

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AARP,

Plaintiff,

v.

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Defendant.

Case No. 1:16-cv-02113 (JDB)
Hon. John D. Bates

DEFENDANT’S STATUS REPORT

The Court’s order of August 22, 2017, directed the United States Equal Employment Opportunity Commission (“EEOC”) to file a status report by this date “proposing a schedule for its review of the rules, including any further administrative proceedings.” ECF No. 46 at 2. In compliance with that order, the EEOC respectfully advises the Court that its present intention is to issue a notice of proposed rulemaking by August 2018 and a final rule by October 2019.¹ This amount of time is necessary for the EEOC to further consider the issues at stake in the challenged rules, evaluate input from stakeholders within and outside the government, vote on any regulatory actions, obtain authorization from the Office of Management and Budget to promulgate regulations, and ultimately issue a final rule.

It bears emphasis that the EEOC’s intentions may change as it further considers the relevant issues in the course of the rulemaking process. In addition, the EEOC’s intentions could change

¹ Given the time that employers need to bring their plans into compliance with new regulatory requirements, any substantively amended rule likely would not be applicable until the beginning of 2021. (For plans whose years do not track the calendar year, the new rules could potentially be applicable as of the first day of any plan year that begins approximately six months from the date of publication in the Federal Register.)

as a result of changes in its composition: the President's nominee for chair of the EEOC is currently pending with the United States Senate, *see* PN 724, Janet Dhillon, Equal Employment Opportunity Commission, <https://www.congress.gov/nomination/115th-congress/724>, as is the President's nominee for one other vacancy, *see* PN 589, Daniel M. Gade, Equal Employment Opportunity Commission, <https://www.congress.gov/nomination/115th-congress/859>.²

The EEOC respectfully suggests — should the Court deny Plaintiff's motion to vacate the challenged rules for 2018 and thereafter, *see* ECF No. 48 — that it would be most efficient for the Court to direct the EEOC to submit a further status report in April 2018, by which time the EEOC's remand process should be significantly more developed. Such a deadline would still allow sufficient time for the resolution of any additional proceedings well in advance of 2019.

In compliance with the Court's August 22 order, the EEOC disclosed the schedule described herein to Plaintiff on Wednesday, September 20.

Dated: September 21, 2017

Respectfully submitted,

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOSHUA E. GARDNER
Assistant Branch Director

/s/ Steven A. Myers
STEVEN A. MYERS (NY Bar No. 4823043)
Trial Attorney
Federal Programs Branch
U.S. Department of Justice, Civil Division
Telephone: (202) 305-8648
Fax: (202) 616-8460
Email: Steven.A.Myers@usdoj.gov

Mailing Address:

² In addition, the Solicitor General has not yet determined whether the EEOC will appeal from the Court's August 22, 2017 Order. The EEOC respectfully reserves all rights to seek a stay of the Court's order should such an appeal be taken.

Post Office Box 883
Washington, DC 20044

Courier Address:
20 Massachusetts Ave., NW Rm. 7334
Washington, DC 20001

Counsel for Defendant