



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OFFICE OF FEDERAL PROCUREMENT POLICY

48 CFR Parts 1, 2, 12, 22, and 52

[FAR Case 2023-021; Docket No. FAR-2023-0021; Sequence No. 1]

RIN 9000-A069

Office of Federal Procurement Policy; Federal Acquisition Regulation: Pay Equity and Transparency in Federal Contracting

AGENCY: Department of Defense (DoD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA), and Office of Federal Procurement Policy (OFPP).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a proposed Governmentwide policy developed by the Administrator for Federal Procurement Policy (OFPP Administrator), pursuant to the Administrator's authority that would prohibit contractors and subcontractors from seeking and considering information about job applicants' compensation history when making employment decisions for certain positions. Under the proposed policy and the

proposed regulatory amendments, contractors and subcontractors would also be required to disclose the compensation to be offered to the hired applicant in job announcements for certain positions.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2023-021 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for "FAR Case 2023-021". Select the link "Comment Now" that corresponds with "FAR Case 2023-021". Follow the instructions provided on the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2023-021" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the point of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR Case 2023-021" in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an

organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868 or by email at mahruba.uddowla@gsa.gov. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAR Case 2023-021.

SUPPLEMENTARY INFORMATION:

I. Proposed Policy of the OFPP Administrator

Pursuant to 41 U.S.C. 1121(b), the Senior Advisor, Office of Federal Procurement Policy (OFPP), performing by delegation the duties of the Administrator for Federal Procurement Policy, is proposing a Government-wide procurement policy that would:

(1) prohibit contractors and subcontractors from seeking and considering information about job applicants' compensation history when making employment decisions about personnel working on or in connection with a government contract; and

(2) require contractors and subcontractors to disclose, in all advertisements for job openings involving work on or in connection with a government contract placed by or on behalf of the contractor or subcontractor, the compensation to be offered to the hired applicant, for any position to perform work on or in connection with the contract.

The Administrator is proposing this policy based on her determination, described in more detail in section IV below, that compensation history bans and compensation disclosure requirements (the latter are also collectively referred to as pay transparency), both together and separately, would promote economy, efficiency, and effectiveness in the procurement of property and services by the Federal Government. Compensation history bans and pay transparency requirements have been shown to promote pay equity by closing pay gaps, which leads to increased worker satisfaction, better job performance, and overall increased worker productivity—all factors associated with promoting economy, efficiency, and effectiveness of the Federal contractor workforce. When workers feel that they are valued and their pay is fair, it can foster a higher level of commitment to an employer associated with better job performance and increased productivity. Compensation history bans¹ have been found to reduce pay gaps that have

¹The state and local laws restricting the use of compensation history in pay-setting and employment decisions are commonly referred to as

been shown to disadvantage certain populations, including women, workers of color, and workers entering the labor market during recessions. Similar to compensation history bans, compensation disclosure requirements reduce gender, racial and ethnic pay gaps by reducing pay secrecy and helping workers negotiate. Pay transparency requirements also promote economy, efficiency, and effectiveness in recruitment and retention. By disclosing the compensation upfront, employers can effectively lower recruiting costs, both in terms of direct expenses, such as job advertising costs, and indirect expenses, such as those related to the selection and negotiation process. In addition to pay equity, compensation history bans and compensation disclosure requirements can help companies attract and retain better talent and lower worker turnover. These practices demonstrate a commitment to fairness for all workers and increase hiring efficiencies and reduce the costs for employers to hire new workers for Federal contracts. A fuller discussion of how the proposed policy would further economy, efficiency and effectiveness in Federal procurement may be found in section IV below.

"salary history bans." When referring to those laws and the studies analyzing their effects, the terms "salary history" and "compensation history" may be used interchangeably. For this rulemaking, "compensation history" means the compensation an applicant is currently receiving or the compensation the applicant has been paid in a previous job, where "compensation" is defined as "any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement."

This proposed policy also accords with Executive Order (E.O.) 14069 of March 15, 2022, titled "Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency." E.O. 14069 established an administration policy of eliminating discriminatory pay practices that inhibit the economy, efficiency, and effectiveness of the Federal workforce and the procurement of property and services by the Federal Government; highlighted regulatory efforts by the Office of Personnel Management to address the use of salary history in hiring and pay-setting processes for Federal employees (see Office of Personnel Management, Proposed Rule, Advancing Pay Equity in Governmentwide Pay Systems, 88 Fed. Reg. 30251 (May 11, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-05-11/pdf/2023-09564.pdf>); and directed the Federal Acquisition Regulatory Council (FAR Council), in consultation with the Secretary of Labor and other agency heads as appropriate, to consider issuing proposed rules to advance economy, efficiency, and effectiveness in Federal procurement by promoting pay equity and transparency for job applicants and employees of Federal contractors and subcontractors. Pursuant to 41 U.S.C. 1121(b), the OFPP Administrator proposes these pay equity policies to be implemented in the FAR through rulemaking. See 41 U.S.C. 1121(b), 1303. The OFPP Administrator invites public comment on this proposed

policy and the analysis supporting it, which is set forth in section IV below.

II. Proposed FAR Rule: Discussion and Analysis

To implement the OFPP Administrator's proposed policy, which is reinforced by E.O. 14069, DoD, GSA, and NASA are proposing to amend the FAR to limit or prohibit contractors and subcontractors from seeking and considering information about job applicants' compensation history when making employment decisions on certain positions and to require contractors and subcontractors to disclose the compensation to be offered to the hired applicant in job announcements for certain positions.

The proposed rule would establish a new FAR subpart 22.XX entitled "Prohibition On Compensation History Inquiries and Requirement For Compensation Disclosures By Contractors" to incorporate the proposed policy of the OFPP Administrator described in section I. A summary of the proposed changes follows:

A. FAR Part 1

FAR 1.106, OMB approval under the Paperwork Reduction Act, will include the OMB control number associated with the notification of rights to job applicants, the compensation disclosures, and the complaints process.

B. FAR Part 2

FAR 2.101, Definitions, has a conforming change to the clause prescription in the new subpart, showing "United States" will include outlying areas (e.g., territories).

C. FAR Part 12

FAR 12.301(d)(11) is added to clarify that use of the new clause is required for acquisitions of commercial products and commercial services.

D. FAR Part 22

This new subpart at FAR 22.XX communicates the policy that contractors and subcontractors are prohibited from seeking and considering information about job applicants' compensation history when making employment decisions on certain positions. The prohibition would apply to the recruitment and hiring for any position to perform work on or in connection with the contract, and applicants are to be provided with notice of this requirement as either part of the job announcement or application process. In addition, the proposed new subpart must communicate the policy that contractors and subcontractors are required to disclose in all advertisements for job openings placed by or on behalf of the contractor or subcontractor, for any position to perform work on or in connection with the contract, the compensation thereof to be offered to the hired applicant.

The new subpart contains the prescription for a new clause at FAR 52.222-ZZ entitled "Prohibition on

Compensation History Inquiries and Requirement for Compensation Disclosures by Contractors During Recruitment and Hiring", and proposed to be included in all solicitations and contracts, where the principal place of performance will be in the United States, which is defined as including its outlying areas.

The proposed policy provides that an applicant for a position covered by the proposed policy may submit a complaint relating to the contractor's noncompliance with the clause to a central collection point of the agency that issued the solicitation or awarded the contract or order. The complaint must be submitted within 180 days of the date the violation occurred. The FAR text provides a link to where the list of agency central collection points is posted. The proposed rule states that the contracting agency will review the complaint, consult with the complainant as necessary to confirm the complainant is a covered applicant, and take action as appropriate. The subpart reiterates that complaints alleging discrimination prohibited by E.O. 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act by the contractor or subcontractor should be submitted directly to the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). If complaints alleging discrimination are submitted to an

agency central collection point rather than directly with OFCCP, the complaints will be forwarded to OFCCP.

E. FAR Part 52

FAR clauses 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) and 52.244-6, Subcontracts for Commercial Products and Commercial Services, are revised to reflect the application of the new policy to both prime contracts and subcontracts for commercial products and commercial services and both prime contracts and subcontracts under the simplified acquisition threshold (see Section III of this preamble).

New FAR clause 52.222-ZZ entitled "Prohibition on Compensation History Inquiries and Requirement for Compensation Disclosures by Contractors During Recruitment and Hiring" is added to FAR part 52. With regard to compensation history, the clause prohibits contractors from seeking an applicant's compensation history either directly or indirectly, from requiring disclosure of compensation history as a condition of an applicant's candidacy, and from retaliating against any applicant for failing to respond to an inquiry regarding their compensation history. The clause also prohibits contractors from relying on an applicant's compensation history, even if an applicant for employment volunteers their compensation history without prompting at any stage in the selection process.

With regard to compensation disclosure, the clause requires contractors to, in solicitations or advertisements for job openings placed by or on behalf of the contractor for any position to perform work on or in connection with the contract, disclose the compensation to be offered to the hired applicant. The disclosure must indicate the salary or wages, or range thereof, that the contractor in good faith believes that it will pay for the advertised position and may reflect, as applicable, the contractor's pay scale for that position, the range of compensation for those currently working in similar jobs, or the amount budgeted for the position. The disclosure must also include a general description of the benefits and other forms of compensation applicable to the job opportunity. Where at least half of the expected compensation for the advertised position is derived from commissions, bonuses, and/or overtime pay, the contractor must specify the percentage of overall compensation or dollar amount, or ranges thereof, for each form of compensation, as applicable, that it in good faith believes will be paid for the advertised position.

The proposed new clause requires contractors to provide any applicants that are covered by the prohibitions and disclosure requirements in the clause with a notice of their rights as either part of the job announcement or application process. Specific language for the notice is

provided in the clause, along with a fill-in where the contractor would inform the applicant of the agency that issued the solicitation or awarded the contract so that applicants know which agency should receive any complaints of noncompliance.

The clause includes language to ensure it will flow down the compensation disclosure requirement and the prohibition on compensation history inquiries to all subcontracts at any tier, to be performed within the United States including its outlying areas.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule proposes a new FAR clause at 52.222-ZZ. The proposed clause is prescribed at FAR 22.XX04 for use in all solicitations and contracts. The clause is applicable to acquisitions at or below the SAT and to acquisitions for commercial products and commercial services, including COTS items.

The benefits of the pay equity and transparency requirements in this proposed rule are equally impactful in commercial and noncommercial settings as well as to large or small dollar contracts. For this reason, an increasing number of states and localities have imposed requirements similar to those described in this proposed rulemaking for

sales of any goods or services in any dollar amount, whether business to business, business to consumer, or business to government. Limiting application would forgo the various ways in which pay equity promotes economy, efficiency, and effectiveness. In addition, because many entities who sell in those states or localities also sell in the Federal marketplace, it is believed that many government contractors, including small businesses, already have incorporated these requirements into their existing human capital management practices. Moreover, limiting the application of the proposed rule could create unintended confusion and ambiguity for contractors and prospective employees. Many contractors who do business with the government have contracts below and above the SAT, and provide both commercial and government unique products and services. Carve-outs to the rule could result in contractor employees performing the same or similar functions receiving disparate treatment during hiring and recruiting for work on or in connection with government contracts, which would perpetuate inequity and deprive the Federal marketplace of economy, efficiency, and effectiveness in the procurement of property and services. The FAR Council will consider public feedback before making a final determination on the scope of the final rule.

IV. Expected Impact on Economy, Efficiency, and Effectiveness

In implementing the OFPP Administrator's proposed policy, this proposed rule provides that for any recruitment and hiring for work on or in connection with a government contract, the contract would prohibit the contractor and subcontractor from seeking an applicant's compensation history, requiring disclosure of compensation history as a condition of an applicant's candidacy, or retaliating against or refusing to interview or otherwise consider, hire, or employ any applicant for failing to respond to an inquiry regarding their compensation history. Furthermore, the contractor and subcontractor would be prohibited from relying on an applicant's compensation history as a criterion in screening or considering the applicant for employment, or relying on an applicant's compensation history in determining the compensation for such individual at any stage in the selection process. These prohibitions are collectively referred to as a compensation history ban in this section.

This rule would also require contractors and subcontractors to disclose in all advertisements for job openings involving work on or in connection with a government contract placed by or on behalf of the contractor or subcontractor, the compensation to be offered to the hired applicant. This requirement is referred to as a compensation disclosure in this section.

The OFPP Administrator has outlined the results of an analysis of economy, efficiency and effectiveness regarding the proposed compensation history bans and compensation disclosure requirements in this section. The OFPP Administrator invites public comments on existing literature or ongoing research that may further inform this analysis.

Expected Benefits

A. Promoting Economy, Efficiency, and Effectiveness through Compensation History Bans

State and local governments are increasingly adopting laws and regulations that prohibit employers from requesting compensation history information from job applicants. A running list of states and localities that have outlawed pay history questions from various employers reveals 22 statewide bans and 22 local bans.² The OFPP Administrator's analysis shows that compensation history bans promote economy, efficiency and effectiveness in various ways.

1. Compensation history bans were found to reduce pay gaps that disadvantage certain populations, including women, workers of color and workers entering the labor market during recessions. Closing pay gaps increases job satisfaction, helps attract and retain staff, and increases

² HRDive. (Aug 2023). Salary history bans: A running list of states and localities that have outlawed pay history questions. Retrieved January 4, 2024 from <https://www.hrdive.com/news/salary-history-ban-states-list/516662/>.

performance, retention, and productivity. This, in turn, may lead to improved economy, efficiency and effectiveness in Government procurement.

Many employers set pay offers on the basis of workers' past pay. This is problematic because research has documented the persistence of racial, ethnic, and gender discrimination in the labor market that may be reflected in pay-setting.³

Closing pay gaps is important to the economy, efficiency, and effectiveness of contract performance because it has been shown to increase the satisfaction, commitment, and motivation of employees.⁴ When workers feel that they are valued and their pay is fair, they are more likely to be committed to their employer, which leads to improved job performance and enhanced productivity. In contrast, when employees think they are underpaid or undervalued, those perceptions can lead to dissatisfaction. Worker dissatisfaction is a very strong predictor of workers' quit intentions.⁵ Consequently, this leads to

³ Mandel, H., & Semyonov, M. (2014). Gender pay gap and employment sector: Sources of earnings disparities in the United States, 1970–2010. *Demography*, 51(5), 1597-1618.; Blau, F. D., & Kahn, L. M. (2017). The gender wage gap: Extent, trends, and explanations. *Journal of economic literature*, 55(3), 789-865.; Manduca, R. (2018). Income inequality and the persistence of racial economic disparities. *Sociological Science*, 5, 182-205.

⁴ Kular, S., & Gatenby, M. (2019). Performance-related pay and employee well-being: Investigating relationships between rewards, pay, satisfaction, and engagement. *Human Resource Management International Digest*, 27(4), 11-14. <https://doi.org/10.1108/HRMID-03-2019-0080>.; Rosenfeld, J. (2021). You're Paid What You're Worth. In *You're Paid What You're Worth*. Harvard University Press.; Lam, L., Cheng, B. H., Bamberger, P., & Wong, M.-N. (2022). Research: The unintended consequences of pay transparency. *Harvard Business Review*. <https://hbr.org/2022/08/research-the-unintended-consequences-of-pay-transparency>

⁵ Xue, J., Wang, H., Chen, M., Ding, X., & Zhu, M. (2022). Signifying the relationship between psychological factors and turnover intention: the mediating role of work-related stress and moderating role of job satisfaction. *Frontiers in Psychology*, 13, 847948.; Pelly, D. (2023). Worker well-being and quit intentions: is measuring job satisfaction enough?. *Social Indicators Research*, 169(1), 397-441.

higher staff turnover.⁶ Turnover is costly to employers, requiring employers to invest in new searches, hiring, and training at the same time that they are losing the contributions of the departed worker. Kuhn and Yu⁷ estimated the costs of employee turnover in small retail sales teams using daily sales data and an advance notice requirement and found that turnover has a negative impact on productivity, especially when it involves high-performing workers or workers with longer tenure. Kuhn and Yu's study estimated that 10 percent higher turnover is about as costly as a 0.6 percent wage increase. Thus, reductions in turnover can improve Federal contractor and Federal Government-procurement efficiencies.

A growing body of evidence indicates that compensation history bans effectively reduce pay gaps. Davis, Ouimet and Wang⁸ evaluated compensation history bans covering all public sector employees in 36 states. They found that on average, compensation history bans lead to a 1.5 percent increase in wages of women relative to men, though this decrease in the gender pay gap was driven in part by overall wage decreases of around 3 percent in the new hire

⁶ Kulik, C. T., & Perera, S. (2016). Help or hindrance? Work-life practices and women in management. *The Leadership Quarterly*, 27(3), 504-5184.; Li, J., & Nelson, J. (2022). Employee development and organizational performance: A review of literature. *Journal of Human Resource Development International*, 23(1), 1-14.; Li, J., & Nelson, J. (2023). Employee turnover and organizational performance: Testing a hypothesis using longitudinal data from over 800 similar workplaces in the United States. *Journal of Public Administration Research and Theory*, 18(4), 573-592.

⁷ Kuhn, P., & Yu, L. (2021). How costly is turnover? Evidence from retail. *Journal of Labor Economics*, 39(2), 461-496.

⁸ Davis, J., Ouimet, P., & Wang, X. (2022). Hidden Performance: Salary History Bans and the Gender Pay Gap. *The Review of Corporate Finance Studies*, 11(3), 511-553.

sample. Mask⁹ studied the effect of compensation history bans on workers who enter the labor market during recessions. During a recession, increased competition forces inexperienced job market entrants to accept lower wages than those who start their careers during an economic boom. This penalty does not reflect workers' skills, experiences, or ability to do their job but simply the misfortune to enter the labor market during an economic downturn. In other words, workers who had the misfortune of working in areas with larger economic shocks have worse employment and wage outcomes years later, unrelated to their own initial skills or experience.¹⁰ This effect is referred to as "scarring," defined as the negative long-term effect that unemployment has on future labor market possibilities.¹¹ Mask found by breaking the linkage between past wages and current offers, compensation history bans could reduce this scarring effect. Moreover, Mask found that compensation history bans increase job mobility, hourly wages, and weekly earnings for scarred workers relative to non-scarred workers, and reduce the gap in wages caused by scarring.

⁹ Mask, J. (2023). Salary history bans and healing scars from past recessions. *Labor Economics*, 84, 102408.

¹⁰ Yagan, Danny (2019). "Employment hysteresis from the Great Recession." *Journal of Political Economy*, 127.5: 2505-2558.

¹¹ Huckfeldt, C. (2022). Understanding the scarring effect of recessions. *American Economic Review*, 112(4), 1273-1310.

Several working papers support the claim as well. For example, Sinha¹² analyzed the effects of U.S. salary history bans with the option to voluntarily share information and showed that these policies narrowed the gender pay gap significantly by 2 percentage points, driven almost entirely by an increase in female earnings. Another working paper by Bessen, Meng and Denk¹³ found that following salary history bans, employers posted wages more often and increased pay for job changers, particularly for women (6.2 percent) and non-whites (5.9 percent). A working paper published in the NBER Working Series¹⁴ showed that the gender earnings ratio increased by 1 percent in states with salary history bans, and that the increase was mainly driven by workers who switched jobs, especially women and non-whites.

2. Compensation history bans were found to increase the pool of applicants to Federal contractors who might have relevant skills or experiences but who otherwise might not apply. Better aligning hiring and compensation decisions with workers' skills and experiences results in a broader applicant pool for Federal contractors, thus increasing efficiencies in federal procurement.

¹² Sinha, Sourav, Salary History Bans: Strategic Disclosure by Job Applicants and the Gender Pay Gap (January 24, 2022). Retrieved January 4, 2024, from <https://ssrn.com/abstract=4025580>.

¹³ Bessen, James E. and Meng, Chen and Denk, Erich, Perpetuating Inequality: What Salary History Bans Reveal About Wages (June 2020). Retrieved January 4, 2024 from <https://ssrn.com/abstract=3628729>.

¹⁴ Hansen, B., & McNichols, D. (2020). Information and the persistence of the gender wage gap: Early evidence from California's salary history ban (National Bureau of Economic Research Working Paper No. w27054). Retrieved January 4, 2024 from https://www.nber.org/system/files/working_papers/w27054/w27054.pdf.

If workers know that Federal contractors base hiring and compensation decisions on workers' past pay, and in turn, that past pay reflects arbitrary factors, workers may be less likely to seek new positions with Federal contractors because they know that their past pay may hamper their ability to secure a job offer or to receive higher pay. This likely is especially true for workers disadvantaged by current hiring and pay-setting practices. In turn, this effect may limit applicant pools for Federal contractors, thereby reducing the availability of workers with relevant skills and experiences and reducing Federal contractor productivity.

For instance, a Harvard Business Review article by Bessen, Denk and Kossuth¹⁵ reported that job seekers or applicants are more likely to apply if salary history is banned. Barach and Horton¹⁶ found that without access to applicant wage histories, employers who had salary history bans tend to consider a wider group of candidates, invite more candidates in for interviews, and ask more questions of each candidate, thus leading to recruiting more diverse and qualified set of candidates. Barach and Horton found that employers evaluated about 7 percent more applicants following a salary history ban. A strong applicant pool

¹⁵ Bessen, J., Denk, E., & Kossuth, J. (2020). Stop asking job candidates for their salary history. Harvard Business Review. Retrieved January 4, 2024 from: Stop Asking Job Candidates for Their Salary History (hbr.org).

¹⁶ Barach, M. A., & Horton, J. J. (2021). How do employers use compensation history? Evidence from a field experiment. Journal of Labor Economics, 39(1), 193-218.

may lead to efficiencies in procurement in terms of reduced time-to-hire and greater possibility of finding stronger shortlist of candidates.

It is important to note, however, that the benefit of a large applicant pool holds true only in the absence of reliance on voluntary disclosures of compensation histories, known as unravelling. In addition to reversing the benefits outlined in this section, unravelling can impose disclosure costs on applicants who must decide whether or not to voluntarily disclose their compensation history. Agan et al.¹⁷ suggest that job candidates also face different direct costs for disclosing; for example, an innate feeling of harm or vulnerability from disclosing. These costs tend to be higher for some groups. In Agan et al.'s study, women are more likely to report discomfort with disclosing than men and tend to ask for lower salaries from employers in the first place. The proposed rule would prevent contractors from using voluntarily-disclosed salary histories as a criterion in screening or considering the applicant for employment, or relying on an applicant's voluntarily-disclosed compensation history in determining the compensation for such individual at any stage in the selection process, which should will likely prevent

¹⁷ Agan, A., Cowgill, B., & Gee, L. K. (2020, May). Do workers comply with salary history bans? a survey on voluntary disclosure, adverse selection, and unraveling. In AEA Papers and Proceedings (Vol. 110, pp. 215-219). 2014 Broadway, Suite 305, Nashville, TN 37203: American Economic Association. Retrieved January 4, 2024 from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3522170.

unravelling. A Columbia Business School research paper¹⁸ used information from a survey of the U.S. labor force to evaluate the connections between voluntary disclosure, wage history, and associated bans. In locations where it is illegal for employers to request pay history, the study found that a significant portion of employees (28 percent) nevertheless provide it. In addition, the study found that if enough of the applicant pool for the position discloses their compensation history, an additional 47 percent will do so.

3. Compensation history bans expand the pool of applicants, thereby facilitating the hiring of more quality candidates. In turn, hiring quality candidates reduces the risks of turnover and leads to overall productivity gains.

By limiting Federal contractors' ability to make hiring and compensation-setting decisions based on workers' past pay, a compensation history ban will more closely align employment decisions with quality factors relevant for the job, thereby improving the quality of the contracting workforce. A working paper by Sran et al.¹⁹ studied the effects of pay history inquiry bans on employers' pay offers and hiring practices. They found some evidence that the number of online job postings

¹⁸ Cowgill, Bo and Agan, Amanda Y. and Gee, Laura, The Gender Disclosure Gap: Salary History Bans Unravel When Men Volunteer their Income (May 9, 2022). Columbia Business School Research Paper No. 4104743. Retrieved on January 4, 2024 from <https://ssrn.com/abstract=4104743>.

¹⁹ Sran, G., Vetter, F., & Walsh, M. (2020). Employer responses to pay history inquiry bans. Retrieved January 4, 2024 from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3587736.

increases and that postings are more likely to include salary information after salary history bans. Another article by Bessen et al.²⁰ showed that employers are more likely to include work experience and other skill expectations in job postings following the passage of compensation history bans, indicating that employers tend to be more explicit about these job-relevant characteristics with bans in place.

Hiring the right employee is crucial to an organization as it reduces employee burnout, thereby reducing the risk of understaffing and turnovers. Hiring an unqualified candidate can lead to significant decrease in productivity within the organization resulting in cost overruns and schedule disruptions for Federal contracts. A survey conducted by CareerBuilder²¹ asked companies how a bad hire affected their organization and found that 37 percent of companies cited less productivity, 32 percent reported lost time in recruiting and training another worker, and 31 percent experienced compromised quality of work. The study calculated an average of \$14,900 lost on every bad hire.

4. Compensation history bans strengthen incentives for prospective and current Federal contractor workers to

²⁰ Bessen, J., Denk, E., & Kossuth, J. (2020). Stop asking job candidates for their salary history. Harvard Business Review. Retrieved January 4, 2024 from <https://hbr.org/2020/07/stop-asking-job-candidates-for-their-salary-history>.

²¹ CareerBuilder. (2017, December 7). Nearly three in four employers affected by a bad hire, according to a recent CareerBuilder survey. Retrieved January 24, 2024 from <https://press.careerbuilder.com/2017-12-07-Nearly-Three-in-Four-Employers-Affected-by-a-Bad-Hire-According-to-a-Recent-CareerBuilder-Survey>.

invest in job-relevant skills and experiences. Better aligning hiring and compensation decisions with workers' skills and experiences incentivizes workers to invest in relevant skills and experiences, increasing efficiencies in Federal procurement.

If workers are aware that Federal contractors are making pay setting decisions based on their skills and experiences, rather than their past pay, they likely will be motivated to invest in enhancing their skill sets and gaining relevant experiences. This investment, in turn, will better equip them for employment opportunities within Federal contractor jobs, increasing the quality of Federal contract work and reducing the potential for cost overruns and schedule delays in Federal contracts. By prioritizing the employment of high-quality workers, the risk of understaffing and turnover can be significantly reduced, leading to further cost savings in terms of hiring expenses.

Seminal theories in labor economics document that unequal treatment among groups, including in hiring and pay, can create self-fulfilling prophecies, whereby minorities believe that their investments in skills and training will not be fully rewarded by employers, leading

those groups to under-invest in training and creating inefficiencies for employers and the economy as a whole.²²

B. Promoting Economy, Efficiency, and Effectiveness through Salary Range Disclosure

Pay transparency laws at the state and local level are becoming increasingly prevalent. These regulations require employers to be more transparent with salary ranges and benefits, and they aim to help promote fairness and equity in the workplace. According to the Center for American Progress²³, as of March 2023, 8 states had enacted, and at least 15 states were considering, salary range transparency laws. There are a number of ways that salary range disclosures promote economy, efficiency, and effectiveness in Federal procurement.

1. Similar to compensation history bans, salary range disclosure requirements reduce gender and racial/ethnic pay gaps by reducing pay secrecy and helping workers negotiate. This may reduce the costs for Federal contracting.

Pay transparency measures can also effectively identify compensation differences and reduce broader gender inequalities in the labor market. Arnold et al.²⁴ is a

²² Lundberg, S. J., & Startz, R. (1983). Private discrimination and social intervention in competitive labor markets. *American Economic Review*, 73(3), 340-347.; Coate, S., & Loury, G. C. (1993). Will affirmative-action policies eliminate negative stereotypes? *American Economic Review*, 83(5), 1220-1240

²³ Center for American Progress. (Mar. 9, 2023). Quick Facts About State Salary Range Transparency Laws. Retrieved Jan. 8, 2024 from <https://www.americanprogress.org/article/quick-facts-about-state-salary-range-transparency-laws/#:~:text=These%20laws%20create%20an%20environment,are%20penalized%20more%20than%20men.>

²⁴ Arnold, David and Quach, Simon and Taska, Bledi, The Impact of Pay Transparency in Job Postings on the Labor Market (August 9, 2022). Retrieved Jan. 9, 2024 from <https://ssrn.com/abstract=4186234>.

working paper which studies the impact of a January 2021 law in Colorado that required job postings to contain expected salary information. Arnold et al. used data from Burning Glass Technologies and found that this law increased the fraction of postings with salary information by 30 percentage points, although there remains substantial non-compliance. For employers that posted salaries both before and after the policy, the Arnold et al. found that posted salaries increased by about 3.6 percent, on average, following the policy. Note, however, that while the results of Arnold et al. support the intended policy effect of raising workers' salaries, the study did not look at effect of pay transparency on inequality, gender pay gaps, and racial pay disparities.

Lyons and Zhang²⁵ examined whether salary transparency influences gender pay inequality in the context of Canadian universities. The authors relied on a policy change enacted in one Canadian province that required salary disclosure through a publicly searchable database, thus lowering the cost of monitoring the gender pay gap, and found that, on average, salary disclosure improves gender pay equality but institutions respond in different ways. Similarly, Baker et al.²⁶ examined the impact of public sector salary disclosure laws on university faculty

²⁵ Lyons, E., & Zhang, L. (2023). Salary transparency and gender pay inequality: Evidence from Canadian universities. *Strategic Management Journal*.

²⁶ Baker, M., Halberstam, Y., Kroft, K., Mas, A., & Messacar, D. (2023). Pay transparency and the gender gap. *American Economic Journal: Applied Economics*, 15(2), 157-183.

salaries in Canada. The laws, which enable public access to the salaries of individual faculty, were introduced in different provinces at different times. Using detailed administrative data covering the majority of faculty in Canada, and an event-study research design that exploits within-province variation in exposure to the policy across institutions and academic departments, Baker et al. found robust evidence that the laws reduced the gender pay gap between men and women by approximately 20-40 percent.

2. Salary range disclosure requirements reduce turnover rates. Employee retention is critical to organizational success. Keeping the turnover rate low strengthens contracting relationships, which ultimately boosts productivity and improves the ability of contractors to stay on budget and on time.

Salary transparency may help build workforce loyalty by building trust in management.²⁷ While pay impacts where people decide to work initially, some reports have shown that pay transparency also impacts whether or not workers stay at their current jobs.²⁸ A recent study conducted by Payscale²⁹, a Seattle-based compensation software firm,

²⁷ Salary transparency: One organization's story, Nonprofit Quarterly / Jeanne Bell, 2021. Retrieved January 4, 2024 from

<https://nonprofitquarterly.org/salary-transparency-one-organizations-story/>

²⁸ How Salary Transparency can Impact retention. Insights2Action Perspective/ McAneny, 2022. Retrieved January 4, 2024 from <https://action.deloitte.com/insight/3037/how-salary-transparency-can-impact-retention.>; Show me the money: More job listings have salary details, The Wall Street Journal / Kate Linebaugh and Ryan Knutson, 2022. Retrieved January 4, 2024 from <https://www.wsj.com/podcasts/the-journal/show-me-the-money-more-job-listings-have-salary-details/7490aa9e-6100-4ff0-9197-cfc78a0cff55>.

²⁹ Pay Transparency Reduces Turnover, Payscale Research Indicates. HRDive / Tornone, 2022. Retrieved January 4, 2024 from

showed that pay transparency decreases intent to quit by 30 percent when analyzed in isolation. Payscale's first Retention Report suggests that workers are eager for greater transparency from their employer in general, with crowdsourced data from more than 578,000 workers indicating that they want information about the health of the business and how their pay is determined.

3. The proposed salary range disclosure may lower recruiting costs. By disclosing the salary range upfront, employers can effectively lower recruiting costs related to the selection and negotiation process. This reduces the costs for Federal contracting.

Studies have found that candidates are more likely to click on job advertisements that include a salary range.³⁰ Thus, implementing pay transparency can streamline the hiring process. Upfront information aligns expectations between employers and applicants on pay and improves time-to-fill open positions. Salary transparency at the outset of the hiring process facilitates pay negotiations later on, eliminates candidates who would later turn down an offer due to salary, and frees up candidate interviews to cover other topics.

C. The Combined Impact of Compensation History Bans and Salary Range Disclosures

Pay transparency reduces turnover, Payscale research indicates | HR Dive.

³⁰ Salary transparency: One organization's story, Nonprofit Quarterly / Jeanne Bell, 2021. Retrieved January 4, 2024 from <https://nonprofitquarterly.org/salary-transparency-one-organizations-story/>.

Compensation history bans and salary range disclosure requirements are relatively new policies. As of August 2023, 22 states have enacted compensation history bans and 10 states have enacted a pay transparency law with their ban. The States that have implemented these policies have, consistent with the literature discussed above, highlighted the important benefits of these policies to "increas[ing] efficiency and achiev[ing] cost savings in state government." Pa. Exec. Order No. 2018-03 (June 6, 2016); see also Office of Governor of Va., Press Release, Governor Northam Announces Employment Equity Initiative for State Agencies (June 20, 2019) ("This initiative adopts industry-wide best practices in compensation and employment, which will help attract and retain top talent in our state workforce and bring greater equity and overdue improvements to our state policies."); and Hawai'i Senate Bill 1057 (July 3, 2023) ("[I]nitial experiences have benefited employers, current employees, and prospective employees.").

Moreover, despite the important benefits of these policies, including in reducing turnover, increasing the quality of applicants, and streamlining the hiring process, absent a Government-wide policy individual contractors cannot reasonably be expected to adopt these policies with sufficient uniformity.

Expected Costs

The FAR Council has identified certain nonrecurring costs associated with the initial rule familiarization, review and revisions of existing policies, and preparation of training for those involved in the recruitment and hiring process discussed below, and welcomes public feedback on these and any potential additional costs associated with implementation of the proposed rule. Federal contractors like all businesses establish market-based compensation to recruit and retain a diverse and talented workforce. Likewise, to be a competitive and viable business, companies need to establish some level of budgeting and human capital management. Regardless of the size of the entity or the sophistication level of their processes, companies will, regardless of the proposed rule, go through a process to determine budgets and set expected compensation levels. Companies will seek market information from public sources such as Bureau of Labor Statistics Economic Cost Indices or purchase compensation survey data. The FAR Council has not identified any additional expected costs related to budgeting that would be incurred as a result of not asking a job applicant their compensation history, or more than a de minimis amount for including a good faith estimate of compensation as part of existing human resource practices.

Identified Costs

Category	Costs
Rule Familiarization	\$15,754,521

Review and Modification of Existing Policies	\$31,509,043
Preparation of Training	\$47,263,564
Total Nonrecurring Costs	\$ 94,527,128

Rule Familiarization

Active SAM Registrants (1)	486,551
Hours (2)	1
Rate (3)	32.38
	\$ 15,754,521

(1) Based on SAM data as of November 30, 2023, there are 486,551 active registrants. We estimate this is the universe of entities that may seek to do business with the Government. Since the actual number of prime contractors during 2022 was less than 120,000 we believe this represents the upper limit of impacted entities inclusive of subcontractors.

(2) Based on the short length, limited complexity and assumptions it is estimated that each entity would spend one hour on initial general familiarization of the rule.

(3) For this function we have assigned a rate based on the Employer Cost for Compensation Table 4 for Office and administrative support occupations.

Review and modification of policies

Active SAM Registrants	486,551
Hours (1)	2
Rate (2)	32.38
	\$ 31,509,043

(1) Based on the short length, limited complexity and assumptions we estimate each entity will spend on average 2

hours reviewing and modifying their existing policies and procedures.

(2) For this function we have assigned a rate based on the Employer Cost for Compensation Table 4 for the Office and administrative support occupations.

Preparation and Training

Active SAM Registrants	486,551
Hours (1)	3
Rate (2)	32.38
	<hr/>
	\$ 47,263,564

(1) Based on the short length, limited complexity and assumptions we estimate each entity will spend on average 3 hours for preparation and conduction of training.

(2) For this function we have assigned a rate based on the Employer Cost for Compensation Table 4 for the Office and administrative support occupations.

V. Request for Public Comment

Interested parties are invited to submit comments on both the proposed policy of the OFPP Administrator and the proposed implementing rule developed by DoD, GSA, and NASA. We encourage commenters to identify whether their comments are directed to the proposed policy, proposed implementing rule, or both.

A. Comments on the Proposed Policy of the OFPP Administrator.

The OFPP Administrator requests comments on the proposed policy and especially welcomes input in response

to the questions below. Such information will be useful for better understanding the effect of regulations on pay-setting by Federal contractors.

1. How might states' experiences with salary history bans inform future regulatory actions? State pay equity statutes often provide workers with protections beyond those in Federal laws such as Title VII of the Civil Rights Act of 1964 and the Equal Pay Act. Many states are updating equal pay statutes and increasing access to equal pay protections and pay transparency, such as limiting salary history questions during the job offer stage, requiring employers to provide pay ranges on job postings, increasing pay reporting requirements for employers, or expanding the classes protected under existing equal pay laws to include identities such as gender identity, race, age, sexuality, religion, and country of origin. For example, some state laws require equal pay for "substantially similar" work rather than for the narrower "equal work" set out in Federal law.

2. What data should the Federal Government consider when measuring the effects of greater pay equity achieved through this rule, including effects on worker engagement, turnover, and productivity, as well as effects on worker equity, dignity, and fairness?

3. What factors should the OFPP Administrator consider for positions of high occupational segregation—

that is, the occupations predominantly held by women that are often paid and valued less, compared to those predominantly held by men at the same level of skill or education?

4. Is there additional literature or ongoing research that would inform formulation of the final policy?

B. Proposed FAR Rule

The FAR Council agencies likewise request comments on all aspects of their proposed rule to implement the OFPP Administrator's proposed policy, including:

1. Which contractors and subcontractors are covered, including small businesses;

2. The scope of contracts included in the proposed rule;

3. The parameters of the prohibition on compensation history inquiries;

4. The parameters of the compensation disclosure requirement;

5. The notice of rights policy for employers to provide;

6. The applicant complaint process; and

7. Additional costs and benefits that should be considered, including as it relates to workers, Federal contractors, including small businesses, and other stakeholders.

VI. Severability

The OFPP Administrator has determined that both the proposed compensation history ban and compensation disclosure requirement, separately and independently, would promote economy, efficiency, and effectiveness in the procurement of property and services by the Federal Government. The OFPP Administrator accordingly intends that the discrete components of the proposed policy described in section I, which are capable of operating independently, be legally severable. Likewise, DoD, GSA, and NASA would intend that the proposed rule implementing the OFPP Administrator's proposed policy be severable. If any portion of the proposed policy or implementing rule were held to be invalid or unenforceable facially, or as applied to any entity or circumstance, that portion shall be severable from the remainder of the policy or rule, and shall not affect the remainder thereof, or their application to entities not similarly situated or to other dissimilar circumstances.

VII. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes

the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VIII. Regulatory Flexibility Act

This proposed rule, if finalized, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601-612. The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the Administrator for Federal Procurement Policy's proposed pay equity policy, which would require that Government agencies, in order to promote economy, efficiency, and effectiveness in Federal procurement, enhance pay equity and transparency for job applicants and employees of contractors and subcontractors.

The objective of the rule is to implement the acquisition policy established by the Administrator for Federal Procurement Policy, pursuant to 41 U.S.C. 1121(b), to promote pay equity for any recruitment and hiring for work on or in connection with a Government contract, which prohibits contractors and subcontractors from seeking and considering information about job applicants' current or past compensation when making employment decisions. In addition, businesses awarded a contract or subcontract containing the new clause will be required in all advertisements for job openings placed by or on behalf of the contractor or subcontractor to disclose the compensation to be offered to the hired applicant, for any position to perform work on or in connection with the contract. The disclosure must indicate the salary or wages, or range thereof, that the contractor or subcontractor in good faith believes that it will pay for the advertised position, and may reflect, as applicable: the contractor's or subcontractor's pay scale for that position, the range of compensation for those currently working in similar jobs, or the amount budgeted for the position. The disclosure must also include a general description of the benefits and other forms of compensation applicable to the job opportunity. Where at least half of the expected compensation for the advertised position is derived from commissions, bonuses, and/or overtime pay, the contractor must specify the percentage of overall compensation or dollar amount, or ranges thereof, for each form of compensation, as applicable, that it in good faith believes will be paid for the advertised position.

The proposed rule also provides guidance on appropriate accountability measures associated with the prohibition and disclosure requirement.

Promulgation of this FAR rule is authorized by 41 U.S.C. 1121(b); 41 U.S.C. 1303; 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

The proposed rule will apply to both contractors and subcontractors and the prohibition and disclosure requirement will apply to employees or applicants that will be performing work on or in connection with the contract or subcontract. The proposed rule will apply the prohibition and disclosure requirement to all contracts over the micro-purchase threshold, which is generally \$10,000.

Based on data obtained from the Federal Procurement Data System, 58,882 unique small entities out of the total 76,414 unique entities were awarded contracts in fiscal year 2022.

With regard to an estimate of the number of small entities that will be impacted by the rule as a subcontractor, data from the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at www.USASpending.gov was used. However, this system does not distinguish small businesses from other than small businesses. Data for fiscal year 2022 show there were a total of 203,802 subcontracts reported; these subcontracts were awarded to 24,190 unique entities. For estimating purposes, DoD, GSA, and NASA assumed that 20 percent of subcontracts have a second-tier subcontractor, 10 percent of second-tier subcontractors have a third-tier subcontractor, and 5 percent of third-tier subcontractors have a fourth-tier subcontractor. This calculation estimates the total number of unique subcontractors is 29,536. Because the FSRS data does not distinguish small businesses from other than small businesses, this number is likely an overestimate of the small entities to which this rule will apply.

Considering there is no way to determine how many of the small entities overlap as both a prime contractor and a subcontractor, the two figures of 58,882 and 29,536 are not added together to estimate the number of total small entities to which the rule will apply.

The proposed rule does not include any new recordkeeping requirements for small businesses. However, the proposed rule does create new reporting and compliance requirements for contractors and subcontractors, including small businesses.

In terms of reporting, small businesses awarded a contract or subcontract containing the new clause will be required, in all advertisements for job openings placed by or on behalf of the contractor or subcontractor, to disclose the compensation to be offered to the hired applicant, for any position to perform work on or in connection with the contract. The disclosure must indicate the salary or wages, or range thereof, that the contractor or subcontractor in good faith believes that it will pay for the advertised position, and may reflect, as applicable: the contractor's or subcontractor's pay scale for that position; the range of compensation for those currently working in similar jobs; or the amount budgeted for the position. The disclosure must also include a general description of the benefits and other forms of compensation applicable to the job opportunity. Where at least half of the expected compensation for the advertised position is derived from commissions, bonuses, and/or

overtime pay, the contractor or subcontractor must specify the percentage of overall compensation or dollar amount, or ranges thereof, for each form of compensation, as applicable, that it in good faith believes will be paid for the advertised position. The proposed rule also requires a small business awarded a contract or subcontract to provide applicants with notice of this requirement as either part of the job announcement or application process. Since these reporting requirements counts as information collections under the Paperwork Reduction Act (44 U.S.C. 3501-3521), the Regulatory Secretariat Division has submitted a request for approval of a new information collection requirement to the Office of Management and Budget.

In terms of compliance requirements, the proposed rule prohibits small businesses awarded a contract or subcontract from seeking and considering information about job applicants' compensation history when making employment decisions. The prohibition would apply to the recruitment and hiring for any position to perform work on or in connection with the contract. This compliance requirement is in addition to the compliance requirement to disclose compensation information listed above. While some small businesses may already be subjected to a prohibition from seeking and considering applicants' compensation history (e.g., small businesses located in states or localities that have enacted laws similar to the prohibition applied in this proposed rule) and some small businesses may already disclose compensation information in their job announcements, the requirements of this proposed rule may be new for other small businesses.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA considered minimizing the impact of the rule on small entities by-

- Exempting commercially available off-the-shelf (COTS) contracts or contracts for commercial products or commercial services;
- Exempting subcontracts;
- Exempting contracts under the simplified acquisition threshold (which is generally \$250,000);
- Exempting contracts with small businesses; or
- Not issuing a rule to implement the policy established by the Administrator for Federal Procurement Policy, pursuant to 41 U.S.C. 1121(b), to promote pay equity for any recruitment and hiring for work on or in connection with a Government contract. DOD, GSA & NASA did not agree to pursue this alternative approach.

Limiting the application of a compensation history ban through any of these alternatives could result in employees performing the same or similar functions receiving disparate treatment during hiring and recruiting for work on or in connection with Government contracts. This, in turn, increases the risk of pay disparity among employees working on Government contracts and, for the many reasons explained above, deprives the Federal marketplace of the economy, efficiency, and effectiveness in the procurement of property and services by the Federal Government when there is pay equity. The benefits of the pay equity and transparency requirements in this proposed rule are equally impactful in commercial and noncommercial settings as well as to large or small dollar contracts. For this reason, an increasing number of states and localities have imposed requirements similar to those described in this proposed rulemaking for sales of any goods or services in any dollar amount, whether business to business, business to consumer, or business to government. Limiting application would forgo the various ways in which pay equity promotes economy, efficiency, and effectiveness. In addition, because many entities who sell in those states or localities also sell in

the Federal marketplace, it is believed that many Government contractors, including small businesses, already have incorporated these requirements into their existing human capital management practices. Moreover, limiting the application of the proposed rule could create unintended confusion and ambiguity for contractors and prospective employees. Many contractors who do business with the government have contracts below and above the simplified acquisition threshold, and provide both commercial and government unique products and services. Carve-outs to the rule could result in contractor employees performing the same or similar functions receiving disparate treatment during hiring and recruiting for work on or in connection with Government contracts, which would perpetuate inequity and deprive the Federal marketplace of economy, efficiency, and effectiveness in the procurement of property and services.

DoD, GSA, and NASA have narrowed the scope of the rule by only applying it to prime contracts and subcontracts with a principal place of performance within the United States including its outlying areas (see 22.XX01, 22.XX04, and 52.222-ZZ(g)).

The FAR Council will consider public feedback before making a final determination on the scope of the final rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2023-021), in correspondence.

IX. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501-3521) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory

Secretariat Division has submitted a request for approval of a new information collection concerning "Pay Equity and Transparency in Federal Contracting" to the Office of Management and Budget (OMB).

A. Public Reporting Burden. Public reporting burden for this information collection, includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

1. The annual reporting burden estimated for compensation disclosure requirements is as follows:

Respondents	96,132
Total annual responses	96,132
Hours/response	x 1
Total burden hours	96,132

2. The annual reporting burden associated with applicant notification of rights is estimated as follows:

Respondents	96,132
Total annual responses	96,132
Hours/response	x 1
Total burden hours	96,132

3. The annual reporting burden associated with the complaints process is estimated as follows:

Respondents	753
Total annual responses	753
Hours/response	x 1

B. Request for Comments Regarding Paperwork Burden.

Submit comments on this collection of information no later than [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***] through <https://www.regulations.gov> and follow the instructions on the site. All items submitted must cite OMB Control No. 9000-XXXX, Pay Equity and Transparency in Federal Contracting. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

Public comments are particularly invited on:

- The necessity of this collection of information for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility;
- The accuracy of the estimate of the burden of this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division by calling 202-501-4755 or emailing GSAREgSec@gsa.gov. Please cite OMB Control Number 9000-XXXX, Pay Equity and Transparency in Federal Contracting.

List of Subjects in 48 CFR Parts 1, 2, 12, 22, and 52.

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 12, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 12, 22, and 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1.106 amend in the table following the introductory text by adding in numerical order an entry for “52.222-ZZ” to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR Segment	OMB Control Number
* * * * *	* * * * *
52.222-ZZ	9000-XXXX
* * * * *	* * * * *

* * * * *

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101, in paragraph (b) (2) in the definition of “United States”, by redesignating paragraphs (9) through (12) as paragraphs (10) through (13); and adding a new paragraph (9) to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

United States * * *

(9) For use in subpart 22.XX, see the definition at 22.XX01.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

4. Amend section 12.301 by redesignating paragraphs (d)(11) through (14) as paragraphs (d)(12) through (15); and adding a new paragraph (d)(11) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(d) * * *

(11) Insert the clause at 52.222-ZZ, Prohibition on Compensation History Inquiries and Requirement for Compensation Disclosures by Contractors During Recruitment and Hiring, as prescribed in 22.XX04.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

5. Add subpart 22.XX to read as follows:

Subpart 22.XX—Prohibition on Compensation History Inquiries and Requirement for Compensation Disclosures by Contractors

Sec.
22.XX00 Scope of subpart.

- 22.XX01 Definitions.
- 22.XX02 Policy.
- 22.XX03 Applicant complaint procedures.
- 22.XX04 Contract clause.

**Subpart 22.XX—Prohibition on Compensation History Inquiries
and Requirement for Compensation Disclosures by Contractors**

22.XX00 Scope of subpart.

This subpart implements the policy established by the Administrator for Federal Procurement Policy, pursuant to 41 U.S.C. 1121(b), to promote pay equity for any recruitment and hiring for work on or in connection with a Government contract.

22.XX01 Definitions.

As used in this subpart—

Applicant means a prospective employee or current employee applying for a position to perform work on or in connection with the contract.

Compensation means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

Compensation history means the compensation an applicant is currently receiving or the compensation the applicant has been paid in a previous job.

United States means the 50 States, the District of Columbia, and outlying areas.

Work on or in connection with the contract means work called for by the contract or work activities necessary to the performance of the contract but not specifically called for by the contract.

22.XX02 Policy.

(a) Pursuant to 41 U.S.C. 1121(b) the Administrator for OFPP has established that it is the policy of the Federal Government to eliminate pay practices that inhibit the economy, efficiency, and effectiveness of the procurement of property and services.

(b) Contractors and subcontractors are prohibited from seeking and considering information about job applicants' compensation history when making employment decisions. The prohibition applies to the recruitment and hiring for any position to perform work on or in connection with the contract.

(c) Contractors and subcontractors are required to disclose, in all advertisements for job openings placed by or on behalf of the contractor or subcontractor, the compensation to be offered to the hired applicant, for any position to perform work on or in connection with the contract. The disclosure must indicate the salary or wages, or range thereof, the contractor or subcontractor in good faith believes that it will pay for the advertised

position. The disclosure must also include a general description of the benefits and other forms of compensation applicable to the job opportunity. Where at least half of the expected compensation for the advertised position is derived from commissions, bonuses, and/or overtime pay, the contractor or subcontractor must specify the percentage of overall compensation or dollar amount, or ranges thereof, for each form of compensation, as applicable, that it in good faith believes will be paid for the advertised position.

(d) Contractors and subcontractors are required to provide applicants with notice of these requirements as either part of the job announcement or application process.

22.XX03 Applicant complaint procedures.

(a) Applicants alleging violations of the requirements in the clause at 52.222-ZZ may submit a complaint to the central collection point of the agency that issued the solicitation or awarded the contract or order, as identified at www.dol.gov/general/labor-advisors. The complaint must be submitted within 180 days of the date the alleged violation occurred.

(b) (1) Except as provided in paragraph (2), the contracting agency will review the complaint, consult with the complainant as necessary to confirm the complainant is a covered applicant, and take action as appropriate.

(2) Applicants who wish to submit complaints that allege discrimination prohibited by Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act should submit such complaints directly to the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) at <https://www.dol.gov/agencies/ofccp/contact/file-complaint>. If complaints alleging discrimination are submitted to an agency central collection point rather than directly with OFCCP, the complaints will be forwarded to OFCCP.

22.XX04 Contract clause.

The contracting officer shall insert the clause at 52.222-ZZ, Prohibition on Compensation History Inquiries and Requirement for Compensation Disclosures by Contractors During Recruitment and Hiring, in all solicitations and contracts where the principal place of performance is within the United States.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 52.213-4 by—

- a. Revising the date of the clause and revising paragraph (a) (2) (vii);
- b. Redesignating paragraphs (b) (2) (iv) and (v) as paragraphs (b) (2) (v) and (vi); and
- c. Adding a new paragraph (b) (2) (iv)

The revisions and addition read as follows:

**52.213-4 Terms and Conditions-Simplified Acquisitions
(Other Than Commercial Products and Commercial Services).**

* * * * *

TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL

PRODUCTS AND COMMERCIAL SERVICES) (**DATE**)

(a) * * *

(2) * * *

(vii) 52.244-6, Subcontracts for Commercial Products
and Commercial Services (**DATE**).

* * * * *

(b) * * *

(2) * * *

(iv) 52.222-ZZ, Prohibition on Compensation History
Inquiries and Requirement for Compensation Disclosures by
Contractors During Recruitment and Hiring (**DATE**)

* * * * *

7. Add section 52.222-ZZ to read as follows:

**52.222-ZZ Prohibition on Compensation History Inquiries and
Requirement for Compensation Disclosures by Contractors
During Recruitment and Hiring.**

As prescribed in 22.XX04, insert the following clause:

PROHIBITION ON COMPENSATION HISTORY INQUIRIES AND REQUIREMENTS FOR
COMPENSATION DISCLOSURES BY CONTRACTORS DURING RECRUITMENT AND HIRING

(**DATE**)

(a) *Definitions.* As used in this clause—

Applicant means a prospective employee or current employee applying for a position to perform work on or in connection with the contract.

Compensation means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

Compensation history means the compensation an applicant is currently receiving or the compensation the applicant has been paid in a previous job.

Work on or in connection with the contract means work called for by the contract or work activities necessary to the performance of the contract but not specifically called for by the contract.

(b) *Applicability.* The prohibition on compensation history inquiries and requirement to disclose compensation described in this clause apply to the recruitment and hiring for any position to perform work on or in connection with the contract. Contractors are also encouraged to apply the prohibitions and requirements in paragraphs (c) and (d) of this clause, respectively, to other positions, including to the recruitment and hiring for any position

that the Contractor reasonably believes could eventually perform work on or in connection with the contract.

(c) *Prohibitions.* For any recruitment and hiring under paragraph (b) of this clause the Contractor shall not—

(1) Seek an applicant's compensation history, either orally or in writing, directly from any person, including the applicant or the applicant's current or former employer or through an agent;

(2) Require disclosure of compensation history as a condition of an applicant's candidacy;

(3) Retaliate against or refuse to interview or otherwise consider, hire, or employ any applicant for failing to respond to an inquiry regarding their compensation history;

(4) Rely on an applicant's compensation history—

(i) As a criterion in screening or considering the applicant for employment or

(ii) In determining the compensation for such individual at any stage in the selection process; and

(5) Violate the prohibitions of (c)(1) through (4) even if an applicant for employment volunteers their compensation history without prompting at any stage in the recruitment and hiring process.

(d) *Compensation disclosure requirements.* (1) The Contractor shall, in all advertisements for job openings

placed by or on behalf of the Contractor for any position to perform work on or in connection with the contract, disclose the compensation to be offered to the hired applicant.

(2) The disclosure must indicate the salary or wages, or range thereof, the Contractor in good faith believes that it will pay for the advertised position, and may reflect, as applicable: the Contractor's pay scale for that position, the range of compensation for those currently working in similar jobs, or the amount budgeted for the position.

(3) The disclosure must also include a general description of the benefits and other forms of compensation applicable to the job opportunity. Where at least half of the expected compensation for the advertised position is derived from commissions, bonuses, and/or overtime pay, the Contractor must specify the percentage of overall compensation or dollar amount, or ranges thereof, for each form of compensation, as applicable, that it in good faith believes will be paid for the advertised position.

(e) *Applicant notification of rights requirements.*
The Contractor shall ensure that any applicants that are covered by the prohibitions in paragraph (c) and the disclosure requirements in paragraph (d) of this clause are provided with notice of these requirements as either part

of the job announcement or application process and provided with the following information in writing:

"This employer is a Federal contractor or subcontractor. Under 48 CFR (FAR) 52.222-ZZ, Prohibition on Compensation History Inquiries and Requirement for Compensation Disclosures by Contractors During Recruitment and Hiring, Federal contractors and subcontractors may not inquire about or rely on an applicant's compensation history to screen an applicant for employment or to determine the applicant's pay for a position on or in connection with a Federal contract or subcontract, even when the information is offered without prompting. The employer must also disclose the compensation for the position in all advertisements for the job opening.

Applicants alleging Federal contractor or subcontractor violations of these requirements: These applicants may submit a complaint to the central collection point of the agency that issued the solicitation for the Federal contract or awarded the Federal contract or order, as identified at www.dol.gov/general/labor-advisors. The

complaint must be submitted within 180 days of the date the violation occurred.

The agency that issued the solicitation or awarded the contract or order on which this applicant would primarily work is

_____. [*Contractor to fill in with*

appropriate agency name] For applicants

supporting multiple agencies, complaints should copy the central collection point of all known agencies to be supported by the applicant's position.

Applicants alleging discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or protected veteran status should file a complaint with the Office of Federal Contract Compliance Programs (OFCCP). If complaints alleging discrimination are submitted to an agency central collection point rather than directly with OFCCP, the complaints will be forwarded to OFCCP. Information on the process for filing a formal complaint of discrimination with OFCCP can be found at the following website:

<https://www.dol.gov/agencies/ofccp/contact/file-complaint>."

(f) *Relationship to other compensation data reporting requirements.* Nothing in this clause alleviates the Contractor from responsibilities that may be imposed by other clauses, such as for providing the contracting officer with employee compensation data required for the evaluation of proposals or claims.

(g) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (g) in all subcontracts at any tier, with a principal place of performance within the United States including its outlying areas.

(End of clause)

8. Amend section 52.244-6 by-

- a. Revising the date of the clause;
- b. Redesignating paragraphs (c)(1)(xx) through (xxiii) as paragraphs (c)(1)(xxi) through (xxiv); and
- c. Adding a new paragraph (c)(1)(xx).

The revision and addition read as follows:

52.222-6 Subcontracts for Commercial Products and Commercial Services.

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SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES **(DATE)**

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(c) * * *

(1) * * *

(xx) 52.222-ZZ, Prohibition on Compensation History
Inquiries and Requirement for Compensation Disclosures by
Contractors During Recruitment and Hiring (**DATE**).

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