

OFCCP Publishes Proposal to Rescind Religious Exemption Rule

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As a follow up to [yesterday's announcement](#), OFCCP [published its proposal](#) to rescind the “Implementing Legal Requirements Regarding the Equal Employment Opportunity Clause’s Religious Exemption” rule (the “Religious Exemption Rule”) today. The [Religious Exemption Rule](#) expanded the existing exemption on religious entities’ compliance with the anti-discrimination provisions of Executive Order 11246.

OFCCP contends that the Religious Exemption Rule, which was enacted during the prior administration, “create[d] a lack of clarity regarding the scope and application of the exemption because... it misstate[d] the law in key respects.” In its proposal, OFCCP lists a number of ways in which the Religious Exemption Rule departs from Title VII principles and “long-standing policy” regarding equal employment opportunity. OFCCP reasons that these inconsistencies “likely ... increase[d] rather than decrease[d] confusion about the application of the Executive Order 11246 religious exemption.”

The OFCCP further explains that it will not be modifying or replacing the Religious Exemption Rule because it “has no effect on the overwhelming majority of federal contractors” – only impacting those that meet the [statutory definition](#) of a “religious corporation, association, educational institution, or society” – and therefore, in the agency’s view, “is unnecessary.” Instead, the agency will revert to its previous approach of interpreting applicable “Title VII principles and applicable law.” OFCCP acknowledged that while there is a lack of uniformity among courts in the approach they use in religious exemption cases, relevant Title VII factors are clearly identified and should be weighed as a balancing test on a case-by-case basis.

Comments on the proposal can be submitted through December 9, 2021.

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