

October 10, 2017

TO THE MEMBERS OF THE FISCAL YEAR 2018 NATIONAL DEFENSE
AUTHORIZATION CONFERENCE COMMITTEE:

The undersigned organizations urge the conference committee to reject section 830 of the Senate-passed version of H.R. 2810, the “National Defense Authorization Act for Fiscal Year 2018,” that would effectively reinstate a version of the recently overturned regulations that implemented President Obama’s “Fair Pay and Safe Workplaces” (FPSW) Executive Order.

Congress invalidated, through the Congressional Review Act (CRA), the regulations implementing the FPSW Executive Order to bar firms from federal contracts due to alleged Occupational Safety and Health Act (OSHA) violations. Had Congress not acted, firms could have been “blacklisted” before their cases were adjudicated, which would have violated their due process rights.

Senate section 830 would require Department of Defense contracting officers, while making their responsibility determinations, to specifically consider OSHA violations before the contractor or potential contractor has had an opportunity to present their case and exhaust their due process rights. This provision could cause eligible contractors and subcontractors to lose federal work without due process. Moreover, these sections are unnecessary as contracting officers already include OSHA records in their review. New requirements in this area are likely to drive additional contract action challenges and delays, which would impede the procurement of military equipment and services.

Under the CRA, an agency may not reissue a substantially similar regulation unless Congress explicitly authorizes it. Section 830 would provide that authorization and override the explicit rejection of President Obama’s misguided executive order.

The conference committee should uphold the CRA resolution passed by this Congress, and reject section 830 of the Senate-passed bill.

Sincerely,

Aerospace Industries Association (AIA)
American Coatings Association, Inc. (ACA)
American Council of Engineering Companies (ACEC)
American Foundry Society (AFS)
American Hotel & Lodging Association (AHLA)
American Trucking Association (ATA)
Associated Builders and Contractors, Inc. (ABC)
Associated General Contractors (AGC)
Business Roundtable (BRT)
College and University Professional Association for Human Resources (CUPA-HR)

HR Policy Association
Independent Electrical Contractors (IEC)
International Foodservice Distributors Association (IFDA)
International Franchise Association (IFA)
IT Alliance for Public Sector (ITAPS)
National Association of Manufacturers (NAM)
National Defense Industrial Association (NDIA)
Society for Human Resource Management (SHRM)
U.S. Chamber of Commerce
WorldatWork