

House and Senate lawmakers have approved legislation authorizing the Defense Department to waive Equal Opportunity Employment Commission regulations in order to test the use of alternative dispute resolution mechanisms to expedite settlement of job complaints.

The legislation authorizing the ADR pilot project, a massive defense and energy spending bill for fiscal year 2001, now awaits President Clinton's signature. Under the bill, the Defense Department is required to test the use of ADR mechanisms to resolve employment disputes on a pilot basis for three years at one military department and two defense agencies, and the project would not be subject to federal EEO regulations.

The pilot project has drawn criticism from the White House since its introduction because of the EEO waiver, and federal officials say the administration remains concerned about the potential impact of the legislative provision. According to Peter Steenland, senior counsel in the Justice Department's Office of Dispute Resolution, the administration's position "remains consistent" that the pilot project is "ill-advised and unnecessary." Steenland said the administration "believes there are a host of highly effective internal workplace dispute resolution programs that can operate without the waiver."

In a statement of administration policy issued this summer, the White House warned that it opposed the proposed project because it would prevent the EEOC from addressing any concerns raised by complainants, and the ground rules of the project would vary significantly from principles outlined by the Federal ADR Council in its guidance to federal agencies on the design and operation of Federal ADR programs.

Federal officials would not speculate on the potential for the administration to place limits on the pilot project when it is implemented.

Three-Year Program

The bill provides for the pilot project to commence on Jan. 1, 2001, and says the Defense Department should establish procedures "to reduce processing time and eliminate redundancy with respect to processes for the resolution of equal employment opportunity complaints, reinforce local management and chain-of-command accountability, and provide the parties involved with early opportunity for resolution."

Participation in the pilot program would be voluntary on the part of the complainant, and complainants who participate in the pilot program shall

retain the right to appeal a final agency decision to the EEOC to file suit in district court. However, the "Equal Employment Opportunity Commission shall not reverse a final agency decision on the grounds that the agency did not comply with the regulatory requirements promulgated by the Commission," the conference report says.

The bill also provides that the program may be run outside of EEOC requirements and regulations. According to the conference report, "Complaints processed under the pilot program shall be subject to the procedural requirements established for the pilot program and shall not be subject to the procedural requirements of part 1614 of title 29 of the Code of Federal Regulations or other regulations, directives, or regulatory restrictions prescribed by the Equal Employment Opportunity Commission."

The legislation also would require the department's comptroller general to report to Congress on the implementation of the pilot program, detailing the processes tested under the project, the results of the processes, a comparison of the results to traditional and alternative dispute resolution processes used in government and the private sector, and finally, recommendations for changes to the processes used to resolve equal opportunity employment complaints based on the results of the pilot program.

Text of Defense Funding Bill EEO Pilot Program Provisions

SEC. 1111. PILOT PROGRAM FOR REENGINEERING THE EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESS.

(a) Pilot Program:

(1) The Secretary of Defense shall carry out a pilot program to improve processes for the resolution of equal employment opportunity complaints by civilian employees of the Department of Defense. Complaints processed under the pilot program shall be subject to the procedural requirements established for the pilot program and shall not be subject to the procedural requirements of part 1614 of title 29 of the Code of Federal Regulations or other regulations, directives, or regulatory restrictions prescribed by the Equal Employment Opportunity Commission.

(2) The pilot program shall include procedures to reduce processing time and eliminate redundancy with respect to processes for the resolution of equal employment opportunity complaints, reinforce local management and chain-of-command accountability, and provide the parties involved with early opportunity for resolution.

(3) The Secretary may carry out the pilot program for a period of three years, beginning on January 1, 2001.

(4)(A) Participation in the pilot program shall be voluntary on the part of the complainant. Complainants who participate in the pilot program shall retain the right to appeal a final agency decision to the Equal Employment Opportunity Commission and to file suit in district court. The Equal Employment Opportunity Commission shall not reverse a final agency decision on the grounds that the agency did not comply with the regulatory requirements promulgated by the Commission.

(B) Subparagraph (A) shall apply to all cases--

(i) pending as of January 1, 2001, before the Equal Employment Opportunity Commission involving a civilian employee who filed a complaint under the pilot program of the Department of the Navy to improve processes for the resolution of equal employment opportunity complaints; and

(ii) hereinafter filed with the Commission under the pilot program established by this section.

(5) The pilot program shall be carried out in at least one military department and two Defense Agencies.

(b) Report: Not later than 90 days following the end of the first and last full or partial fiscal years during which the pilot program is implemented, the Comptroller General shall submit to Congress a report on the pilot program. Such report shall contain the following:

(1) A description of the processes tested by the pilot program.

(2) The results of such testing.

(3) Recommendations for changes to the processes for the resolution of equal employment opportunity complaints as a result of such pilot program.

(4) A comparison of the processes used, and results obtained, under the pilot program to traditional and alternative dispute resolution processes used in the government or private industry.