

December 16, 2011

VIA REGULAR U.S. MAIL AND ELECTRONIC MAIL

Debra A. Carr
Director, Division of Policy, Planning and Program Development
Office of Federal Contract Compliance Programs
U.S. Department of Labor
Room C-3325
200 Constitution Avenue, NW
Washington, DC 20210

Re: Request for 90-Day Extension of Public Comment Deadline — Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities (RIN 1250-AA02)

Dear Ms. Carr:

The Equal Employment Advisory Council (“EEAC”) respectfully submits this letter requesting the Office of Federal Contract Compliance Programs (“OFCCP”) to extend for a minimum of ninety (90) days the public comment period for the above-referenced Notice of Proposed Rulemaking (“NPRM”). 76 Fed. Reg. 77056 (December 9, 2011).

Published one week ago today, OFCCP’s “historic” proposal would fundamentally rewrite the rules federal contractors and subcontractors have been following for more than 30 years to ensure equal employment opportunity for individuals with disabilities, transforming a regulatory framework based largely upon “good-faith effort” into one requiring numerical targets, mandatory outreach and recruitment activities, and extensive new recordkeeping and data collection requirements. Given the proposal’s legal, practical, and economic magnitude, and OFCCP’s stated interest in receiving meaningful feedback on its burdens and utility, the agency must allow the very companies that will be responsible for complying with the rule a sufficient amount of time to collect, tabulate, and provide such feedback.

In particular, the proposal would impose on hundreds of thousands of federal contractor and subcontractor establishments new mandatory compliance obligations that demand careful and thorough review by the regulated community before those obligations can be implemented, including requirements for all federal contractor and subcontractor establishments to:

- set and work toward achieving a seven percent (7%) numerical hiring goal for individuals with disabilities in all job groups;
- engage in certain mandatory, minimum outreach and recruitment activities, including negotiating, signing, implementing, and monitoring compliance with a minimum of three written “linkage agreements” each year;
- immediately begin listing most of their externally sourced open positions with state and local workforce offices;
- invite all job applicants to voluntarily self-identify disability status at the time of application, and then again post-offer;
- annually resurvey all incumbent employees as to their disability status;
- prepare and provide a written confirmation acknowledging receipt of every request for reasonable accommodation;
- collect, calculate, and maintain for five years extensive new disability-related data points, including referral ratios, applicant ratios, hiring ratios, and “job fill” ratios; and
- develop and maintain confidential “career files” on each and every known individual with a disability, to include a separate written statement prepared every time such an individual was considered but rejected for nearly any employment opportunity.

OFCCP has provided interested stakeholders with a total of 60 days – spanning the busiest time of year for most human resources professionals – to review and provide comment on the proposal. As set forth below, EEAC believes that more than 60 days is needed to allow a thorough examination of the proposed new compliance and recordkeeping requirements, and to provide federal contractors with an opportunity to evaluate the impact the proposal will have on their operations. In the interest of sound public policy, and consistent with the requirements established by the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and relevant Executive Orders including Executive Orders 12866, 13272, and 13563, we respectfully urge OFCCP to provide stakeholders with an additional 90 days to review and comment on the agency’s proposal.

Statement of Interest

EEAC is the nation’s largest nonprofit association of major employers dedicated exclusively to the advancement of practical and effective programs to eliminate employment discrimination. Formed in 1976, EEAC’s membership now includes approximately 300 of the nation’s largest private-sector corporations, who collectively employ more than 19 million workers in the United States alone. Nearly all EEAC member companies are subject to the affirmative action requirements of Executive Order 11246, the Rehabilitation Act of 1973, the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, and their implementing

regulations. As the nation's largest federal contractors and subcontractors, they have a significant stake — and interest — in ensuring that OFCCP's regulations efficiently and effectively accomplish their most important underlying policy objective, which in the case of the instant NPRM is the meaningful improvement of employment opportunities for individuals with disabilities.

A 90-Day Extension of the NPRM's Public Comment Period Is Necessary for a Complete and Accurate Evaluation of Its Likely Burdens and Utility

If implemented as proposed, OFCCP's proposal would require federal contractors to fundamentally change both the way they structure and implement their disability programs and the way they go about documenting their efforts pursuant to these programs. Before changes of this magnitude are finalized, contractors should be afforded time to understand their new obligations, determine what changes will be required in their current programs to remain in compliance, and assess the financial and staffing resources that will be necessary to do so.

The months of December and January are not an ideal time for human resources professionals to evaluate a major new regulatory scheme. Quite apart from the holidays, many human resources professionals currently are fully engaged in updating their affirmative action programs, managing their organizations' benefit open enrollment periods, and administering a broad array of year-end compensation responsibilities, all of which will occupy a significant amount of their time and attention through at least the end of January.

If OFCCP is sincerely interested in receiving meaningful quantitative and qualitative feedback on the burdens and utility of the proposal's various requirements, the agency must allow EEAC member companies and other federal contractors a sufficient amount of time to collect, tabulate, and provide that feedback. To this end, immediately after the NPRM was published EEAC began developing a survey instrument that will allow us to solicit from our members — and subsequently provide to the agency — detailed feedback on the proposal's requirements. We respectfully submit that this feedback will be useful, if not essential, to the development of a sound and economically viable final rule, but that collecting, tabulating, and researching the data needed to develop it will take considerably longer than 60 days. On top of this effort, EEAC also has distributed to our members copies of the proposal along with an analysis of its major provisions, and we intend to shortly distribute a side-by-side comparison helping to highlight for our members exactly what changes are being proposed.

For these reasons, EEAC believes that an extension of the public comment period is necessary and entirely consistent with the spirit of the law requiring that the public and those impacted by new regulations be given adequate opportunity to review and respond to such changes. We therefore respectfully request that OFCCP grant an extension of the NPRM's public comment period until Monday, May 7, 2012 at the earliest. This extension will afford our members — and other interested stakeholders — an adequate amount of time to understand and evaluate the proposal without unreasonably delaying OFCCP's objective of meaningfully

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improving employment opportunities for individuals with disabilities, an objective which EEAC fully supports.

If you have any questions regarding this request, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey A. Norris". The signature is written in a cursive style with a large, stylized initial "J".

Jeffrey A. Norris
President

cc: Seth D. Harris, U.S. Department of Labor
Cass R. Sunstein, Office Management and Budget