

AFFIRMATIVE ACTION UPDATE

** NEWS FLASH **

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Douglas B. Brown, LLC

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PROPOSED MERGER OF THE OFCCP & EEOC

THE TRUMP ADMINISTRATION WANTS TO SEE THIS HAPPEN!

It's officially on the table. The 2018 budget proposal released yesterday by the Trump Administration officially calls for the merger of the OFFCP with the EEOC by the end of fiscal 2018 (September 30, 2018). The proposal states:

"The proposed merger will benefit employers, workers, and the public by consolidating the oversight of federal equal employment opportunity under one roof."

The budget also reduces funding for the OFCCP from \$105M to \$88M, a reduction of 16%. This is expected to reduce Agency headcount from 571 employees in 2017 to 440 in 2018, a reduction of 131 employees or 23%.

The proposal also calls for establishing two Skilled Regional Centers, located in San Francisco and New York staffed with "...highly skilled and specialized compliance officers capable of handling various large, complex compliance evaluations in specific industries, such as financial services or information technology." The budget goes on to state that having these Centers, "...reduces the need for a network of field area and district offices." All of this points to the elimination of many of the District and Regional offices, and their staffs.

It is not clear what is meant by the phrase, "...handling various large, complex compliance evaluations..." It could imply conducting compliance reviews of multi-establishment locations of a single contractor instead of the current focus on a single establishment. This would be a major new development in the scope of compliance evaluations as well as conducting self-audits.

The budget anticipates that the Agency will continue to focus on systemic compensation discrimination and that 35% of conciliation agreements will be based on pay. The other major focus will be on "...larger federal and federally-assisted construction projects..."

As an aside, since the proposal specifically references banks and IT organizations, this should be taken as a heads-up to these organizations that they should be anticipating in-depth reviews of their compensation practices.

Preliminary reactions from the U.S. Chamber of Commerce and civil rights organizations have been to oppose the merger. It is important to note that this is merely one of many proposals. Comments from Senate and House Republicans have included statements that the budget will be "dead on arrival" when it reaches the respective legislative bodies.

It is important to keep in mind that even if the two Agencies do not merge, the OFCCP may still be looking at the loss of 16% of its funding and 23% of its staff as well as the fundamental restructuring of its operations. This is just the opening salvo in the 2018 budget war. Current indicators point to the legal concept of Affirmative Action and the associated compliance obligations continuing. However, whether or not there is a merger, the enforcement protocols could be vastly different from what contractors have grown accustomed to under past administrations.

These remain interesting times. We will keep you advised as further developments occur.

If there are any questions or comments concerning anything contained above, they can be directed to this office by calling us at 440-564-7987 or sending an email to dbb@dbbrown.com. The discussion of this matter is for the clients and friends of Douglas B. Brown, LLC and does not represent nor is intended as a substitute for professional legal advice.