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AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

November 14, 2016

Majority Leader Mitch McConnell U.S. Senate 317 Russell SOB Washington D.C. 20510	Speaker Paul Ryan U.S. House of Representatives 1233 Longworth HOB Washington, D.C. 20515

Dear Speaker Ryan and Majority Leader McConnell,

On behalf of the Associated General Contractors of America (AGC) and its more than 26,000 commercial construction company members, I strongly urge you to utilize the Congressional Review Act (CRA) to repeal unnecessary, unworkable, unreasonable and unfounded federal agency regulations. As such, please find enclosed for your CRA consideration a list of regulations that adversely impact the construction industry and likely fall within the confines of the statute's requirements.

The CRA allows Congress to overturn a federal agency rule, whether it is a major rule or not, within 60 days of congressional receipt of the rule. With the incoming Republican Congress and president, the CRA reach back period may begin sometime in May 2016. The definition of a "rule" subject to the CRA is broad with limited exception. As such, some agency actions—e.g., guidance, policy statements, reporting/paperwork requirements—that are not subject to notice and comment rulemaking under the Administrative Procedures Act may still be considered a rule under the CRA apt for repeal.

With these parameters in mind, AGC puts forth the following major rules for CRA consideration:

- The Federal Acquisition Regulation Council's Fair Pay and Safe Work Places Executive Order Rule; and
- The Department of Labor Wage and Hour Division's Paid Sick Leave Rule.

AGC, additionally, puts forth the following non-major rules for CRA consideration:

- The OSHA Electronic Workplace Injury & Illnesses Recordkeeping Rule;
- The U.S. Equal Employment Opportunity Commission's Revised Pay Equity EEO-1 Report; and
- The U.S. Department of Labor's Guidance for the Fair Pay and Safe Work Places Executive Order Rule.

Lastly, there are still a host of other pending, costly and burdensome rules that may become final between now and January 20, 2017. We will provide an update of such rules for your consideration. Thank you for your consideration of this request.

Sincerely,

Stephen E. Sandherr
Chief Executive Officer
Enc.

CC: Chairman John Kline, House Education & the Workforce Committee
Chairman Lamar Alexander, Senate Health, Education, Labor & Pensions Committee
Chairman Jason Chaffetz, House Oversight and Government Reform Committee
Chairman Ron Johnson, Senate Homeland Security & Governmental Affairs Committee

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Federal Rules for Congressional Review Act Consideration

November 14, 2016

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Agency	Rule	Fed. Reg. Publication Date	Impact on Construction Industry
OSHA	Electronic Tracking of Workplace Injuries and Illnesses	May 12, 2016	Under the rule, OSHA will make public detailed information concerning specific workplace injuries and illnesses, without allowing for meaningful context for such information. In addition, OSHA does not and cannot protect employers or employees from Freedom of Information Act disclosures that could lead to the public release of personally identifiable information. In addition, the rule puts at risk employer drug-free workplace deterrence efforts. Specifically, the rule may restrict employers' ability to test employees after an incident for drugs or alcohol. Unfortunately, statistics show that drug and alcohol abuse is in the double digits in the construction workforce; among the highest of any industry workforce. All reasonable means to deter drug and alcohol abuse on construction sites—where innocent mistakes can cost a life—must be permissible. For AGC coalition's comments on the rule click here.
FAR Council	Fair Pay and Safe Workplaces Federal Acquisition Regulation, Executive Order 13673 (Blacklisting) OIRA Major Rule	Aug. 25, 2016	The rule establishes an unnecessary, unfounded and unlawful regulatory regime under which federal contracting officers, with the advice of agency labor compliance advisers, may de-facto debar federal contractors for past and alleged violations of federal and state labor laws, in spite of the existing suspension and debarment process. The rule additionally puts forth a system under which enforcement agencies—by requiring federal contractors sign labor compliance agreements—directly insert themselves into procurement agency contracting decisions counter to the Federal Procurement Act. There is no limit to the terms the enforcement agency could include in such compliance agreements. This rule adds another layer of bureaucracy that will neither improve economy nor efficiency in federal procurement. Rather, it will delay procurements, increase litigation and protests, and drive competition out of the federal procurement marketplace. For AGC comments and testimony click here and here, respectively. See also www.agc.org/blacklsiting for more information.
DOL/OS	Guidance for Executive Order 13673, "Fair Pay and Safe Workplaces" (Blacklisting)	Aug. 25, 2016	The guidance establishes an incredibly subjective scheme for which federal contracting officers, with the advice of agency labor compliance advisors, may de-facto debar federal contractors for past and alleged violations of federal and state labor laws. For AGC comments and testimony click here and here, respectively. See also www.agc.org/blacklisting for more information.
DOL/ WHD	Establishing Paid Sick Leave for Federal Contractors, Executive Order 13706 OIRA Major Rule	Sept. 30, 2016	The rule applies a one-size fits all approach—that does not fit the construction industry—for requiring federal contractors and subcontractors to provide employees up to seven days of paid sick leave. Work in the construction industry is typically project-based, transitory and seasonal. Most craft workers move from project to project and from employer to employer, often within short periods of time, thereby making this rule an administrative nightmare. The rule also exceeds and conflicts with the statutory provisions of the Davis Bacon Act. For AGC comments and testimony click here and here, respectively.
EEOC/ OMB	Increasing Pay Equity Data Reporting in EEO-1 Form	Announced by agency on Sept. 29, 2016	The data reporting requirements of this new form are—in many ways—redundant and needlessly burdensome for the construction industry that already supplies similar information under the Davis-Bacon Act. Additionally, both the EEOC's and OFCCP data show that there is no need for the eradication of wage discrimination in construction because there is scant evidence that such discrimination exists. For AGC's comments, click here. For AGC's testimony, click here.