

One Minute Memo[®]



DOL's Latest July 2013 Release Date for Final Veterans, Disability Rules Is Doubtful

Earlier this month, the Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") short-set a July 2013 timetable to publish the much awaited final versions of the revised regulations governing affirmative action for veterans and individuals with disabilities. Due to the heightened burdens these regulations will likely place on federal contractors, the community has been "holding its breath" in anticipation of their release. Indeed, each time OFCCP issues a new potential publication date for the final rules, impacted employers have braced themselves to prepare for an extensive overhaul of their affirmative action practices. For various reasons, however, we tend to believe that government bureaucracy will continue to stall the final release a bit longer.

First, the regulatory approval process has not yet been fully completed. Although most are aware of the notice of proposed rulemaking and comment procedures that must be followed by regulatory agencies, like OFCCP, to promulgate new rules, Executive Order 12866 further requires additional review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) of all agency draft regulations before publication. OIRA review exists to, among other things, ensure compliance with EO 12866 regulatory principles, promote coordination with other agency rules, and confirm that the President's policies are accurately reflected in all pending agency rules. This additional step has not yet occurred for OFCCP's revised regulations.

Once OFCCP submits its proposed regulations to OIRA, it will then have 90 days to review them. Notwithstanding, there is no minimum period for review, and there are also occasions when extensions are permitted. Moreover, OIRA could potentially "return" the draft rules to OFCCP for further consideration, or issue a "prompt" letter recommending suggested modifications, in the event it determines that they are inconsistent with EO 12866. If the latter occurs, we can expect the approval process to be further elongated by several months.

Second, we are skeptical that these regulations will be finalized before a new Secretary of Labor is confirmed. Indeed, because these revised regulations are such game-changers, OFCCP Director Patricia Shiu will likely need fierce support from top government officials. Accordingly, delays associated with the confirmation of the President's nominee to be Secretary of Labor, Thomas Perez, appear to be another roadblock to the final release of the regulations. Although it appears as though the Senate is now moving toward a resolution over Republican filibusters of pending presidential appointees, reports have just emerged that a potential workplace bias class action will be filed against Perez and the U.S. Department of Justice (DOJ) for discriminatory treatment. This presents another potential obstacle to Perez's confirmation. In turn, the release of the final veteran and disability regulations could remain on the back-burner.

In short, until we receive confirmation that the final regulations have been submitted to OIRA for review, we have no reason to believe that they will be released imminently. Even then, there are still other variables that may further impact the publication date. Regardless, when the rules are finalized, they will be published in the Federal Register, at which time we will be providing additional guidance about compliance with the new rules and best practices for their implementation.

By: *Cassandra Carroll*, *Valerie J. Hoffman* and *Leon R. Sequeira*

Cassandra Carroll is located in Seyfarth Shaw's San Francisco office. *Valerie J. Hoffman* is located in the firm's Los Angeles and Chicago offices and *Leon R. Sequeira* is located in the firm's D.C. office. If you would like further information, please contact your Seyfarth Shaw attorney, Cassandra Carroll at ccarroll@seyfarth.com, Valerie Hoffman at vhoffman@seyfarth.com or Leon Sequeira at lsequeira@seyfarth.com.