OMB Directs US EPA and Other Federal Agencies to Refocus on Mission-Critical Functions Amidst Coronavirus Pandemic; OECA Guidance regarding Implications for Enforcement and Compliance Forthcoming

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Monday, March 23, 2020
Last week, the Office of Management and Budget (OMB) issued guidance to the heads of federal departments and agencies titled, “Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19.” The guidance directs agencies to “prioritize all resources to slow the transmission of COVID-19, while ensuring our mission-critical activities continue.” Under the guidance, agencies are to minimize face-
to-face operations to safeguard the health and safety of federal workplaces except as necessary to protect public health and safety, including law enforcement and criminal-justice functions. Specifically, agencies must adjust their plans and operations to accomplish the following:

- Reduce and re-prioritize non-mission-critical services to free up capacity for critical services;
- Identify and resolve supply challenges that may be limiting factors or bottlenecks;
- Identify a variety of transportation limitations that could impact service delivery;
- Whenever possible and appropriate, leverage existing materials and content relating to authoritative information on COVID-19;
- Maximize telework across the nation for the federal workforce (including mandatory telework, if necessary), while maintaining mission-critical workforce needs;
- Assess professional services and labor contracts to extend telework flexibilities to contract workers wherever feasible;
- Consider streamlining regulations and approval processes for critical services, including issuing general waivers policies and delegating decision-making where appropriate; and
- Ensure agency policies and procedures restrict individuals infected with, or at higher risk for serious illness from, COVID-19 from accessing Federal facilities in accordance with guidelines from the Centers for Disease Control and Prevention and US Department of Labor.

The US EPA Office of Enforcement and Compliance (OECA) is expected to issue guidance regarding its operational adjustments to address the Coronavirus pandemic shortly. Consistent with prior OMB guidance, US EPA had already authorized telecommuting and voluntary unscheduled leave for all its workers, raising questions as to whether there will be sufficient personnel for routine enforcement and compliance matters. Likewise, as more and more states adopt shelter in place orders and the Coronavirus spreads, staffing and operational challenges are expected to test the ability of regulated operations to maintain compliance.

Squire Patton Boggs will continue to monitor these developments and provide further updates as soon as they become available.