



December 12, 2023

Timothy Riera, Director (acting)
Jeffrey Burstein, Regional Attorney
New York District Office
U.S. Equal Employment Opportunity Commission
33 Whitehall Street, 5th Floor
New York, NY 10004

**Investigation Request: International Business Machines Corporation
("IBM")**

Dear Mr. Riera and Mr. Burstein:

America First Legal Foundation ("AFL") is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write, pursuant to 29 C.F.R. § 1601.6(a), seeking issuance of a Commissioner's charge for an inquiry into individual or systemic discrimination by International Business Machines Corporation ("IBM").¹ IBM is a publicly traded corporation headquartered at 1 New Orchard Road, Armonk, NY 10504.²

Title VII of the Civil Rights Act of 1964 prohibits IBM from discriminating against an employee or an applicant for employment because of race, color, religion, sex, or national origin; to limit, segregate, or classify employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of race, color, religion, sex, or national origin; or to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.³ However, the evidence is that IBM is knowingly, intentionally, and systematically engaging in such unlawful employment practices.

On December 11, 2023, a tape of IBM Chief Executive Officer and Board Chairman Arvind Krishna was released on X.⁴ In the video, Krishna promises to fire, demote, or deny bonuses to corporate executives who either fail to meet the corporation's

¹ Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them pursuant to 29 C.F.R. § 1601.6(a).

² IBM Annual Report (Form 10-K) (Feb. 28, 2023), available at <https://ibm.co/48dY2Ti>.

³ 42 U.S.C. § 2000e-2.

⁴ James O'Keefe (@JamesOKeefeIII), TWITTER (Dec. 11, 2023, 7:47 PM), <https://bit.ly/46ZvXOm>.

racial and national origin hiring quotas or who hire too many Asian individuals.⁵ Also, Paul Cormier, the chairman of IBM subsidiary Red Hat, admits employees who failed to meet or comply with the corporation's unlawful racial and national origin quotas were terminated.

A Commissioner's charge is particularly appropriate here because there is ample reason to believe that IBM has knowingly and intentionally violated federal law and intends to continue doing so. Krishna, Cormier, and others in management have embedded immoral and unlawful employment practices into the corporation's culture.⁶ For example, IBM's 2022 ESG report acknowledges that "A modifier for diversity results is included in the annual incentive program for our executives globally and is based on improvement in executive representation for women globally and U.S. underrepresented minority (URM) groups (specifically, Black and Hispanic) for our executives in the U.S."

Discrimination based on immutable characteristics such as race, color, national origin, or sex "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone."⁷ More broadly, IBM's employment practices foment contention and resentment—they are "odious and destructive."⁸ It truly "is a sordid business, this divvying us up" by race or sex.⁹

Thank you in advance for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Gene P. Hamilton
Gene P. Hamilton
America First Legal Foundation

Cc: The Honorable Charlotte A. Burrows, Commission Chair
The Honorable Jocelyn Samuels, Commission Vice Chair
The Honorable Keith E. Sonderling, Commissioner
The Honorable Andrea R. Lucas, Commissioner
The Honorable Kalpana Kotagal, Commission

⁵ "Asians in the US are not an underrepresented minority in a tech company... I'm not trying to finesse this, so for blacks we should try to get towards 13 point something percent," says Krishna. James O'Keefe (@JamesOKeefeIII), TWITTER (Dec. 11, 2023, 7:47 PM), <https://bit.ly/46ZvXOm> (starting at the 7:56 mark).

⁶ 2022 IBM ESG Report at 28 (2022), <https://ibm.co/48w3v8f>.

⁷ *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

⁸ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

⁹ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

APPENDIX

Our vision for diversity and inclusion at IBM

We foster a culture of conscious inclusion and active allyship, where every IBMer can make a positive impact on society while bringing their authentic selves to work. We are building this through creating a more diverse workforce, cultivating a flexible work environment, enabling an inclusive culture, and advocating for equity, both inside and outside of IBM.

Advocacy

IBM works to drive systemic change that creates opportunity for diverse communities

Allyship

IBM provides training and support to help every IBMer be an upstander through inclusive behaviors

Employee experience

IBM champions all diverse communities of IBMers and supports every employee to thrive and bring their authentic selves to work

Accountability

IBM harnesses data transparency and AI to enable accountability, action and outcomes for increased diversity representation and inclusion at every level of our company

Our ESG Commitments

Our commitment to creating Ethical Impact, Equitable Impact, and Environmental Impact includes targets. Updates through the end of calendar year 2022 for those targets are as follows:

Ethical Impact	Equitable Impact	Environmental Impact
<p>Include technology ethics education in training for IBM ecosystem partners, reaching 1,000 partners by end of 2022</p> <p> Achieved by target date We exceeded our target to train 1,000 ecosystem partners in technology ethics in 2022.</p>	<p>Skill 30 million people globally by 2030</p> <p> Commitment in progress Since January 2021, over 7 million* learners have enrolled in IBM courses.</p>	<p>Reach net-zero operational greenhouse gas emissions by 2030</p> <p> Commitment in progress In 2022, we reduced emissions 63.3% against base year 2010, adjusted for acquisitions and divestitures, placing IBM on track to meet its GHG emissions reduction goal.</p>
<p>Train 1,000 technology suppliers in technology ethics by 2025</p> <p> New commitment in 2023</p>	<p>\$250 million investment in apprenticeship and new-collar programs by 2025</p> <p> Commitment in progress</p>	<p>Divert 90% (by weight) of IBM's total nonhazardous waste from landfill and incineration by 2025</p> <p> Achieved annual target in 2022 In 2022, we diverted 93.8% (by weight) of our total nonhazardous waste from landfill and incineration. We are working to reduce the amount of diverted waste sent to waste-to-energy processes from the 11.9% (by weight) achieved in 2022 to less than 10%.</p>
<p>Annual Incentive Program includes a modifier to drive accountability in improving executive diversity representation</p> <p> Commitment in progress Executive representation of women globally, as well as Black and Hispanic executives in the U.S., excluding Red Hat, improved by 0.3 points, 0.7 points and 0.3 points, respectively in 2022. This improvement did not increase the incentive score. The executive incentive program will continue to include a diversity modifier and our goal remains to close the gap in executive representation in these key areas.</p>	<p>Log 4 million volunteer hours by 2025</p> <p> Commitment in progress Since January 2022, IBMers logged over 437,000* volunteer hours towards our goal.</p>	<p>Document 100 client engagements or research projects in which IBM solutions have enabled demonstrable environmental benefits by 2025</p> <p> Commitment in progress Since January 2021, we have documented 40* such engagements or projects.</p>
<p>Engage 100% of suppliers on sound practices including social and environmental responsibility, ethics, and risk planning</p> <p> Commitment in progress</p>	<p>15% of first tier supplier diversity spend from Black-owned suppliers by 2025</p> <p> Commitment in progress In 2022, 6.9% of our first-tier supplier diversity spend was with Black-owned suppliers.</p>	

Annual Incentive Program includes a modifier to drive accountability in improving executive diversity representation

Commitment in progress

Executive representation of women globally, as well as Black and Hispanic executives in the U.S., excluding Red Hat, improved by 0.3 points, 0.7 points and 0.3 points, respectively in 2022. This improvement did not increase the incentive score.

The executive incentive program will continue to include a diversity modifier and our goal remains to close the gap in executive representation in these key areas.

Diversity-Linked Executive Compensation

To reinforce our focus on improving the diverse representation of our workforce, we link executive compensation with the company's performance in key diversity areas. A modifier for diversity results is included in the annual incentive program for our executives globally and is based on improvement in executive representation for women globally and U.S. underrepresented minority (URM) groups (specifically, Black and Hispanic) for our executives in the U.S. Our goal remains to improve and close the gap in representation.

“It’s a signal to the world that we can create a better society going forward, just by taking a look at who we hire, how we hire, how we promote, and how we are authentic to the very value of equity.”

Nigel Pretence

Design Director for Digital Growth and Commerce, Chair for IBM’s Racial Equity in Design Initiative

Champion diversity

Every one of us is a complex combination of diverse characteristics. Learn more about other communities and embrace all aspects of identity.

Black →	DiversAbility →	Hispanic →
Indigenous →	LGBTQ+ →	Pan-Asian →
Veterans →	Women →	



Women's Be Equal Woman Tee
\$18.75



Pan Asian Tee
\$9.95
Was: \$25.00