

February 1, 2017

TO THE MEMBERS OF THE UNITED STATES CONGRESS:

The undersigned associations, representing tens of thousands of federal contractors, strongly support H.J. Res. 37, a resolution of disapproval under the Congressional Review Act to invalidate the Federal Acquisition Council regulations implementing the Fair Pay and Safe Workplaces Executive Order (EO) 13673 issued by President Obama on July 31, 2014.¹

We urge members of the House of Representatives to vote “yes” on H.J. Res. 37 because the Obama administration’s costly and flawed “blacklisting” regulation circumvents congressional authority, harms the economy and efficiency of the federal acquisition system and disrupts fair and open competition in federal contracting. It also creates a duplicative and costly bureaucratic structure within DOL that undermines longstanding suspension and debarment procedures that already are part of the federal contracting process.

Federal contractors support the federal government’s efforts to ensure that the government contract with responsible companies and that federal contractors compete on a level playing field. However, unsound regulatory policies like this will only tie up law-abiding employers in red tape and make a system intended to protect workers less efficient.

For decades, there have been laws and procedures in place designed to hold accountable contractors who violate rules. Taxpayers, contractors and their employees deserve a fair and transparent process in which contracts are awarded based on merit to firms that can deliver the highest quality product at the best price. Instead, EO 13673’s blacklisting regulations will needlessly increase costs, add uncertainty and subjectivity to the federal acquisition process and increase the frequency and cost of labor and employment disputes and related bid protests.

Blacklisting regulations impose a *de facto* debarment system that will restrict a federal contractor’s ability to counter alleged violations of the 14 federal laws and equivalent state laws identified in the final rule. Depriving contractors of due process rights against frivolous allegations will lead to litigation, reduced competition, increased costs and needless delays to the detriment of all taxpayers, the federal acquisition workforce, federal contractors and their employees.

By the Obama administration’s own recognition, the “vast majority of federal contractors play by the rules,”² yet the FAR Council’s own Regulatory Impact Analysis of blacklisting regulations conservatively estimates the first year of this rule will cost federal contractors and the government \$474 million³ in added quantifiable regulatory costs.

¹ Executive Order 13673, Fair Pay and Safe Workplaces, issued July 31, 2014: <https://www.whitehouse.gov/the-press-office/2014/07/31/executive-order-fair-pay-and-safe-workplaces>.

² Fact Sheet: Fair Pay and Safe Workplaces Executive Order: <http://www.whitehouse.gov/the-press-office/2014/07/31/fact-sheet-fair-pay-and-safe-workplaces-executive-order>.

³ FAR’s Regulatory Impact Analysis (RIA) of EO 13673 final rule, Exhibit 8, pp. 417-419: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-19676.pdf>

This costly, unnecessary and unworkable blacklisting regulatory scheme undermines congressional efforts to attract innovative large and small businesses by streamlining the acquisition process and removing needless regulations and barriers to entry into the federal marketplace.

We urge members of the House of Representatives to vote YES on H.J. Res. 37 in opposition to the Obama administration's costly and flawed blacklisting regulatory scheme. We thank you for addressing this important issue.

Sincerely,

Aerospace Industries Association
American Council of Engineering Companies
American Foundry Society
American Hotel & Lodging Association
American Trucking Association
Associated Builders and Contractors, Inc.
Associated General Contractors
College and University Professional Association for Human Resources (CUPA-HR)
HR Policy Association
Independent Electrical Contractors
Information Technology Alliance for the Public Sector
International Foodservice Distributors Association
National Association of Manufacturers
National Defense Industrial Association
Professional Services Council
Society for Human Resource Management
The Coalition for Government Procurement
U.S. Chamber of Commerce
WorldatWork