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November 21, 2017

The Honorable Ron Johnson
Chairman
The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Trey Gowdy
Chairman
The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

Subject: *Department of Defense, General Services Administration, National Aeronautics and Space Administration: Federal Acquisition Regulation; Removal of Fair Pay and Safe Workplaces Rule*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) (collectively, agencies) entitled “Federal Acquisition Regulation; Removal of Fair Pay and Safe Workplaces Rule” (RIN: 9000-AN52). We received the rule on November 6, 2017. It was published in the *Federal Register* as a final rule on November 6, 2017. 82 Fed. Reg. 51,527. A correction which does not affect our report was published on November 8, 2017. 82 Fed. Reg. 51,773.

DOD, GSA, and NASA are issuing this final rule amending the Federal Acquisition Regulation (FAR) to implement a public law that disapproved the final rule, Fair Pay and Safe Workplaces (FAR Case 2014-025), and an executive order dated March 27, 2017, that rescinded the prior executive orders authorizing that rule.

Enclosed is our assessment of the agencies’ compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the agencies complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Jeffrey A. Koses
Senior Procurement Executive
General Services Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF DEFENSE,
GENERAL SERVICES ADMINISTRATION,
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
ENTITLED
“FEDERAL ACQUISITION REGULATION;
REMOVAL OF FAIR PAY AND SAFE WORKPLACES RULE”
(RIN: 9000-AN52)

(i) Cost-benefit analysis

According to the agencies, the impacts of this final rule were assessed relative to current (and anticipated future) practice, and the resulting impacts are negligible. The final rule's effects were assessed relative to a baseline in which regulated entities comply with the 2016 final rule, and those costs were summarized in a table included in this rule (minus the relatively small portion that may already have been incurred as entities prepared to comply with the regulatory provisions that were not enjoined) and would be eliminated as a result of this rulemaking's removal of the 2016 final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

According to the agencies, the Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant Federal Acquisition Regulation (FAR) revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment. However, the agencies state the rule reduces the burden on small entities as it rescinds the August 25, 2016, Fair Pay and Safe Workplaces (FAR Case 2014-025), major rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The agencies did not address the Unfunded Mandates Reform Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On May 28, 2015, a FAR proposed rule was published. 80 Fed. Reg. 30,548. Public comments were due July 27, 2015. The Department of Labor also published its proposed guidance on May 28, 2015 (80 Fed. Reg. 30,574). A first extension of the period for public comments on the FAR rule to August 11, 2015, was published on July 14, 2015. A second extension, to August 26, 2015, was published on August 5, 2015. The final rule that was rescinded by this final rule was published in the *Federal Register* as a final rule on August 25, 2016. 81 Fed. Reg. 58,562. Most of the 2016 final rule's provisions were preliminarily enjoined by a lawsuit before compliance would have been required. In addition, on March 27, 2017, under Executive Order 13,782, the President rescinded Executive Order 13,673, the Order that served as the

underpinning of the rule. On the same day, the President signed the Joint Resolution that Congress passed under the Congressional Review Act disapproving the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

PRA applies to this rule because this rule removes information collection requirements currently cleared by the Office of Management and Budget (OMB) under OMB clearance 9000-0195, Fair Pay and Safe Workplaces. The requirements that would have imposed burden hours are now removed from the FAR and OMB clearance 9000-0195 has been discontinued.

Statutory authorization for the rule

On March 27, 2017, under the Congressional Review Act (5 U.S.C. chapter 8), Congress passed House Joint Resolution 37 (Pub. L. 115-11). Under 5 U.S.C. 801(b)(1), a rule shall not take effect or continue if the Congress enacts a joint resolution of disapproval, described under 5 U.S.C. 802. Under 5 U.S.C. 801(f), any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

Executive Order No. 12,866 (Regulatory Planning and Review)

The rule being removed (FAR Case 2014-025) was a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12,866, dated September 30, 1993. It was a major rule under 5 U.S.C. 804. This final rule is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12,866; it has been determined to be a major rule under 5 U.S.C. 804. This rule removes a prior rule that had been considered a major rule.

Executive Order No. 13,132 (Federalism)

The agencies did not address the Federalism Order.