

ALERT

Fair Pay and Safe Workplaces Final Rule and Guidance May Be Drawing Closer

May 4, 2016

This morning, the Office of Management and Budget (OMB) received the planned final rule and final guidance from the FAR Council and Department of Labor (DOL), respectively, for implementing Executive Order 13673, Fair Pay and Safe Workplaces (Fair Pay). OMB will review the final rule and guidance as required by Executive Order 12866. The review is typically the last step before publication, suggesting that the final rule and guidance may appear in the Federal Register in the near future.

Another new development may limit coverage of the Fair Pay final rule once implemented. On April 27, 2016, the House Armed Services Committee approved a Fair Pay-related amendment to H.R. 4909, the FY 2017 National Defense Authorization Act (NDAA). The amendment would exempt the “acquisition, contracting, contract administration, source selection, [and] any other activities” of the Department of Defense (DOD) and National Nuclear Security Administration (NNSA) from Fair Pay coverage.

Initially, this NDAA amendment might seem a challenge to move through a full House vote, a Senate conference, and the President’s signature. Indeed, a similar amendment offered for the FY 2016 NDAA did not make it through the legislative process. But legislative limitations on Fair Pay implementation are possible; for instance, the FY 2016 Omnibus Appropriations Act excluded funding for a new DOL Office of Labor Compliance that is supposed to have a critical role in coordinating how agencies apply the unwieldy mandates of the Fair Pay Executive Order, regulations, and guidance. So the current FY 2017 NDAA amendment to exempt DOD and the NNSA could still end up being enacted.

Practice Areas

Government Contracts

At bottom, implementing the Fair Pay Executive Order has remained a priority for the Obama Administration, as evidenced by the OMB submissions today. It nonetheless remains to be seen what the final rule's effective date(s) will be and whether any agencies and contracts will be exempted from coverage through legislation. For more on the substantial burdens that the Fair Pay requirements may impose, click on our prior analyses [here](#) and [here](#).