



**DEPARTMENT OF LABOR**

**Office of the Secretary**

**48 CFR Parts 22 and 52**

**ZRIN 1290-ZA02**

**Guidance for Executive Order 13673, “Fair Pay and Safe Workplaces”**

**AGENCY:** Department of Labor

**ACTION:** Final guidance; rescission.

**SUMMARY:** Under the Congressional Review Act, Congress has passed, and the President has signed, Public Law No. 115-11, a resolution of disapproval of the rule promulgated by the Department of Defense, General Services Administration, and National Aeronautics and Space Administration to implement Executive Order 13673, Fair Pay and Safe Workplaces, as amended (the “Order”). Additionally, the President has issued an Executive Order revoking the Order, and directing all executive departments and agencies, as appropriate and to the extent consistent with law, to consider promptly rescinding any orders, rules, regulations, guidance, guidelines, or policies implementing or enforcing the Order. Accordingly, the Department of Labor is rescinding its guidance on the Order, published on August 25, 2016.

**DATES:** Effective [INSERT DATE OF PUBLICATION].

FOR FURTHER INFORMATION CONTACT: Stephanie Swirsky, Deputy Assistant Secretary for Policy, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693-5959 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693-5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free [1-877-889-5627] to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: On July 31, 2014, President Barack Obama issued Executive Order 13673, Fair Pay and Safe Workplaces. 79 FR 45309. Executive Order 13673 was amended twice, first by section 3 of Executive Order 13683 on December 11, 2014, 79 FR 75041, and again by Executive Order 13738 on August 23, 2016, 81 FR 58807. The Order directed the Federal Acquisition Regulatory Council (“FAR Council”) to amend its regulations consistent with the Order’s requirements, and directed the Secretary of Labor (“Secretary”) to develop guidance to assist agencies in implementing the Order. After notice and comment, the final rule and guidance were published on August 25, 2016. 81 FR 58562 (FAR Council’s rule); 81 FR 58654 (Secretary’s guidance). On October 24, 2016, the United States District Court for the Eastern District of Texas issued a preliminary injunction partially enjoining the FAR Council’s rule and the Secretary’s guidance. See Associated Builders & Contractors of Se. Texas v. Rung, No. 1:16-CV-425, 2016 WL 8188655 (E.D. Tex. Oct. 24, 2016). On October 25, 2016, the FAR Council issued a memorandum directing that all steps necessary be taken to ensure that the enjoined provisions of the rule would not be

implemented while the injunction was in force. On December 16, 2016, the Department of Defense, General Services Administration, and National Aeronautics and Space Administration, on behalf of the FAR Council, amended the FAR Council's rule to conform to the district court's injunction. 81 FR 91636.

On March 27, 2017, President Donald Trump signed Public Law No. 115-11, a resolution of disapproval of the FAR Council's rule under the Congressional Review Act, 5 U.S.C. 801 et seq. The resolution had previously passed the House of Representatives on February 2, 2017 and the Senate on March 6, 2017. See 163 Cong. Rec. S1601 (daily ed. Mar. 6, 2017); 163 Cong. Rec. H907 (daily ed. Feb. 2, 2017). Under the Congressional Review Act, a rule shall not take effect or continue if a joint resolution of disapproval of the rule is enacted. 5 U.S.C. 801(b)(1). Additionally, on March 27, 2017, President Trump issued Executive Order 13782, revoking Executive Order 13673, section 3 of Executive Order 13683, and Executive Order 13738, and directing all executive departments and agencies, "as appropriate and to the extent consistent with law, [to] consider promptly rescinding any orders, rules, regulations, guidance, guidelines, or policies implementing or enforcing the revoked Executive Orders and revoked provision[.]" 82 FR 15607. Accordingly, the Secretary is hereby rescinding the guidance on Fair Pay and Safe Workplaces, published on August 25, 2016. In a separate entry published in today's Federal Register, the Department of Defense, General Services Administration, and National Aeronautics and Space Administration, on behalf of the FAR Council, are rescinding the FAR Council's rule.

Signed this 13<sup>th</sup> day of October, 2017.

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R. Alexander Acosta

Secretary, U.S. Department of Labor.

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