

the
MAIN STREET
alliance



February 2, 2024

Ms. Brandee Anderson
Senior Advisor to the Deputy Secretary
Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Re: Response to Request for Information on Business Diversity Principles

Dear Ms. Anderson,

Main Street Alliance¹ writes to express our support for the Department of Commerce’s (“Department”) efforts to provide the private sector with resources and tools that will help institutions uphold and operationalize their commitments to equity and economic development. We appreciate the opportunity to respond to the Department’s Request for Information on Business Diversity Principles, published in the Federal Register on November 29, 2024.²

Main Street Alliance works with community leaders all across the United States to build power for Main Street, including both small business owners and workers. Justice, equity, and sustainability are at the core of our approach. We strive to create a small business organization that reflects the rich diversity of the communities we serve, including BIPOC

¹ We appreciate the assistance of Brooke Menschel, Emma Leibowitz, and Robin Thurston, Democracy Forward Foundation, in preparing this comment.

² Business Diversity Principles, 88 Fed. Reg. 83,380 (Nov. 29, 2023)

individuals, LGBTQIA+ communities, and those in rural areas. Our commitment to equity and inclusion permeates every aspect of our work, from community organizing and policy strategies to staff recruitment and retention. We are driven by the belief that by uplifting underrepresented voices and championing fairness, we can create positive change for all. Together, we are building a future where small businesses thrive, and every individual has an equal opportunity to succeed. We also believe that diversity is good for business.

We commend the Department for the comprehensive guidance and suggested best practices in the Business Diversity Principles. We focus this comment in particular on question 11 in the RFI, which asks “What role do you believe the government should play in promoting Business Diversity within the private sector?”³ Diversity in this context is necessarily multi-faceted and includes human resources, workforce development, supplier diversity efforts, and “the range of private sector efforts that focus on [diversity, equity, inclusion, and accessibility].”⁴ Regardless of the specifics of a particular program or initiative, though, business diversity describes “private sector initiatives that seek to advance equitable economic development” and “promot[e] inclusive capitalism and equitable economic growth for all Americans.”⁵

As detailed further below, diversity, as described by the Department, in business is vital for: (1) economic growth; (2) capitalizing on opportunities and avoiding unnecessary constraints on growth; and (3) improving collaboration, creativity, and innovation. Moreover, diversity in business is a critical interest in its own right. And advancing diversity for the purpose of economic prosperity, and for the benefit of all people in the United States, is central to the federal government’s role as it seeks to promote economic growth and the long-term stability of the United States.

“[P]rivate sector initiatives that seek to advance equitable economic development” are critical to ensuring the United States’s long-term economic growth and stability.⁶ Conversely, a lack of diversity and inclusion limits opportunities for financial growth. As a crucial partner for the private sector in “promot[ing] growth and well-being” of the economy, the federal government’s role in supporting diversity and inclusion cannot be underestimated.⁷ And as the entity charged with safeguarding long-term economic prosperity, maintaining the United States’s role as a global economic leader, and ensuring that the economy works to benefit the United States’ populace writ large, the federal government’s role cannot be overstated. In short, the

³ *Id.*

⁴ *Id.* at 83,382.

⁵ *Id.* “Business Diversity,” “diversity in business” are used interchangeably throughout this comment.

⁶ *Id.* at 83,380.

⁷ See, e.g., White House, *Economic Report of the President* 47 (Apr. 2022), https://www.whitehouse.gov/wp-content/uploads/2022/04/ERP_2022_.pdf.

federal government should and must play a key role in promoting business diversity within the private sector.

I. Business Diversity is integral to cultivating economic growth, avoiding financial loss, and increasing innovation

The United States economic system is premised on the belief that “diversity” itself is a building block for economic prosperity.⁸ The concept of diversity is a driver for many central tenets of the U.S. economy: diverse competition drives innovation, diverse thought drives ingenuity, diverse investment minimizes risk, diverse offerings ensure broad appeal, diverse opportunity yields optimal results, and so on.⁹ Yet without embodying diversity of people, thought, and experiences, in addition to diversity of tools and opportunity, the possibilities for economic prosperity will remain limited. Private sector leaders have long recognized, and championed, diversity as an important means of promoting economic success. Diversity and inclusion “[are] a powerful source of commercial advantage and critical to [the private sector’s] continued success.”¹⁰ For those in the private sector who operationalize inclusion and diversity, it is an important “source of competitive advantage” and a “core enabler of growth and value creation” that helps companies that focus on diversity “pull[] ahead of the rest.”¹¹ These efforts include targeting diverse talent, ensuring leadership is accountable for business diversity efforts, increasing openness and transparency around business diversity, and fostering belonging through internal practices that support “multivariate” diversity.¹² As one industry leader noted in a May 2020 report, “[t]he business case for diversity, equity, and inclusion . . . is stronger than ever.”¹³

Companies with the most diverse leadership, both in terms of gender and racial and ethnic diversity, are among the most profitable. In 2019, companies with the most gender

⁸See, e.g., David Orentlicher, *Diversity: A Fundamental American Principle*, 70 Mo. L. Rev. 777, 781 (2005).

⁹See, e.g., *id.* at 797-98, 800.

¹⁰See Mot. for Leave to File Brief Amicus Curiae Out of Time and Brief of BP America Inc. as Amicus Curiae in Support of Neither Party at *2, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2004 WL 1339512 (describing the strategic decision to make diversity and inclusion a focus that “transcends all [] business activities”).

¹¹McKinsey & Co., *Diversity wins: How inclusion matters* 13 (May 2020), <https://www.mckinsey.com/~media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf>.

¹²See *id.* at 42-44; see also *id.* at 22 (describing Citi Group’s practices to help “strengthen[] equality of opportunity), 31 (describing Pentair’s efforts to “build[] an inclusive culture”), 39 (describing Target’s transparency practices), 46 (describing Lockheed Martin’s efforts to build an inclusive culture).

¹³McKinsey & Company, *Diversity wins: How inclusion matters*, <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters#/> (last visited Jan. 29, 2024).

diversity on their executive teams were 25 percent more likely to experience above-average profitability as compared to those with the least gender diverse executive teams.¹⁴ Likewise, companies in the top 25 percent of ethnic and cultural diversity were 36 percent more profitable than their peer companies in the bottom 25 percent.¹⁵ And these financial advantages have increased over the last decade, with increased performance resulting from both gender and ethnic diversity on executive teams in 2019 compared to 2014.¹⁶ Other data suggests that “there is a linear relationship between racial and ethnic diversity and better financial performance: for every 10 percent increase in racial and ethnic diversity on the senior-executive team, earnings before interest and taxes (EBIT) rise 0.8 percent.”¹⁷

Data backs this up. Diversity helps drive business success. Meanwhile, inequity takes a huge financial toll on the nation as a whole. A September 2020 report on the financial impact of racial gaps in areas including employment opportunity highlights the scope of the problem.¹⁸ Research underlying the report showed that failure to address racial gaps had imposed up to \$16 trillion in costs for the U.S. economy over the preceding 20 years.¹⁹ These gaps reach all sectors of the economy. As of September 2020, closing racial gaps in wages,²⁰ housing credit,²¹ access to higher education,²² and lending²³ could lead to an additional \$5 trillion of additional gross

¹⁴ McKinsey & Co., *supra* n. 11, at 8; *see id.* at 17 (showing that executive teams “with more than 30% of women are more likely to outperform those with fewer or no women”).

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 14 (finding that companies “in the top quartile for gender diversity in their executive teams were 15 percent more likely to experience above-peer-average profitability than companies in the fourth quartile [in 2014]” but finding that had increased by 2019 to 25 percent”); *see also id.* at 20 (showing “36 percent higher likelihood of outperformance on [earnings before interest and taxes] margin for top quartile companies for ethnic and cultural diversity on executive teams— up from 33 percent in 2017 and 35 percent in 2014”).

¹⁷ *See, e.g.,* Vivian Hunt, Dennis Layton & Sara Prince, *Why diversity matters*, McKinsey & Co. (Jan. 1, 2015),

<https://www.mckinsey.com/~media/mckinsey/business%20functions/people%20and%20organizational%20performance/our%20insights/why%20diversity%20matters/why%20diversity%20matters.pdf>.

¹⁸ *See generally* Citi Global Perspectives & Solutions, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.* (Sept. 2020),

<https://www.citigroup.com/global/insights/citigps/closing-the-racial-inequality-gaps-20200922>.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 18 (showing potential economic gains of \$6.8 trillion in income over 20 years by closing the wage gap for Black workers).

²¹ *Id.* (noting that adequate access to housing credit for Black would-be homeowners over the preceding 20 years could have added \$218 billion to the GDP during that period).

²² *Id.* (“More Black students with university and advanced degrees might have generated an additional \$90 to \$113 billion in income [over the preceding two decades] that could have contributed to consumption.”).

²³ *Id.* (“More than 6 million jobs per year might have been added [over the preceding 20 years] and \$13 trillion in cumulative revenue gained if Black-owned firms had equitable access to credit.”)

domestic product over five years.²⁴ Those numbers suggest a national and international crisis for the United States' ability to ensure long-term prosperity and for our ability to compete on the world stage.

Beyond the easily measurable economic benefits, incorporating diversity, equity, and inclusion improves outputs by boosting creativity, collaboration, and innovation. Working alongside people with different backgrounds, experiences, and perspectives has been shown to “jolt us into cognitive action in ways that homogeneity simply does not,” which not only increases creativity but also leads to deeper engagement, increased proactive and strategic thinking, improved communication, and more effective conflict resolution.²⁵

Industry leaders acknowledge this reality. According to Safra A. Catz, the CEO of Oracle Corporation, “We cannot invent and build the best new technologies or make the greatest scientific discoveries without the creativity, insights, and unique perspectives of diverse innovators. Homogeneity is the enemy of innovation.”²⁶ Likewise, Dr. Kathryn Guarini, PhD., the Chief Operating Officer and Vice President for IBM Research, applauded the U.S. Patent and Trademark Office Council for Inclusive Innovation, noting that its “focus on fostering innovation, competitiveness, and economic growth by increasing the involvement of underrepresented groups is a key and welcomed component to ensuring . . . global leadership in driving innovation.”²⁷

The data demonstrates the relationship between diversity and innovation. A survey of 1,700 companies demonstrated that those companies with above-average diversity across a range of factors in leadership were far more likely to yield revenue based on innovation than those with below-average diversity in their leadership.²⁸ The study found a “strong and statistically significant correlation between the diversity of management teams and overall innovation.”²⁹ This correlation held true across industries and geography.³⁰ Moreover, where a diverse leadership team was paired with other factors that “allow diversity to flourish,”³¹ companies were

²⁴ *Id.* at 4.

²⁵ Katherine W. Phillips, *How Diversity Makes Us Smarter*, *Sci. Am.* (Oct. 1, 2014), <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/> (describing a 2006 study that found racially diverse groups were more thorough, careful, communicative, and open minded in an effort to reach consensus than racially homogenous groups).

²⁶ U.S. Patent and Trademark Office, *About the Council for Inclusive Innovation* (last visited Jan. 29, 2024), <https://www.uspto.gov/initiatives/equity/ci2/about>.

²⁷ *Id.*

²⁸ Rocío Lorenzo et al., *How Diverse Leadership Teams Boost Innovation* (Jan. 23, 2018), <https://www.bcg.com/publications/2018/how-diverse-leadership-teams-boost-innovation>.

²⁹ *Id.*

³⁰ *Id.*

³¹ These included “fair employment practices,” “participative leadership,” “strategic emphasis on diversity,” “frequent and open communication,” and “a culture of openness to new ideas.” *See id.*

13 percent more likely to yield revenue based on innovation.³² “For management teams, there are few slam dunks in the business world,” the study team wrote. Diversity “is one of them.”³³

II. By promoting Business Diversity, the federal government fulfills its explicitly stated and implicitly understood role to support a strong, and thus necessarily diverse, economy.

The federal government’s role in promoting economic prosperity is both expressly stated³⁴ and implicitly understood. Economists broadly recognize that the government plays a unique role in “promot[ing] growth and well-being” in the economy, both in partnership with the private sector and independently through actions that the private sector cannot or does not take independently.³⁵ These impacts are far-reaching: through financial investment, policy platforms and mandates, enforcement actions, and domestic and global leadership, the federal government grows the economy in a host of ways. Beyond the economic benefits, a robust economy “is an indispensable driver of improvement in human well-being.”³⁶ Moreover, a healthy economy can be a crucial tool to bolstering national security,³⁷ which is especially critical in the face of geopolitical conflict or natural disasters. When the government plays an active role in the economy, it is “creating, protecting, and expanding markets and their potential to produce an inclusive and prosperous society.”³⁸

The federal government has a compelling interest and a responsibility to use the tools at its disposal to ensure long-term economic prosperity and sustainability. Agencies across the federal government recognize their role in supporting the nation’s economic engine to serve the

³² *See id.*

³³ *Id.*

³⁴ *See, e.g.*, U.S. Const. art. I, § 8 (describing various economic powers).

³⁵ White House, *Economic Report*, *supra* n. 7, at 42.

³⁶ White House, *Economic Report of the President* 21 (Mar. 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf>.

³⁷ White House, *Economic Report*, *supra* n. 7, *Id.* at 214, 221-25 (describing the importance of the public sector’s role in ensuring “supply chain resilience,” producing “critical goods,” and protecting “hub industries,” which are all key for national security purposes).

³⁸ *Id.* at 42.

entire country.³⁹ The Department of Commerce is no exception, as it seeks to “create the conditions for economic growth and opportunity for *all* communities.”⁴⁰ As discussed, it is established that diversity has the predictable impact of growing the economy.⁴¹ Accordingly, the federal government can and should promote inclusive capitalism and equitable economic growth. Doing so requires a prolonged and multifaceted approach, but it is one that has already, and will continue, to pay dividends.

Congress has directly addressed diversity and equity as part of key economic legislation that has been instrumental in stabilizing the economy after a once-in-a-century pandemic,⁴² improving and enhancing infrastructure,⁴³ investing in scientific innovation and manufacturing,⁴⁴

³⁹ See, e.g., Dep’t of Treasury, *Role of the Treasury*, <https://home.treasury.gov/about/general-information/role-of-the-treasury> (last visited January 29, 2024) (highlighting the Treasury Department’s role in “promoting economic prosperity and ensuring the financial security of the United States”); Fed. Reserve, *About the Fed*, <https://www.federalreserve.gov/aboutthefed.htm> (last visited January 29, 2024) (noting that the Federal Reserve “promote[s] the effective operation of the U.S. economy and . . . the public interest” by establishing monetary policy, promoting the financial system’s stability; fostering a payment and settlement system, and promoting consumer protection and community development).

⁴⁰ Dep’t of Commerce, *About*, <https://www.commerce.gov/about> (last visited January 29, 2024) (emphasis added).

⁴¹ See *supra* Sec. I.; see also IMF Fisc. Affs. Dep’t, *Should Equity Be a Goal of Economic Policy?*, 35 Finance & Development 2 (Sept. 1998) (“Equity-enhancing policies, particularly investment in human capital, can, in the long run, boost economic growth . . .”).

⁴² American Rescue Plan of 2021, Pub. L. No. 117-2, 135 Stat. 4. The American Rescue Plan, for example, worked to lower barriers to entry for working families, White House, *Advancing Equity through the American Rescue Plan 16* (May 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/05/ADVANCING-EQUITY-THROUGH-THE-AMERICAN-RESCUE-PLAN.pdf>, targeted small businesses, *id.*, including by providing economic assistance to farmers and rural communities, *id.* at 32, as well as indigenous communities, *id.* at 28.

⁴³ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (widely known as the “Bipartisan Infrastructure Law”). The Bipartisan Infrastructure Law included various equity goals, including funding for development projects supporting rural communities, Tribes, and historically disadvantaged communities of color. See U.S. Dep’t of Transp., *Fact Sheet: Equity in the Bipartisan Infrastructure Law* (July 5, 2022), <https://www.transportation.gov/bipartisan-infrastructure-law/fact-sheet-equity-bipartisan-infrastructure-law>.

⁴⁴ CHIPS and Science Act, Pub. L. No. 117-167, 136 Stat. 1366 (2022). The Chips and Science Act includes a commitment to “drive opportunity and equity for all of America in STEM and innovation,” including through initiatives to support Historically Black Colleges and Universities and other academic institutions that target historically-underserved students and communities, as well as to broaden the “geographic diversity of research and innovation funding.” White House, *Fact Sheet: CHIPS and Science Act Will Lower Costs, Create Jobs*,

and reducing inflation.⁴⁵ For instance, the 2021 American Rescue Plan was crucial to stimulating the U.S. economy in the wake of the COVID-19 pandemic. But the \$1.9 trillion plan was particularly effective because it ensured that recovery was equitable and thus more sustainable.⁴⁶ Its expansion of the Child Tax Credit and Earned Income Tax Credit helped millions of front-line workers—often people of color or who otherwise come from traditionally underserved communities—to continue working, helping millions of workers stay in the economy.⁴⁷ And its \$24 billion investment in Child Care Stabilization provided essential support to childcare providers, ensuring that these institutions could keep their doors open so that the parents who relied on their services, many of whom are women, could continue to work.⁴⁸ Similarly, the Bipartisan Infrastructure Law, invested billions of dollars in a wide-range of diverse communities, including rural communities, with the understanding that doing so would be essential for economic success.⁴⁹ For example, the Bipartisan Infrastructure Law allocated funds for massive investment in rural communities—providing high-speed internet to rural homes and businesses, investing in rural transportation, and creating good-paying jobs, among other programs.

Strengthen Supply Chains, and Counter China (Aug. 9, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/09/fact-sheet-chips-and-science-act-will-lower-costs-create-jobs-strengthen-supply-chains-and-counter-china/>.

⁴⁵Inflation Reduction Act, Pub. L. No. 117-169, 36 Stat. 1818 (2022). The Inflation Reduction Act includes programs that target low-income communities. U.S. Dep’t of Treasury, *Fact Sheet: How the Inflation Reduction Act’s Tax Incentives Are Ensuring All Americans Benefit from the Growth of the Clean Energy Economy* (Oct. 20, 2023), <https://home.treasury.gov/news/press-releases/jy1830>.

⁴⁶ White House, *Fact Sheet: Biden-Harris Report: “Advancing Equity Through the American Rescue Plan”* (May 24, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/24/fact-sheet-biden-harris-report-advancing-equity-through-the-american-rescue-plan/>.

⁴⁷ *Id.* For example, the “American Rescue Plan also tripled EITC for 17 million workers without dependent children from \$540 to \$1500 – first increase since 1993 – and extended the credit to younger & older workers.” It helped “nearly 1.8 million cashiers and retail salespeople; almost 1 million cooks and food prep workers; and more than 850,000 nurses and health aides, 500,000 janitors, 400,000 truck and delivery drivers, and 300,000 childcare workers.”

⁴⁸ White House, *Fact Sheet: American Rescue Plan Funds Provided a Critical Lifeline to 200,000 Child Care Providers – Helping Millions of Families to Work* (Oct. 21, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/21/fact-sheet-american-rescue-plan-funds-provided-a-critical-lifeline-to-200000-child-care-providers-helping-millions-of-families-to-work/> (“[T]he American Rescue Plan – through its historic \$24 billion Child Care Stabilization Program – has already provided vital aid to help more than 200,000 child care providers keep their doors open to as many as 9.5 million children, helping their parents work. Stabilization funds have already assisted providers employing more than 1 million child care workers.”).

⁴⁹ *See, e.g.*, E.O. 13, 985, § 2 (including “persons who live in rural areas” as those who are underserved); *see also infra* n. 83-85 and accompanying text.

The executive branch plays just as significant a role in promoting Business Diversity. As the “world’s largest and most influential buyer,”⁵⁰ the federal government works to ensure “equitable procurement” practices, and through its spending, can “integrate diverse enterprises more fully into the American business landscape as contractors, suppliers, and partners.”⁵¹ This is a prime example of essential and beneficial federal engagement in the economy that has the additional benefit of creating an opportunity to enhance economic equity.⁵² Nonetheless, it is no easy task. Far too often, eligible vendors for government contracts are precluded from winning government contracts because of barriers that raise financial and other costs to entry.⁵³ Recognizing that reality, the federal government has diversified contract recipients, including by striving to ensure that federal contracting dollars are spent on contracts with small disadvantaged businesses owned by racial and ethnic minorities,⁵⁴ women-owned businesses,⁵⁵ and veteran-owned businesses.⁵⁶ Executive Order 14,091, which President Biden signed on February 16, 2023, further emphasized the goal of “increasing the share of federal contracting dollars,” including that spent with SDBs by 50 percent by 2025.⁵⁷ Through this spending, the government also has the ability and responsibility to ensure that those companies that choose to engage in

⁵⁰ White House, *Advancing Equity and Racial Justice Through the Federal Government*, <https://www.whitehouse.gov/equity/> (last visited Jan. 31, 2024).

⁵¹ Dr. Kimberly Myers et al., *Government’s Equity Imperative* (Sept. 14, 2021), <https://www2.deloitte.com/us/en/insights/industry/public-sector/bias-discrimination-racial-equity-government.html> (describing “pitfalls” to equitable outcomes, including “diversity efforts that focus only on spending, without developing or connecting with minority entrepreneurs”).

⁵² *See id.*

⁵³ White House, *Advancing Equity and Racial Justice Through the Federal Government*, *supra* n. 50 (“Too often, however, small disadvantaged businesses (SDBs) must spend countless hours and tens of thousands of dollars learning how to navigate government contracting process to compete against larger and more experienced firms. This can be a serious barrier to entry for SDBs.”).

⁵⁴ U.S. Small Bus. Admin., *Small Disadvantaged Business*, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/small-disadvantaged-business> (last visited Jan. 31, 2024).

⁵⁵ U.S. Small Bus. Admin., *Women-Owned Small Business Federal Contract program*, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/women-owned-small-business-federal-contract-program> (last visited Jan. 31, 2024).

⁵⁶ U.S. Small Bus. Admin., *Veteran contracting assistance programs*, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/veteran-contracting-assistance-programs#id-service-disabled-veteran-owned-small-business-program> (last visited Jan. 31, 2024).

⁵⁷ White House, *Advancing Equity and Racial Justice Through the Federal Government*, *supra* n. 50; *see also* Exec. Order No. 13985, 86 Fed. Reg. 7009, § 7 (Jan. 20, 2021).

business with the federal government promote diversity in their workforces through and abide by anti-discrimination measures.⁵⁸

The federal government also advances its economic goals through the grantmaking process, through which the government provides funds to individuals, companies, universities, non-profit organizations, State, Tribal, territorial, and local governments, and small businesses. The grantmaking process, much like the contracting process, often creates various hurdles that may reduce the equitable receipt of grants, which, in turn, limits the country's economic vitality. President Biden's focus on "[d]elivering equity through grantmaking," including by investing "nearly \$100 million in grants to help minority and other underserved entrepreneurs seeking capital to grow and scale their businesses," will generate considerable financial gains that can and will spur additional growth.⁵⁹ And even where the government does not award grants directly to private entities, it can serve these same economic goals by condition funding, or providing guidance, to State, Tribal, territorial, and local government grant recipients in a way that supports diversity in the private sector.

The government's unparalleled ability to collect, store, and analyze data provides yet another tool to reinforce business diversity. The federal government's thirteen principal agencies responsible for tracking statistics⁶⁰ curate information that provides insights into financial markets, the labor force, and changing economic conditions.⁶¹ These data sets serve a variety of purposes and take various forms: from the American Community Survey, an annual survey that tracks everything from age to industry of occupation to housing costs, and the Economic Census, a five-year report providing comprehensive statistics on American businesses.⁶² They capture troves of information that provides public and private entities with the tools necessary to make well-informed decisions on everything from hiring strategies to the locations of new infrastructure.⁶³ Data also allows entities to assess the impact of their policies and programs, which informs resource allocation decisions. And additional measures are underway to ensure

⁵⁸ Dept. of Labor, Off. of Fed. Contract Compliance Programs, *About Us*, <https://www.dol.gov/agencies/ofccp/about> (last visited Jan. 29, 2024).

⁵⁹ White House, *Advancing Equity and Racial Justice Through the Federal Government*, *supra* n. 50.

⁶⁰ OMB, Off. of Info. and Reg. Affs., *Statistical Programs & Standards*, <https://www.whitehouse.gov/omb/information-regulatory-affairs/statistical-programs-standards/> (last visited Jan. 31, 2024).

⁶¹ OMB, Off. of Info. and Reg. Affs., *Statistical Programs of the United States Government: Fiscal Year 2018 3* (May 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/05/statistical-programs-2018.pdf>.

⁶² U.S. Census Bureau, *Economic Census*, <https://www.census.gov/programs-surveys/economic-census.html> (last visited Jan. 31, 2024).

⁶³ OMB, Off. of Info. and Reg. Affs., *Statistical Programs of the United States Government: Fiscal Year 2018*, *supra* note 61, at 3.

effective and representative data collection through the Equitable Data Working Group,⁶⁴ mandated by Executive Order 13,985, which aims to “study existing federal data collection policies, programs, and infrastructure to identify inadequacies and provide recommendations that lay out a strategy for increasing data available for measuring equity and representing the diversity of the American people.”⁶⁵ Having access to such robust and accurate data will allow the private sector to better imbue business diversity into its practices, whether by cultivating diverse talent pipelines or investing in underserved communities.

Finally, by providing guidance across a range of areas and industries,⁶⁶ the federal government can educate private actors about the benefits of business diversity and encourage consistent adoption of these best practices to the benefit of those organizations, their employees, the communities in which they work, and the economy as a whole. For example, in addition to enforcing federal anti-discrimination law against private employers, the Equal Employment Opportunity Commission (“EEOC”) provides technical assistance and educational materials to both private and public sector stakeholders.⁶⁷ In doing so, the EEOC helps mitigate conflict and ensure small businesses and other economic actors are well-equipped to contribute to a robust economy that draws from diverse communities.⁶⁸

⁶⁴ Exec. Order No. 13985, *supra* n. 57.

⁶⁵ White House, *A Vision for Equitable Data: Recommendations from the Equitable Data Working Group 2* (April 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/04/eo13985-vision-for-equitable-data.pdf>.

⁶⁶ *See, e.g.*, FTC, Bureau of Consumer Protection; *Business Guidance*, <https://www.ftc.gov/business-guidance> (last visited Jan. 31, 2024); EEOC, *Best Practices of Private Sector Employees*, <https://www.eeoc.gov/best-practices-private-sector-employers> (last visited Jan. 31, 2024) (providing information on compliance with the law);

⁶⁷ EEOC, *Overview* (last visited Jan. 29, 2024), <https://www.eeoc.gov/overview>.

⁶⁸ Similarly, the Office of Federal Contract Compliance Programs also releases a number of guidance documents that propose practices that contractors may implement to ensure equitable practices. *See, e.g.*, U.S. Dep’t of Lab., Off. of Fed. Contract Compliance Programs, *Best Practices for Ensuring Equal Opportunity in Promotions*, <https://www.dol.gov/agencies/ofccp/focused-reviews/promotions/best-practices> (last visited Jan. 31, 2024); U.S. Dep’t of Lab., Off. of Fed. Contract Compliance Programs, *Best Practices for Construction Contractors and Subcontractors*, <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/resources/construction-best-practices> (last visited Jan. 31, 2024); U.S. Dep’t of Lab., Off. of Fed. Contract Compliance Programs, *Best Practices for Fostering Diversity & Inclusion*, <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/hbcu-initiative/best-practices> (last visited Jan. 31, 2024); U.S. Dep’t of Lab., Off. of Fed. Contract Compliance Programs, *Best Practices: Creating an Inclusive Workforce for Native Americans*, <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/indians-native-americans/best-practices> (last visited Jan. 31, 2024). One such document—the “Best Practices for Fostering Diversity & Inclusion”—gives helpful suggestions, modeled off of private-sectors practices, to contractors interested in hiring and retaining diverse employees. U.S. Dep’t of Lab., Off. of Fed. Contract Compliance Programs, *Best Practices for Fostering Diversity & Inclusion*,

Like the various other tools that the federal government uses, the Department’s proposed Business Diversity Principles support its economic goals by “foster[ing] a more equitable economic landscape by encouraging businesses to learn from each other’s successes and adopt[ing] best practices and strategies.”⁶⁹

III. Diversity in the private sector is a valid stand-alone government interest

In addition to serving the federal government’s economic goals, the Department’s proposed Business Diversity Principles also serve the Department’s broader mission of creating conditions for economic growth and opportunity for *all* communities⁷⁰ and provide a platform for the federal government to advance equity and support for underserved communities. The government has the capacity to advance equity in various ways, including through the enforcement of civil rights laws,⁷¹ targeting underserved communities for investment⁷² and programmatic benefit,⁷³ and using its platform to underscore the importance of making this country work for all people, including rural communities, Tribal communities, communities of color, the LGBTQI+ community, the disabled community, and women and girls, among other groups. As the Office of Management and Budget recognized in a June 2021 report, the country’s founding motto—“E Pluribus Unum”—recognized that “America thrives when all of us thrive.”⁷⁴

<https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/hbcu-initiative/best-practices> (last visited Jan. 31, 2024).

⁶⁹ 88 Fed. Reg., *supra* n. 2, at 83,380.

⁷⁰ Dep’t of Com., *About*, *supra* n. 40.

⁷¹ *See, e.g.*, DOJ, Civ. Rights Div., *Our Work*, <https://www.justice.gov/crt/our-work> (last visited Jan. 31, 2024); U.S. EEOC, *EEOC History: The Law*,

<https://www.eeoc.gov/history/eeoc-history-law#:~:text=The%20Civil%20Rights%20Act%20of%201964%20prohibits%20discrimination%20in%20a.color%2C%20religion%20and%20national%20origin> (last visited Jan. 31, 2024).

⁷² Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Exec. Order No. 14091, 88 Fed. Reg. 10825 (describing investments in underserved communities, including Tribal Nations and Native American Communities, disabled Americans, and people of color).

⁷³ *See, e.g.*, U.S. Dep’t of Ed., Federal TRIO Programs, <https://www2.ed.gov/about/offices/list/ope/trio/index.html> (last visited Feb. 1, 2024) (describing eight federal “outreach and student services programs designed to identify and provide education-related services for individuals from disadvantaged backgrounds,” including low-income individuals, first-generation college students, and individuals with disabilities).

⁷⁴ OMB, *Study to Identify Methods to Assess Equity: Report to the President 3* (July 2021), https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-Report-on-E013985-Implementation_508-Compliant-Secure-v1.1.pdf.

IV. The Proposed Business Diversity Principles Serve the Federal Government’s Economic and Sustainability Goals and Raise No Legal Concerns

As one of his first actions after assuming office on January 20, 2021, President Biden ordered agencies to examine how they engage with underserved communities—including communities of color, religious minorities, LGBTQ+ communities, disabled communities, rural communities, and communities faced with persistent poverty.⁷⁵ Two years later, in a February 2023 executive order, President Biden instructed agencies to “embed equity into all aspects of Federal decision-making.”⁷⁶

The proposed Business Diversity Principles are an important part of the Department’s efforts to comply with these orders. The Department has broad authority over an array of areas that impact business in the country.⁷⁷ Its thirteen bureaus implement hundreds of budgeted programs.⁷⁸ These components have provided guidance and best practices for industry across various areas, from the importing and exporting of goods,⁷⁹ to the protection of intellectual property,⁸⁰ to the ways that businesses can ensure they increase safety for residents, customers, and employees.⁸¹ As with the Department’s other efforts, these Principles provide the private

⁷⁵ See Exec. Order No. 13985, *supra* n. 57.

⁷⁶ Exec. Order No. 14091, *supra* n. 72.

⁷⁷ 15 U.S.C. § 1512.

⁷⁸ Dep’t of Com., *Strategic Plan - 2022 – 2026* 4-5 (March 2023), <https://www.commerce.gov/sites/default/files/2022-03/DOC-Strategic-Plan-2022%E2%80%932026.pdf>.

⁷⁹ See, e.g., Dep’t of Com., Bureau of Indus. and Sec., *Bureau of Industry and Security Issues Best Practice Guidance to Help Prevent High-Priority Items from Being Diverted to Russia* (Sept. 28, 2023), <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3342-2023-09-25-bis-press-release-customer-certification-v3-se/file>; Dep’t of Com., Bureau of Indus. and Sec., *Best Practice: Certification to Prevent Diversion to Russia of Highest Priority Items*, <https://www.bis.doc.gov/index.php/documents/policy-guidance/3339-tent-final-best-practice-customer-certification-v4/file> (last visited Jan. 31, 2024); Off. of Foreign Assets Control, *Know Your Cargo: Reinforcing Best Practices to Ensure the Safe and Compliant Transport of Goods in Maritime and Other Forms of Transportation* (Dec. 11, 2023), <https://ofac.treasury.gov/media/932391/download?inline>.

⁸⁰ See, e.g., Int’l Trade Admin., *Protect Intellectual Property*, <https://www.trade.gov/protect-intellectual-property> (last visited Jan. 31, 2024); U.S. Patent and Trademark Off., *Best Practices: Suggestions and Tips*, <https://www.uspto.gov/patents/laws/examination-policy/best-practices-suggestions-and-tips-slide-set-html> (last visited Jan. 31, 2024).

⁸¹ See, e.g., City of Philadelphia, *Business Camera Security Program*, <https://www.phila.gov/programs/business-security-camera-program/> (last visited Jan. 31, 2024).

sector information on best practices to promote diversity and, as discussed above, help foster economic growth.⁸²

The Department's Business Diversity Principles focus on providing the private sector with guidance and tools that they can use to promote equitable participation in the economy, including from underserved communities. Those communities, defined in E.O. 13,985, as "populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life," include "Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality."⁸³ But neither that list nor the strategies and objectives included in the Department's proposed Business Diversity Principles are exclusive. Moreover, they are not mandatory: implementing the Department's proposed Business Diversity Principles is voluntary, and failing to do so carries no government imposed penalty.⁸⁴ The Department's guidance seeks to promote inclusive capitalism and equitable economic growth for all Americans, which, as the Department recognizes, is "essential to the competitiveness of the Nation's businesses and overall American economy."⁸⁵ This is a lawful goal that does not violate equal protection or run afoul of any constitutional commandments. Indeed, it promotes the very aim underlying equal protection: That *all* people—regardless of race, creed, sex, economic status, geographic location, or sexual orientation—have a fair shot at the American dream.

Thank you for considering these comments as you work to finalize and adopt comprehensive Business Diversity Principles. We appreciate your commitment and look forward to working with you to ensure that the economy works for all people in the United States. Please feel free to contact me at shawn@mainstreetalliance.org or (608) 385-6488 if we can be of further assistance.

⁸² The Department has issued helpful best practice documents in the areas of equity and diversity in the past. *See, e.g.,* Dr. Mary Fuller et al., *Diversity in Innovation Best Practices Guide* (2021), <https://digitalcommons.law.scu.edu/facpubs/989/>; Dep't of Com., *10 Tips for Boosting Diversity and Inclusion in the Recruitment and Hiring Processes*, <https://www.commerce.gov/sites/default/files/2023-09/10%20Tips%20to%20Boost%20Diversity%20Recruitment%20and%20Hiring%20Practices.pdf> (last visited Jan. 31, 2024).

⁸³ Exec. Order No.13985, *supra* n. 57, at § 2.

⁸⁴ *See generally* 88 Fed. Reg., *supra* n. 2, at 83,830. Nonetheless, failing to implement these types of voluntary business diversity initiatives may hinder a private entity's ability to reach maximum economic prosperity. *See, e.g., supra* Sec. I.

⁸⁵ 88 Fed. Reg., *supra* n. 2, at 83,382.

Respectfully,

A handwritten signature in black ink, appearing to be 'SP' with a large flourish.

Shawn Phetteplace
Policy and Political Impact Director