

For Immediate Release  
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# **FACT SHEET**

## **Final Guidance and Regulations Implementing the Fair Pay and Safe Workplaces Executive Order**

While the vast majority of federal contractors play by the rules, every year tens of thousands of American workers are unlawfully denied overtime wages, discriminated against in hiring or pay, put in physical danger on the job, or otherwise denied basic workplace protections by the federal contractors who employ them using taxpayer dollars. Taxpayer dollars should not reward companies that break the law, and federal agencies risk poor performance by awarding contracts to companies with a history of labor law violations. Responsible contractors who meet their legal responsibilities should not have to compete with those who offer low-ball bids based on savings from skirting the law.

On July 31, 2014, President Obama signed the [Fair Pay and Safe Workplaces Executive Order](#), to require prospective federal contractors to disclose labor law violations and give agencies guidance on how to consider labor violations when awarding federal contracts.

The Executive Order also ensures that contractors' employees are given the necessary information each pay period to make sure that they are getting paid what they are owed, and that workers who are victims of sexual assault or sexual harassment get their day in court and are not forced to arbitrate these claims if they work for companies with very large federal contracts.

The Executive Order directs the Federal Acquisition Regulatory Council (FAR Council) and the Department of Labor (DOL) to issue regulations and guidance, respectively, implementing the Executive Order. After extensive outreach to the contracting community, worker advocates, and other stakeholders, the FAR Council and DOL published proposed regulations [\[HYPERLINK\]](#) and proposed guidance [\[HYPERLINK\]](#) on May 27, 2015, followed by a 90-day period for public comment. The final rule and guidance reflect careful consideration of the extensive comments received from the public, including many members of the contracting community, and considerable collaboration and coordination across the federal government.

On August 24, 2016, the Administration announced final regulations and guidance implementing the Executive Order. These regulations and guidance make sure that agencies have the information they need to determine which contractors are providing their workers with basic protections. Using this information, agencies can

better ensure that taxpayer dollars only go to contractors that are willing to meet their responsibilities to their employees. They also create a process for agencies and DOL to help contractors come into compliance with labor laws and to better ensure that contractors who get federal contracts continue to comply with labor laws while they are receiving federal funds.

In implementing the Executive Order, DOL and the FAR Council have made every effort to streamline the disclosure process and minimize the burden on contractors. The processes set forth in the final guidance and regulations build on the existing federal acquisition system already familiar to contractors. And given that most contractors follow the law their only new responsibility will be to attest that they have not broken the law. Moreover, contracting officers will focus on the most egregious violations; for those contractors with such egregious violations, DOL and the enforcement agencies will work with those who want to come into compliance to address any issues that can be remedied. And the final regulations will be phased in, so contractors have time to fully understand their responsibilities.

The final guidance and regulations will be available for public review on August 24, 2016, at [\[INSERT LINK\]](#), followed by publication in the Federal Register on August 25, 2016. The final regulations will be effective beginning on October 25, 2016, and will be implemented in phases.

DOL will be available to help contractors and subcontractors understand their responsibilities under the Executive Order and comply with relevant law. And before the new rules go into effect, contracting agencies will have in place Agency Labor Compliance Advisors (ALCAs) to assist contracting officers with reviewing and making determinations about disclosed labor violations, as well as helping contractors take steps to come into compliance. ALCAs will also be available to members of the public who have information they feel that prospective contractors should have disclosed about their labor violations.

For contractors who do not want any surprises when they bid on future contracts, they can get an early assessment of their compliance record from DOL. The week of September 12, 2016, DOL will begin a “pre-assessment process,” through which contractors can voluntarily come to DOL to discuss their history of compliance with labor laws. DOL will be available to discuss existing labor law violations and whether additional compliance measures are necessary. For information about the pre-assessment process, please visit [\[INSERT LINK\]](#).

Further information on the final guidance and regulations can be found below, and for additional information on implementation and compliance, please visit [\[INSERT LINK\]](#).

# ADDITIONAL INFORMATION ON THE STREAMLINED COMPLIANCE REVIEW PROCESS

DOL and the FAR Council have made every effort to streamline the disclosure process and minimize the burden on contractors:

**The processes set forth in the guidance and regulations build on the existing federal acquisition system with which contractors are familiar.**

Federal contracting officers already must assess a contractor's record of integrity; however, there currently is no way for them to access comprehensive information about companies' workplace violations. The guidance and regulations make sure that contracting officers have the necessary information to make informed decisions. The guidance and regulations also provide greater transparency for contractors as to the information that will be considered in making that determination and give them an opportunity to provide additional information, mitigating circumstances, and remedial steps taken to address past problems.

**The vast majority of federal contractors will only have to attest that they comply with laws providing basic workplace protections.** The guidance and regulations direct contracting officers to consider only the most egregious violations. It is estimated that less than 10 percent of covered contractors and subcontractors will have labor violations involving enforcement-agency action that require disclosure, and only an additional small number will have violations involving private litigation or arbitration proceedings that will require disclosure. Of this percentage, only an offeror that is in the running to actually get the contract will be required to disclose details regarding their labor law violations, and only a small portion of those offerors will have serious, repeated, willful, or pervasive violations that require further action.

**There will be designated agency personnel who will help contractors understand their responsibilities and come into compliance.** DOL will be available to help contractors and subcontractors understand their responsibilities under the Executive Order and comply with relevant law. DOL will also work with Agency Labor Compliance Advisors across contracting agencies to ensure efficient, accurate, and consistent decisions across the government.

**The rule's requirements will be phased in over time.** The final regulations contain a number of phase-in provisions to give contractors the opportunity to better understand their obligations under the Executive Order and prepare to comply.

- For the first year that the regulations are effective (beginning October 25, 2016), only prime contractors must make disclosures. Subcontractors will not be required to start making disclosures until October 25, 2017.
- For the first six months that the rule is effective, disclosure requirements will only be included in solicitations valued at \$50 million or more. Disclosure requirements will be included in solicitations valued at \$500,000 or more beginning on April 25, 2017.
- The initial period for which labor violations must be disclosed is limited to one year and will gradually increase to three years by October 25, 2018.
- The rule's paycheck transparency requirements will become effective January 1, 2017.
- The Executive Order provides that contractors and subcontractors will also be required to disclose violations of state labor laws equivalent to the 14 federal labor laws identified in the Order, and directs DOL to provide guidance as to which state laws are equivalent. This requirement will be phased in at a later time, with the exception of OSHA-approved state plans, which are included in the guidance and regulations issued today.

**DOL will handle disclosures by subcontractors.** The final regulations provide that subcontractors will disclose their labor law violations directly to DOL, significantly reducing the burden on prime contractors. Prime contractors will be able to rely on DOL's review of a subcontractor's violations in determining whether the subcontractor is responsible.

## ADDITIONAL INFORMATION ON THE FINAL DOL GUIDANCE

Under the Executive Order, covered contractors and subcontractors will be required to disclose any administrative merits determinations, civil judgments, or arbitral awards or decisions issued within the preceding three years finding that they have violated one or more of the labor laws identified in the Executive Order. As directed by the Executive Order, DOL's guidance defines the determinations, judgments, awards and decisions that must be disclosed. The guidance also defines which labor law violations are considered serious, repeated, willful, and/or pervasive, using existing statutory definitions where available, and provides guidance on weighing labor law violations and mitigating factors. Finally, the guidance provides direction on implementing the Executive Order's paycheck transparency requirements. Each of these core provisions is summarized below.

### Types of decisions:

- 1. Administrative Merits Determinations:** In order to provide clarity regarding the violations that covered contractors and subcontractors must disclose, the guidance provides a complete list of documents issued by each of the relevant enforcement agencies that constitute administrative merits determinations. Each of these is a written document issued to employers following an investigation by the relevant enforcement agency—i.e., DOL's Wage and Hour Division, Occupational Safety and Health Administration, or Office of Federal Contract Compliance Programs; the National Labor Relations Board; or the Equal Employment Opportunity Commission—and a finding by the enforcement agency that one of the labor laws identified in the Executive Order has been violated.
- 2. Civil Judgments:** These include any judgment or order issued by a court finding that an employer has violated one or more of the covered labor laws, or enjoining or restraining the employer from violating one or more of those laws.
- 3. Arbitral Awards or Decisions:** These include any award or decision by an arbitrator or arbitral panel finding that an employer has violated one of the covered labor laws, or enjoining or restraining the employer from violating one or more of those laws.

### Types of Violations:

- 1. Serious:** The guidance incorporates the Occupational Safety and Health Act's definition of "serious" and for the remaining labor laws defines the elements that make a violation serious. In doing so, the guidance considers factors such as the number and/or percentage of employees affected; the degree of risk posed or actual harm done by the violation to the health, safety or well-being of a worker; and the amount of damages incurred or penalties assessed.

2. **Repeated:** “Repeated” violations are two or more labor law violations within the preceding three years that are the same or substantially similar. Whether violations are substantially similar turns on the nature of both the violations themselves and the underlying legal obligations. In order to provide clarity regarding which violations will be considered repeated, the guidance includes an exhaustive list of related violations by statute that would be considered repeated.
3. **Willful:** For the Occupational Safety and Health Act, the Fair Labor Standards Act, and several anti-discrimination laws, there are existing standards for determining whether violations are “willful,” and the guidance adopts those existing standards for purposes of those statutes. For each of the remaining statutes, a violation is willful if the employer knew that its conduct was prohibited by one or more of the covered labor laws, or showed reckless disregard for, or acted with plain indifference to, whether the covered labor laws prohibited its conduct.
4. **Pervasive:** “Pervasive” violations are the most severe. Violations are pervasive if they reflect a basic disregard by the employer for the covered labor laws, as demonstrated by a pattern of violations, continuing violations, or numerous violations. Among the factors to be considered in determining whether violations are pervasive are the size of the contractor relative to the number of violations and the extent of higher-level management’s involvement.

#### **Weighing Violations and Mitigating Factors:**

The guidance provides direction on weighing the relative severity of violations. For example, pervasive violations, violations falling into two or more of the four categories, and violations of particular gravity (such as terminating employees in retaliation for exercising their rights under the covered labor laws, or violations related to an employee’s death) should be given the most weight. The guidance also addresses mitigating factors to consider when weighing violations, including good faith efforts to remedy past violations, internal processes for expeditiously and fairly addressing reports of violations, and/or plans to proactively prevent future violations.

#### **Paycheck Transparency:**

The Executive Order requires covered contractors and subcontractors to provide wage statements to covered workers, giving them information concerning their hours worked, overtime hours, pay, and any additions to or deductions made from their pay. The Executive Order also requires covered contractors and subcontractors to provide to workers whom they treat as independent contractors a document informing them of their independent contractor status. Contractors and subcontractors must also provide written notice to inform workers if they are exempt from overtime pay. The guidance provides direction on implementing these paycheck transparency requirements. The guidance also identifies states with existing wage statement

requirements that are substantially similar, compliance with which will satisfy the Executive Order's wage statement requirement.

**Equivalent State Laws:**

The Executive Order provides that contractors and subcontractors will also be required to disclose violations of state labor laws equivalent to the 14 federal labor laws identified in the Order, and directs DOL to provide guidance as to which state laws are equivalent. This requirement will be phased in at a later time, with the exception of OSHA-approved state plans, which are included in the guidance and regulations issued today. DOL will issue a second round of proposed guidance defining the remainder of the equivalent state laws, and the FAR Council will issue a second set of regulations to implement this portion of the Executive Order's disclosure requirements. For future rulemaking on this topic, there will be a notice and comment period.

The guidance provides more detailed direction on each of these topics, including appendices with illustrative examples for ease of understanding. The text of the final guidance can be accessed here [\[HYPERLINK\]](#).

## ADDITIONAL INFORMATION ON THE FINAL FAR RULE

As directed by the Executive Order, the FAR regulations build on DOL's guidance and existing federal procurement policies and practices and include the following provisions:

- 1. Initial Representation:** When bidding on federal procurement contracts covered by the Executive Order, prospective contractors will only attest whether they have or have not had violations of the covered labor laws resulting in administrative merits determinations, civil judgments or arbitral awards or decisions—as defined in the DOL guidance—within the reporting period.
- 2. Disclosure of Additional Information:** Only if a contracting officer initiates a responsibility determination regarding the prospective contractor will it have to disclose additional information about its labor violations (unless the contractor has already submitted such information for another bid and nothing has changed since then). At the same time, the prospective contractor will have the opportunity to provide additional information as it deems necessary to demonstrate its responsibility, such as mitigating circumstances, remedial measures and other steps taken to achieve compliance with the relevant labor law(s).
- 3. Evaluation by Contracting Officer:** With the advice and assistance of the contracting agency's Labor Compliance Advisor, contracting officers will determine whether a prospective contractor's labor violations demonstrate a satisfactory record of integrity and business ethics and whether additional action is needed. If necessary, such action may include a labor compliance agreement with the relevant enforcement agency or agencies, denial of the award, or referral to the agency's suspending and debarring official.
- 4. Subcontractor Disclosure:** The Executive Order and the FAR regulations provide that contractors will require their prospective subcontractors on subcontracts valued at greater than \$500,000 to disclose information regarding their violations of the covered labor laws. This requirement builds on contractors' existing obligation to evaluate the responsibility of their prospective subcontractors. The FAR regulations provide that subcontractors will disclose their labor law violations directly to DOL, and prime contractors will be able to rely on DOL's review of a subcontractor's violations in determining whether the subcontractor is responsible. The FAR regulations also provide that subcontractor disclosure will be phased in, beginning one year after regulations become effective, in order to allow the contracting community to become familiar with these requirements.
- 5. Paycheck Transparency Requirements:** The FAR regulations implement the Executive Order's requirements that covered contractors and subcontractors give their workers wage statements (i.e., information concerning hours worked, overtime hours, pay, and any additions to or deductions made from their pay)

and, for workers who are treated as independent contractors, notices informing them of their independent contractor status. Contractors and subcontractors must also provide written notice to inform workers if they are exempt from overtime pay. These requirements will help workers ensure they are getting paid what they are legally owed.

- 6. Giving Workers Their Day in Court:** Effective October 25, 2016, the Executive Order and FAR regulations prohibit companies with federal contracts of \$1 million or more from requiring their workers to enter into pre-dispute arbitration agreements for disputes arising out of Title VII of the Civil Rights Act, or from torts related to sexual assault or harassment, except where valid contracts already exist and remain unmodified.

The text of the FAR regulations can be accessed here [\[HYPERLINK\]](#).