

One Minute Memo®



President Trump Revokes Government Contracting Executive Orders And Signs Disapproval Resolution of “Blacklisting” Regulations

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Seyfarth Synopsis: Today, President Trump issued an Executive Order revoking President Obama’s “Blacklisting” Executive Orders pertaining to the government contracting community. The President also signed the joint resolution of disapproval rescinding the resolutions issued pursuant to President Obama’s Executive Order 13678, entitled “Fair Pay and Safe Workplaces” but popularly referred to as the “Blacklisting” Order. Under the Congressional Review Act, once a resolution is rescinded, the Executive Branch cannot reissue the same or similar regulation absent legislative authorization.

Today, March 27, 2017, President Trump issued a new Executive Order titled “Revocation of Federal Contracting Executive Orders” rescinding the “Blacklisting” Executive Orders issued by President Obama. The President also signed the resolution of disapproval passed by both [Houses of Congress](#), disapproving the regulations issued pursuant to President Obama’s Executive Order 13678, entitled “Fair Pay and Safe Workplaces” but more popularly referred to as the “Blacklisting” Order. The resolution of disapproval was made pursuant to the Congressional Review Act (CRA), which permits Congress to pass legislation rescinding a particular regulation under certain restrictions.

Both President Trump’s new Executive Order and the rescission resolution are in line with the Trump Administration’s stated goal of rolling back many Obama-era federal regulations. They also have the effect of rescinding the paycheck transparency provisions requiring contractors to provide regular statements disclosing wages and benefits to employees, which were left in place by Judge Marcia Crone’s nationwide preliminary [injunction](#) blocking the other elements of the “Blacklisting” Orders’ implementing regulations.

Now that the “Blacklisting” Orders’ implementing regulations have been completely rescinded pursuant to the CRA, the Executive Branch is prohibited from reissuing the same regulations, or promulgating similar ones, without Congressional approval. The Executive Order itself is also no longer in effect, due to President Trump’s action today to rescind it.

The “Blacklisting” Order was criticized by the employer community and employer associations because of the additional financial burdens it imposed on covered contractors, the risk to reputation and business from public disclosure of alleged violations before they are proven, and the fact that agencies already had enforcement mechanisms in place to ensure contractor compliance. The Congressional action under the CRA removed these supplementary requirements for federal contractors and the additional responsibilities given to the contracting agencies and the Department of Labor.

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