).

(n) Person means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

(o) Prime contractor means any person holding a contract with a contracting agency, and, for the purposes of subparts B and C of this part, includes any person who has held a contract subject to the Executive Order.

(p) Related rules, regulations, and orders of the Secretary of Labor, as used in section 470.2 of this part, means rules, regulations, and relevant orders of the Assistant Secretary for Employment Standards, or his or her designee, issued pursuant to the Executive Order or this part.

(q) Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

(r) Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

(s) Subcontractor means any person holding a subcontract and, for the purposes of subparts B and C of this part, any person who has held a subcontract subject to the Executive Order.

(t) Union means a labor organization as defined in paragraph (k) of this section.

(u) Union-security agreement means an agreement entered into between a contractor and a labor organization which requires certain employees of the contractor to pay uniform periodic dues and/or fees, initiation fees, or other payments to that labor organization as a condition of employment.

(v) United States, as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

§ 470.2 Under the Executive Order, what employee notice clause must be included in Government contracts?

(a) *Government contracts.* Except in contracts exempted in accordance with Section 470.3 and collective bargaining agreements as defined in 5 U.S.C. 7103(a)(8), all Government contracting agencies must, to the extent consistent with law, include the following provisions in Government contracts entered into on or after April 28, 2004, that resulted from solicitations issued on or after April 18, 2001:

"1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form as the Secretary of Labor will prescribe, in conspicuous places in and about its plants and offices, including all places where notices to employees are customarily posted. The notice must include the following information (except that the last two sentences must not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151–188)).

"NOTICE TO EMPLOYEES

"Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

"If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

"For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll-free number: National Labor Relations Board, Division of Information, 1099 14th Street, NW., Washington, D.C. 20570, 1–866–667–6572, 1–866–315–6572 (TTY).

"To locate the nearest NLRB office, see NLRB's website at *http://www.nlrb.gov.*"

"2. The contractor will comply with all provisions of Executive Order 13201 of February 17, 2001, and related rules, regulations, and orders of the Secretary of Labor.

"3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order 13201 of February 17, 2001. Such other sanctions or remedies may be imposed as are provided in Executive Order 13201 of February 17, 2001, or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.

"4. The contractor will include the provisions of paragraphs (1) through (4) herein in every subcontract or purchase order entered into in connection with this contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13201 of February 17, 2001, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any such subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance: However, if the contractor becomes involved in

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litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

(b) *Inclusion by reference.* The employee notice clause need not be quoted verbatim in a contract, subcontract, or purchase order. The clause may be made part of the contract, subcontract, or purchase order by citation to 29 CFR part 470.

(c) *Adaptation of language.* The Assistant Secretary may make such changes in the contractual provisions of the Executive Order as may be necessary to reflect Acts of Congress, clarifications in the law by the courts, or otherwise to fully and accurately inform employees of their rights under the Executive Order.

(d) *Obtaining employee notice poster.* The required employee notice poster, printed by the Department, will be provided by the Federal contracting agency or may be obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs. A copy of the poster may also be downloaded from the Office of Labor-Management Standards Web site at *www.olms.dol.gov*. Additionally, contractors may reproduce and use exact duplicate copies of the Department's official poster.

§ 470.3 What contracts are exempt from the employee notice clause requirement?

(a) *Transactions below the Simplified Acquisition Threshold.* The requirements of this part do not apply to Government contracts for purchases that fall below the Simplified Acquisition Threshold, as that threshold is defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403. Therefore, the employee notice clause need not be included in contracts for purchases below that threshold, *provided that*—

(1) No agency, contractor, or subcontractor is permitted to procure supplies or services in a way designed to avoid the applicability of the Order and this part; and

(2) The employee notice clause must be included in contracts and subcontracts for indefinite quantities, unless the contracting agency or contractor has reason to believe that the amount to be ordered in any year under such a contract or subcontract will be less than the Simplified Acquisition Threshold.

(b) *Government contracts resulting from solicitations issued before April 18, 2001.* Pursuant to section 14 of the Order, the requirements of this part do not apply to Government contracts that result from solicitations issued before April 18, 2001, the effective date of the Order.

(c) *Specific contracts.* The Deputy Assistant Secretary for Labor-Management Programs may exempt a contracting agency or any person from requiring the inclusion of any or all of the employee notice clause in any specific contract, subcontract, or purchase order when the Deputy Assistant Secretary deems that special circumstances in the national interest so require. Requests for such exemptions must be in writing, and must be directed to the Deputy Assistant Secretary for Labor-Management Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC, 20210.

(d) *Withdrawal of exemption.* When any contract or subcontract is of a class exempted under this section, the Deputy Assistant Secretary for Labor-Management Programs may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when, in the Deputy Assistant Secretary's judgment, such action is necessary or appropriate to achieve the purposes of the Order.

§ 470.4 What contractors or facilities are exempt from the posting requirements?

(a) *Number of employees.* The requirement to post the employee notice given in § 470.2(a) (hereafter, posting requirement) does not apply to contractors and subcontractors that employ fewer than 15 persons.

(b) *Union representation.* The posting requirement does not apply to contractor establishments or construction work sites where no union has been formally recognized by the prime contractor or certified as the exclusive bargaining representative of the prime contractor's employees.

(c) *State law.* The posting requirement does not apply to contractor establishments or construction work sites in jurisdictions where state law forbids enforcement of union-security agreements. For purposes of this paragraph, the term "state" is intended to include any of the entities identified as comprising the United States, as defined in § 470.1(2).

(d) *Work not performed under Government contracts.* Upon the written request of the contractor, the Deputy Assistant Secretary for Labor-Management Programs may waive the posting requirements with respect to any of a contractor's facilities if the Deputy Assistant Secretary finds that the contractor has demonstrated that:

(1) The facility is in all respects separate and distinct from activities of the contractor related to the performance of a contract; and

(2) Such a waiver will not interfere with or impede the effectuation of the Executive Order.

(e) *Work outside the United States.* The posting requirement does not apply to work performed outside the United States that does not involve the recruitment or employment of workers within the United States.

Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures

§ 470.10 How will the Department determine whether a contractor is in compliance with the Executive Order and this part?

(a) The Deputy Assistant Secretary for Federal Contract Compliance may conduct a compliance evaluation to determine whether a contractor holding a nonexempt contract is in compliance with the requirements of this part. Such an evaluation may be limited to compliance with this part or may be included in a compliance evaluation conducted under other laws, Executive Orders, and/or regulations enforced by the Department.

(b) During such an evaluation, a determination will be made whether:

(1) The employee notice required by Section 470.2(a) is posted in conspicuous places in and about each of the contractor's establishments and/or construction work sites not exempted under section 470.4 of this part, including all places where notices to employees are customarily posted; and

(2) The provisions of the employee notice clause are included in nonexempt Government contracts entered into on or after April 28, 2004, that resulted from solicitations issued on or after April 18, 2001.

(c) The results of the evaluation will be documented in the evaluation record, which will include findings regarding the contractor's compliance with the requirements of the Executive Order and this part and, as applicable, conciliation efforts made, corrective action taken and/or enforcement recommended under Section 470.13.