

“Blacklisting” Order Revoked and Final Rule Nullified

Yesterday, President Trump issued an executive order revoking President Obama’s Fair Pay and Safe Workplaces Executive Order – the so-called “blacklisting” order that required prospective government contractors to disclose past labor law violations during the federal procurement process, and imposed other obligations and restrictions. The president also signed Congress’ disapproval resolution, nullifying the final rule implementing the blacklisting order and permanently blocking the government from enforcing its requirements.

Background

On July 31, 2014, President Obama issued [Executive Order 13673: Fair Pay and Safe Workplaces](#) – the so-called “blacklisting” order – that required contractors bidding on federal contracts valued at more than \$500,000 to disclose past violations of 14 federal labor and employment laws. It also imposed new paycheck transparency requirements on covered contractors and restricted their use of mandatory arbitration agreements. Last August, the Federal Acquisition Regulatory Council issued a final rule implementing the order. Hours before the rule was to take effect, a Texas district court issued a nationwide preliminary injunction, putting its disclosure and arbitration – but not the paycheck transparency – provisions on hold. (See our [October 27, 2016 FYI Alert](#).)

Last month, the House passed a joint resolution ([H. J. Res. 37](#)) under the Congressional Review Act (CRA) that disapproved the blacklisting rule and permanently blocked the government from enforcing its requirements, including the paycheck transparency provisions. On March 6, the Senate followed suit, passing the joint resolution of disapproval and clearing the way for President Trump to nullify the blacklisting rule with his signature. (See our [March 7, 2017 FYI Alert](#).)

President Rescinds “Blacklisting” Order

On March 27, President Trump issued an Executive Order entitled [Revocation of Federal Contracting Executive Orders](#) that rescinds President Obama’s blacklisting order and two related orders affecting government contractors. As expected, the president also [signed](#) Congress’ joint resolution of disapproval, effectively barring the final rule implementing the blacklisting order from having any force or effect. Because the final rule was rescinded under the CRA, the executive branch cannot reissue the same rule or issue a substantially similar one without congressional authorization.



In Closing

President Trump's actions relieve federal contractors from the requirement to publicly disclose labor law violations as part of the competitive bidding process, and lift restrictions the blacklisting rule would have imposed on arbitration agreements. In addition, his actions rescind the paycheck transparency requirements that went into effect earlier this year.

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