

KEY VOTE ALERT!

March 2, 2017

TO THE MEMBERS OF THE UNITED STATES SENATE:

The U.S. Chamber of Commerce supports H.J. Res. 37, which would invalidate the Federal Acquisition Regulatory Council's implementing regulations for President Obama's Fair Pay and Safe Workplaces executive order, and will consider including votes related to it in our 2017 *How They Voted* scorecard.

The Executive Order and the FAR Council's rule, which has earned the "blacklisting" moniker, is seriously problematic, burdensome and unwarranted:

- They create a virtual "guilty until proven innocent" process on contractors, subcontractors, and would-be contractors to report "violations" of 14 different labor and employment laws and executive orders. But, "violations" are defined to include even minor citations and unproven allegations. Therefore, contractors could lose their ability to perform federal work on baseless claims, and before they have had the opportunity to adjudicate the charges.
- The addition of contracting penalties and new levels of severity for violations usurps Congress's exclusive authority to write labor and employment laws.
- They exceed the authority provided under the Procurement Act, which allows the president to change federal procurement only to increase "economy and efficiency." The reporting requirements will likely spur massive delays for procurement, particularly for key Department of Defense items.
- They contradict the Federal Arbitration Act that permits employers to use pre-dispute arbitration clauses in employment contracts to resolve employee complaints without the expense and burden of going to court. Arbitration is a simpler, fairer and faster way for all parties to resolve disputes that arise between them. Such use of these clauses have been upheld by the courts numerous times.
- Because of any contractor's desire to remain eligible, enforcement agencies will have extraordinary leverage to extract agency-favorable "labor compliance agreements" from contractors to resolve violations, even before the contractors will have had a chance to present their defense.



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The Chamber urges you to vote in favor of H.J. Res. 37, to invalidate the blacklisting regulation and to prevent the FAR Council from promulgating any substantially similar rule in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Howard". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Jack Howard
Senior Vice President
Congressional and Public Affairs