

ALERT

Fair Pay and Safe Workplaces Final Rule on Verge of Nullification

March 7, 2017

WHAT: Last evening, the Senate passed Joint Resolution 37, disapproving the Fair Pay and Safe Workplaces final rule. Through this action, Congress exercised its authority to disapprove certain regulations under the Congressional Review Act, 5 U.S.C. § 801 *et seq.* The House passed its version of the joint resolution of disapproval on February 2, 2017. The joint resolution now awaits President Trump's signature.

WHEN: The Senate passed the resolution on March 6, 2017.

WHAT DOES IT MEAN FOR INDUSTRY: The joint resolution and expected presidential signature will nullify the Fair Pay final rule in its entirety (including "paycheck transparency" requirements) and retroactively. None of the provisions will take effect, or remain in effect. The Fair Pay final rule provisions would have required disclosure of (often preliminary) labor law decisions, prohibited certain pre-dispute arbitration agreements, and required communications of certain paycheck information. The FAR Council presumably will withdraw the final rule in full. And these Fair Pay requirements are unlikely to return now that they have been disapproved: the Congressional Review Act prohibits promulgating a substantially similar rule unless "specifically authorized" by a future act of Congress.

Though significant, this relief may be less palpable because the disclosure and arbitration provisions were preliminarily enjoined in late October 2016 and never took effect. The paycheck transparency requirements did go into effect, in contrast, and thus could require more time to unwind. If you are responding to a solicitation that includes the implementing clause, FAR 52.222-60, Paycheck

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Transparency (Executive Order 13673), consider asking the contracting officer to remove it. If you are already performing a contract that incorporates FAR 52.222-60, consider evaluating the burden of complying with the clause; if it is significant, consider asking the contracting officer to remove the clause by modification immediately.