



Federal Contractor Agency To Be Radically Overhauled Under Trump Budget Proposal

OFCCP WILL SEE BUDGET SLASHED, MERGER WITH EEOC BY END OF FY2018

Insights

5.23.17

The proposed federal budget released today would have a dramatic impact on the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), the watchdog agency overseeing the federal government's affirmative action programs. Not only does the budget proposal call for the OFCCP to be subsumed into the Equal Employment Opportunity Commission (EEOC) by the end of FY 2018 (September 30, 2018), but it would significantly slash the agency's budget and employee allotment leading up to that consolidation.

"Merger" With EEOC

Although long-rumored, the proposal to consolidate the OFCCP into the EEOC still comes as somewhat of a shocking development. It would mark the end of an era that began in 1977 when President Carter signed an executive order creating a new federal agency to carry out several functions then being handled by various offices. It would not do away with the responsibilities of the agency, but instead place them under a different umbrella. And although some are characterizing the action as a "merger" between the OFCCP and the EEOC, the proposal would actually see the EEOC completely subsume the OFCCP.

The consolidation is expected to allow the agencies to operate seamlessly and to avoid the current delays caused by data and file transfers. The stated goal is to increase operational efficiencies and make enforcement more consistent. Under the terms of the proposed budget, the OFCCP and EEOC will create a transition workgroup to strategically plan and implement the transition process throughout FY 2018 (October 1, 2017 – September 30, 2018).

Under the proposal, the OFCCP's transfer to the EEOC will encompass every aspect of the federal contractor agency's operations. This includes compliance evaluations, compliance assistance, policy, training, stakeholder outreach and education, personnel, contracting and procurement, and information technology.

The consolidation does seem natural, to a certain extent. After all, the OFCCP and the EEOC have held themselves out as "sister agencies" for several years, and they routinely share information. Their Memorandum of Understanding confirming their collaboration in areas of shared jurisdiction has been routinely renewed. In fact, the OFCCP's most recent revision to its audit notice scheduling

letters expressly reminds contractors that data and information provided in the audit may be shared with other agencies, such as the EEOC.

One of the ways that the consolidation will be carried out is through the establishment of two Skilled Regional Centers to replace its current structure. The centers would be located in the Pacific (San Francisco) and Northeast (New York) regions, staffed by “highly skilled and specialized compliance officers capable of handling various large, complex compliance evaluations in specific industries, such as financial services or information technology.” This would reduce the need for numerous field area and district offices, resulting in further cost reductions.

If the proposal is carried through, the OFCCP will focus its FY 2018 activities on tasks to support the merger, including:

- Drafting and reviewing legislative proposals amending the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VEVRAA) and Section 503 of the Rehabilitation Act of 1973 (Section 503);
- Drafting and reviewing a new Executive Order amending E.O. 11246;
- Working on rulemaking to transfer to the EEOC the OFCCP’s authority under Section 503, VEVRAA, and E.O. 11246;
- Restructuring its compliance officer training;
- Coordinating with the EEOC in investigator training and policy requirements;
- Integrating OFCCP’s Help Desk and EEOC’s system;
- Working with the U.S. Government Accountability Office (GAO) and the Office of Inspector General (OIG) to close out pending audits and audit recommendations;
- Identifying redundant information technology and procurements systems; and
- Creating a stakeholder communication system to be used before and during the merger.

Finalizing the training program framework and completing or revising the Federal Contract Compliance Manual (FCCM) are recognized as two priorities. These are predicted to provide a framework for future enforcement efforts. Further, the OFCCP’s digital communication strategy developed in 2017 will continue to serve as a communication tool to convey information to the stakeholders before and during the transfer of authority to EEOC.

Agency Budget Slashed

During this transition year, the OFCCP will be called upon to carry out its responsibilities with far fewer resources at its disposal. The FY 2018 budget request calls for an allotment of \$88 million and 440 full-time employees for the OFCCP, which represents a decrease of \$17.2 million and 121 full

440 full-time employees for the OFCCP, which represents a decrease of \$17.2 million and 131 full-time employees from the FY 2017 Full Year Continuing Resolution level. The federal budget proposes that the OFCCP begin reducing the number of its field offices and begin transitioning the agency to the EEOC during this transition year, thereby justifying a lower budget.

What's In Store For Federal Contractors During The Transition And Beyond?

Under the proposed budget, FY 2018 (October 1, 2017 – September 30, 2018) would be considered a “transition year for OFCCP” to consolidate its functions with those of the EEOC. The agency would continue operations during this time, however, with the proposal directing the OFCCP to:

1. Prioritize “those evaluations with evidence of systemic pay issues” consistent with OFCCP’s recent focus on pay equity issues; and
2. Provide “intensive compliance assistance” to contractors and subcontractors engaged in mega-construction projects, consistent with the government’s focus on infrastructure improvements.

It is important to note that the proposed budget does not suggest that federal contractor affirmative action requirements will be modified or eliminated. However, the mandate to focus on the transition means that contractors will have a welcome respite from the spate of regulations and executive orders they have become accustomed to in the past few years. Further, the agency’s shift in focus from applicant/hire issues to pay equity and mega-construction project support signals a new day for the federal contractor community.

This is not to say all of this is a done deal, however. The proposed budget has not yet been approved by Congress, and there could certainly be revisions along the way. It is possible that any legislative requirements needed to effectuate the change may be more cumbersome than anticipated, depending upon the position taken by any special interest groups. The fact that this is the first item on the bulleted list of agency focus points recognizes the significance of the need for a proper legislative approach.

Even if the proposed budget passes as proposed, or, at least, this portion of the budget survives, federal contractors were reminded by the OFCCP as recently as 2013 that its revised pay equity analysis that relies upon Title VII standards should not come as a surprise to them. Contractors are once again reminded they are covered by federal civil rights laws in addition to their affirmative action compliance requirements. No matter what happens with the budget or the agency, the underlying affirmative action compliance requirements would remain firmly in place, albeit administered very differently under the EEOC’s guidance.

We will continue to monitor the status of this proposal and will provide further updates as events warrant. For more information about this proposal or how it may affect your business, contact any member of our [Affirmative Action and Federal Contract Compliance Practice Group](#) or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of a specific budgetary proposal. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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