



**American Association for Access, Equity and Diversity and the
National Association of Diversity Officers in Higher Education
Announce Their Opposition to the President's Proposal to Merge Two Equal Employment
Opportunity (EEO) Agencies**

*Associations of EEO and Diversity professionals find the proposal to merge the disparate Equal
Employment Opportunity Commission and Labor's Contract Compliance Office
"the antithesis of efficiency"*

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Washington, DC, June 5, 2017- The American Association for Access, Equity and Diversity (AAAED) and the National Association of Diversity Officers in Higher Education (NADOHE) announced their opposition to the President's proposal to merge the Equal Employment Opportunity Commission (EEOC) with the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), as part of his budget for Fiscal Year (FY) 2018.¹ In a letter to Secretary Alexander Acosta and Office of Management and Budget (OMB) Director Mick Mulvaney, AAAED and NADOHE wrote: "In our view, such an action is inefficient, and it will undermine more than fifty years of progress towards equal opportunity, not only in academic institutions but in the entire employment sector of the United States."

The Administration proposes a budget of \$88 million for OFCCP, a reduction of \$17.275 million or 17 percent; and 440 Full Time Equivalents (FTE), a reduction of 131 FTE or a 23 percent reduction in staffing. These resources would be transferred to EEOC. The associations' letter submits that this will result in "fewer compliance reviews and less equal employment opportunity."

The budget proposal would end OFCCP's tenure in the Department of Labor since the 1960s, when President Johnson issued Executive Order (EO) 11246 in 1965, delegating authority to enforce his order to the Secretary of Labor. The agency's bi-partisan history is part of a succession of executive orders dating back to 1941. EO 11246 and other laws enforced by OFCCP require that companies and institutions holding federal contracts must not discriminate and must use affirmative action. OFCCP covers approximately one-quarter of the civilian labor force. The laws enforced by OFCCP prohibit discrimination based on race, color, religion, national origin, sex, disability, veterans' status, gender identity and sexual orientation. Many colleges and universities conducting research and other services are also federal contractors.

The EEOC was created by Title VII of the Civil Rights Act of 1964. EEOC is responsible for enforcing federal laws that prohibit discrimination against a job applicant or an employee on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information. It prohibits retaliation against a person because the person complained about discrimination,

¹ FY 2018 Budget Congressional Budget Justification, Office of Federal Contract Compliance Programs, <https://www.dol.gov/sites/default/files/CBJ-2018-V2-10.pdf>

filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. In FY 2016, the EEOC received 91,503 complaints of discrimination.

As indicated by the associations' letter, both agencies share equal employment opportunity as their mission but do not perform the same actions. The EEOC, a semi-independent agency, is primarily complaint-driven and investigates charges of discrimination. The OFCCP, a sub-agency of the Department of Labor, a cabinet department, is a creature of the federal procurement process and enforces the Equal Opportunity Clause in federal contracts. The OFCCP conducts compliance reviews and does not have to wait for a complaint to be filed. Moreover, the agency looks at systemic policies and practices, from the hiring stage to the executive suite. It may review potential disparities in pay or investigate the existence of a "glass ceiling."

The associations state that the ultimate action for noncompliance at the EEOC includes a decision to litigate a case of discrimination. In most instances, it issues a "right to sue" letter to the complainant so he or she may seek redress in the federal courts. At the OFCCP, the ultimate sanction is debarment from receiving federal contracts. While the EEOC represents the interests of the complainant the ultimate burden of compliance is on the charging party, "with all of the costs and consequences to one's self and one's career that such an effort entails." The OFCCP represents the government's interest in ensuring that no federal dollars are used to discriminate. While individuals may receive back pay and other make-whole relief, they lack a private right of action at OFCCP and administrative law judges decide the ultimate sanction. The Solicitor of Labor's Office represents the OFCCP before the administrative law judges and review board.

In the letter, the associations assert: "Any merger of the two agencies would have to include not only the staff and offices of the OFCCP, both in the national office and the regional and district offices, but also the civil rights legal staff of the Office of the Solicitor, both in Washington, DC and nationwide. In addition, the Administrative Review board may require transfer of staffing and resources. This is, therefore, not an inconsequential proposal, but would upend an entire administrative structure that the EEOC, underfunded and understaffed, could not easily absorb. This proposal, therefore, is the antithesis of efficiency."

The Administration's proposal is opposed by members of both the civil rights and federal contractor communities.² For more information, see the AAAED/NADOHE letter at <file:///C:/Users/Shirley/Documents/AAAED%20Statement%20on%20OFCCP%20EEOC%20merger%20060217.pdf>

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Founded in 1974 as the American Association for Affirmative Action (AAAA), AAAED has four decades of leadership in providing professional training to members, enabling them to be more successful and productive in their careers. It also promotes understanding and advocacy of affirmative action and other equal opportunity and related compliance laws to enhance the tenets of access, inclusion and equality in employment, economic and educational opportunities.

The National Association of Diversity Officers in Higher Education (NADOHE) was established to serve as the preeminent voice for diversity officers in higher education by supporting their collective efforts to lead their member institutions towards inclusive excellence. NADOHE's membership includes chief diversity officers (CDOs) at colleges and universities throughout the United States.

² See, e.g., Letter of the Institute for Workplace Equality to the Secretary of Labor and Director of OMB, May 19, 2017; and Letter of 73 Civil Rights organizations to Secretary Acosta and Director Mulvaney, May 26, 2017.