

Proposed rule on federal contractor salary information requests, comp information on job postings is withdrawn

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1/9/25 | Legal Bulletin

Yesterday, the Federal Acquisition Regulatory Council [withdrew](#) a proposed rule that would have (1) prohibited federal government contractors and subcontractors from requesting or using compensation history in the hiring and compensation process, (2) required disclosure of compensation ranges in any job postings by federal government contractors and subcontractors, for all jobs involving work "on or in connection with" a federal government contract, and (3) required covered contractors and subcontractors to inform applicants of these requirements and the process for making complaints.

In doing so, the FAR Council was acting through its constituent agencies: the U.S. Department of Defense, the General Services Administration, the National Aeronautics and Space Administration, and the Office of Federal Procurement Policy.

The FAR Council indicated that it was withdrawing the proposed rule to free the agencies to focus on other priorities: "In light of the limited time remaining in the current Administration, [the FAR Council members] have decided to withdraw the proposed policy and rule and focus their attention on other priorities, including directives in recent National Defense Authorization Acts."

In all likelihood the withdrawal was prompted by the incoming administration of President-Elect Donald Trump, who has indicated that he will take prompt action to put an end to federal government initiatives, such as diversity, equity, and inclusion, and the like. President Trump has made no secret of the fact that he is intent on reversing multiple executive orders and policy directives of the Biden Administration, including those related to DEI.

[According to the now-withdrawn proposed rule](#), the Biden Administration reasoned that a ban on requests or use of compensation history would result in a wider pool of applicants, and help to reduce the effects of potential biases that pass “from job to job” and that “may contribute to a pay gap between the earnings of men and women.” With respect to the proposed mandatory posting of compensation/salary ranges in job listings, the Administration said that such a requirement “has been shown to reduce pay secrecy, help workers negotiate, and reduce pay gaps” between diverse ethnic and gender groups.

The proposed rule was prompted by President Biden’s March 2022 [Executive Order 14069](#), “Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency.” The stated purpose of E.O. 14069 was to “eliminate 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.” The Executive Order ordered the FAR Council to “consider whether any such rules should limit or prohibit Federal contractors and subcontractors from seeking and considering information about job applicants’ and employees’ existing or past compensation when making employment decisions.” A [prior Executive Order](#) had directed the federal government to consider adopting similar rules to apply in hiring.

Many states, counties, and municipalities have enacted broad compensation/salary history bans and compensation/salary disclosure/posting requirements in recent years. Some of the bans prohibit employers from asking job applicants about compensation/salary history, while others restrict or prohibit the use of compensation/salary history information in determining employees’ compensation.

For now, the proposed regulations pertaining to federal contractors are dead. However, both federal government contractors and private sector employers should continue to monitor this issue, which could be revived in the future under a different Presidential administration or under applicable state or local laws.

The proposed regulations, had they become effective, might have had an adverse effect on the dynamics and costs of hiring and retaining employees. Arguably, salary history information can be helpful to employers in making market-based hiring, compensation, and benefits decisions, which can result in longer-term employee satisfaction and retention.

If you need assistance with your obligations as a federal contractor, or in determining whether and how you can take into account the salary history of applicants or employees, please contact any member of Constangy's [Affirmative Action/OFCCP Compliance Practice Group](#) or any Constangy attorney.

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