



January 17, 2024

Carmen Navarro, Regional Director
Midwest Region
U.S. Department of Labor
Office of Federal Contract Compliance Programs
230 S Dearborn St
Room 570
Chicago, IL 60604-1520

Investigation Request: United Airlines, Inc.

Dear Ms. Navarro:

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. Your office is charged with responsibility for achieving the aims of parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin, employed or seeking employment with Government contractors. *See* 41 C.F.R. § 60-1. We write, pursuant to 41 C.F.R. § 60-1.21, seeking a complaint investigation into alleged violations of Executive Order 11246 by United Airlines, Inc. (“United”).

United is a subsidiary of United Airlines Holdings, Inc., a publicly traded corporation under your jurisdiction, headquartered at 233 South Wacker Drive, Chicago, Illinois.¹ Since 2008, United has received more than \$150,000,000 from federal government contracts—primarily with respect to transportation services for the Department of Defense and the Department of Transportation.² Federal law requires all federal government contracts to include an equal opportunity clause prohibiting the contractor from discriminating against an employee or an applicant for employment because of race, color, religion, sex, or national origin. The law provides:

The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual

¹ United Airlines, Form 10-K at 3 (Feb. 16, 2023), <http://tinyurl.com/nez4wyj7>.

² *United Airlines Inc.*, USASPENDING, <http://tinyurl.com/phjnvpt4> (last visited Jan. 16, 2024).

orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship ... The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

41 C.F.R. §§ 60-1.4(a)(1), (2). This clause is a part of every federal contract and subcontract, whether or not it is physically incorporated and whether or not the contract between the agency and the contractor is written. 41 C.F.R. § 60-1.4(e). If the contractor violates this provision, then the Secretary of Labor may cancel, terminate, or suspend its contracts, and the contractor may be declared ineligible for further federal government contracts and subject to other sanctions. 41 C.F.R. §§ 60-1.26–27.

The evidence is that United is knowingly, intentionally, and systematically violating its equal opportunity covenants and assurances. In an interview on June 20, 2021, United CEO Scott Kirby described diversity quotas in United’s training academy, the Aviate Academy. Kirby said that in order to increase diversity among pilots, “[w]e have committed that 50% of the classes will be women or people of color.”³ He further described that “for every job, when we do an interview, we require women or people of color to be involved in the interview process.” Kirby confirmed that, at the time of the interview, “only” 19% of United pilots were women and people of color.⁴ Increasing diversity among pilots accordingly entails refusing to consider or hire qualified nonminority pilots.

Additionally, AFL is concerned⁵ with discriminatory commitments described in United’s 2022 Corporate Responsibility Report⁶ that describe unlawful benchmarks, classifications, and quotas for potential and current employees. These include:

- “Include a diverse makeup of candidates in 90% of new hire interview slates for management and administrative roles.”

³ Dan Primack, *United CEO: America Could Face a Pilot Shortage*, AXIOS on HBO, AXIOS (June 20, 2021), <http://tinyurl.com/2p93se7m> (video embedded at the beginning of the article).

⁴ *Id.*

⁵ AMERICA FIRST LEGAL, *America First Legal Files Civil Rights Complaints Against American, United, and Southwest Airlines for Illegal Racial and Sex Discrimination* (Nov. 1, 2023), <http://tinyurl.com/2k9ws2mf>.

⁶ UNITED AIRLINES, *Inclusion Among Our Workforce*, 2022 CORPORATE RESPONSIBILITY REPORT, <https://tinyurl.com/3y22u6mz> (last visited Jan. 17, 2024).

- “Continue to meet United Aviate Academy diversity goal: 50% of enrolled students who are women and/or people of color.”
- A “3% increase in representation of women and 6% increase in representation of underrepresented racial and ethnic groups when comparing December 2020 to December 2022.”
- “In 2022, almost half of all promotions at the Senior Professional and Senior Leader level were of those belonging to underrepresented racial and ethnic groups. *Growing diversity in our leadership will continue to be an essential focus in 2023 and beyond.*” (Emphasis added.)
- “[W]e have *committed to increase the number of women in senior positions and underrepresented areas by a minimum of 25% by 2025.*” (Emphasis added.)
- “In 2022, we welcomed 200 students to the Academy and celebrated the graduation of our inaugural class of pilots, that included 51 students – with nearly 80% being women or people of color.”
- “200 team members from underrepresented racial and ethnic groups attended these [McKinsey Connected Leadership Academies] in 2022, which equip future leaders with a peer network that will help them achieve their aspirations and assist them in developing new capabilities, mindsets and behaviors for growth. These programs are implemented in identity-based communities and provide a unique lens on leadership from the perspective of diverse leaders.”⁷

United also may have violated applicable law by engaging in unlawful subcontracting practices. According to its website, United’s “Supplier diversity program” furthers United’s focus “on supporting businesses from historically underrepresented groups such as women and minorities.” Further, United stated that it intends to spend “at least \$1 billion annually with women-and-diverse-owned businesses by 2050,” and has advanced on that goal by spending \$151 million with such businesses in 2021-22.⁸

⁷ We note that 42 U.S.C. § 1981 prohibits racial discrimination in the making, performance, modification, and termination of contracts, and in the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship; the statute applies to all phases and incidents of the contractual relationship. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1020 (2020) (Ginsburg, J., concurring). Nevertheless, United admits entering into contractual agreements with McKinsey that benefit some of its employees based solely on their immutable characteristics and discriminating based on race, color, national origin, and ethnicity. UNITED AIRLINES, *Inclusion Among Our Workforce*, 2022 CORPORATE RESPONSIBILITY REPORT, <https://tinyurl.com/3y22u6mz> (last visited January 16, 2024).

⁸ UNITED AIRLINES, *Amplifying Progress Through Supplier Partnership*, 2022 CORPORATE RESPONSIBILITY REPORT, <https://tinyurl.com/399vcjhh> (last visited Jan. 16, 2024). Furthermore, it is

Through explicit statements from its CEO and its public commitments in its Corporate Responsibility Report, United has admitted to unlawfully considering sex, race, and color in its hiring practices. As a recipient of hundreds of federal contracts, it appears to have admitted to intentional violations of 41 C.F.R. §§ 60-1.4(a)(1), (2). Accordingly, your office should exercise its authority and undertake a compliance evaluation of United; on this record, failing to do so would be arbitrary and capricious, and an abuse of your discretion.

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

Sincerely,

/s/ Will Scolinos

Will Scolinos

America First Legal Foundation

CC: The Hon. James Comer, Chair, House Committee on Oversight and Accountability
The Hon. Jamie Raskin, Ranking Member, House Committee on Oversight and Accountability
The Hon. Sam Graves, Chair, House Committee on Transportation and Infrastructure
The Hon. Rick Larsen, Ranking Member, House Committee on Transportation and Infrastructure

required to include nondiscrimination requirements in every one of its subcontracts or purchase orders unless otherwise exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. 41 C.F.R. § 60-1.4(a)(8). There is no evidence that United is doing so.

APPENDIX

INCLUSION AMONG OUR WORKFORCE

As we announced our growth plans last year, which included hiring 50,000 employees over the next five years—we created company-wide DEI goals for the first time in our history and tied them to specific metrics in our executive long-term incentive plan to ensure accountability for progress.

These goals focus on three key areas related to talent:

1. Increasing demographically diverse representation;	2. Creating new pathways to United careers; and	3. Assessing and refining HR policies and practices.
Goal	Progress	
1: Include a diverse makeup of candidates in 90% of new hire interview slates for management and administrative roles	We identified women and people of color in leadership roles as areas of opportunity and introduced this measure to bring more demographic diversity into our candidate funnel for consideration.	
2: Update 50% of job postings to appeal to a broader labor market and eliminate biased verbiage	We introduced a tool that checks for language that may be perceived as biased and/or may create feelings of exclusion in order to replace them with statements that are more inclusive and are expected to appeal to a broader audience of diverse job seekers.	
3. Continue to meet United Aviate Academy diversity goal: 50% of enrolled students who are women and/or people of color	To attract diverse candidates, we partnered with diverse professional organizations to amplify the United Aviate Academy and, in partnership with JPMorgan Chase & Co., established a scholarship fund to provide more than \$5 million in scholarships for prospective academy students.	

1. Increasing demographically diverse representation

We exceeded all three of our goals in these areas:

Goal	Progress
1: Include a diverse makeup of candidates in 90% of new hire interview slates for management and administrative roles	We identified women and people of color in leadership roles as areas of opportunity and introduced this measure to bring more demographic diversity into our candidate funnel for consideration.
2: Update 50% of job postings to appeal to a broader labor market and eliminate biased verbiage	We introduced a tool that checks for language that may be perceived as biased and/or may create feelings of exclusion in order to replace them with statements that are more inclusive and are expected to appeal to a broader audience of diverse job seekers.
3. Continue to meet United Aviate Academy diversity goal: 50% of enrolled students who are women and/or people of color	To attract diverse candidates, we partnered with diverse professional organizations to amplify the United Aviate Academy and, in partnership with JPMorgan Chase & Co., established a scholarship fund to provide more than \$5 million in scholarships for prospective academy students.

2. Creating new pathways to United careers

We met our primary goal in this area

Goal	Progress
1: Launch apprenticeship program for Maintenance Technicians with a focus on underrepresented groups	Calibrate, our new in-house apprenticeship program, was launched in November 2022, supporting our ambitious goal of hiring 7,000 maintenance technicians by 2026

In-house apprenticeship program

Calibrate, our new in-house apprenticeship program, launched in November 2022. It will be a key strategic component in ensuring that we achieve our ambitious goal of hiring 7,000 maintenance technicians by 2026. We plan to train more than 1,000 new technicians by 2026, with a goal that at least half will be students who identify as women and/or people of color.

In the 36-month program, apprentices will gain the skills and knowledge they need to obtain their Airframe & Powerplant Certificate, including hands-on and classroom training and mentorship alongside United's experienced technicians.

Our first cohort was comprised of 80% people of color. The Calibrate program plans to expand to over a dozen locations in 2023 and will be open to United's global employee base and external candidates.



Our strategy

Our DEI strategy is centered around transforming the future of aviation. It is recognized as an essential driver of our growth and sustainable financial and operational success.

In 2022, we built on our progress to embed DEI throughout the business with a focus on leading the aviation industry by:

- Cultivating greater opportunities and access for underrepresented groups so they can build long, lucrative careers at United and enhance our uniquely inclusive culture;
- Offering a more accessible and culturally sensitive travel experience for all of our customers;
- Empowering and uplifting the communities we serve; and
- Demonstrating active leadership in building a strong pipeline for business diversity.

We are proud to share how we exceeded our DEI goals in 2022, made additional progress beyond these goals and established ongoing DEI commitments among our employees, customers, communities and commercial partners.

Communities	Support our DEI aims through engagement with community organizations	<ul style="list-style-type: none"> • Support United recruitment and workforce programs • Craft a public policy agenda that includes a DEI focus • Grow partnerships and engagement
Read about our performance against community goals		
Suppliers and commercial partners	Support women- and diverse-owned businesses through membership in the Billion Dollar Roundtable	<ul style="list-style-type: none"> • Direct \$1 billion+ of spending annually towards women- and diverse-owned businesses by 2025 • Implement business policy and practices to ensure program sustainability and diverse business growth and development.

The next step on our journey: Billion Dollar Roundtable

In 2021, we announced our intention to become a member of the Billion Dollar Roundtable (BDR), a group of corporations recognized for:

- Spending at least \$1 billion¹ annually with women- and diverse-owned businesses by 2050.
- Implementing business policy and practices to ensure program sustainability and diverse business growth and development.

¹Spend is BDR-qualified only if the supplier is certified by one of five agencies: Disability:IN, the National LGBT Chamber of Commerce, the National Minority Supplier Development Council, the National Veteran's Business Development Council or the Women's Business Enterprise National Council (WBENC).

We are making significant progress:



Additional progress toward more diverse representation

We are building customized multi-year strategies for each functional area of our business in order to attract, develop and support diverse talent in the advancement of their careers at United. Our officers and HR teams monitor how hiring, promotion and attrition are impacting our progress using talent dashboards and develop ways to use that data to inform our strategies and programs.

Building on our commitment to increased transparency, we are sharing our [US workforce demographic data](#) for the third year in a row.

Measurable highlights from 2022 include:

1. Higher representation of women and underrepresented racial and ethnic groups

Our US workforce saw a 3% increase in representation of women and 6% increase in representation of underrepresented racial and ethnic groups when comparing December 2020 to December 2022.

2. New hires are improving diverse representation

Representation of women and traditionally underrepresented racial and ethnic groups in our new hire management and administrative population is higher than in January 2022: 5% higher for women and 9% higher for people from underrepresented racial and ethnic groups.

3. Voluntary turnover remains low

In a time period known by many as “the Great Resignation” when many employers experienced layoffs and a spike in voluntary exits, we actually grew, bringing in almost 2,000 new management and administrative employees. Our team members are staying with us to build careers, as evidenced by our voluntary turnover rate of only 7%. We remain a destination for lifelong careers, with an average tenure of 16 years of service for United employees.

4. Progress has been made at senior levels

We made progress in our efforts to have our leadership reflect the diversity of the communities we serve. In 2022, almost half of all promotions at the Senior Professional and Senior Leader level were of those belonging to underrepresented racial and ethnic groups. Growing diversity in our leadership will continue to be an essential focus in 2023 and beyond.