

**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

Defendant Equal Employment Opportunity Commission respectfully submits the following status report pursuant to the Court's orders of December 20, 2017, and January 18, 2018. *See* ECF Nos. 54, 58.

As Defendant has previously indicated, in light of the Court's order vacating the challenged rules as of January 1, 2019, there are a number of policy choices available to Defendant, including promulgating new regulations, leaving the regulations as they stand following vacatur, or studying the issue further before committing to either of these options. *See generally* Def's Unopposed Mot. for Partial Reconsideration, ECF No. 56, at 7.

As of the date of this filing, the Commission has not made a final choice from among these courses of action; it does not currently have plans to issue a Notice of Proposed Rulemaking addressing incentives for participation in employee wellness programs by a particular date certain, but it also has not ruled out the possibility that it may issue such a Notice in the future. Defendant notes in this regard that it is still awaiting Senate confirmation of the President's nominee for Chair, *see* PN274 – Janet Dhillon – Equal Employment Opportunity Commission,

<https://www.congress.gov/nomination/115th-congress/724>, and for one other vacancy, *see* PN859

– Daniel M. Gade – Equal Employment Opportunity Commission,

<https://www.congress.gov/nomination/115th-congress/859>.

Dated: March 30, 2018

Respectfully submitted,

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/s/ Steven A. Myers

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