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MARK WALKER, CHAIRMAN
RSC THE REPUBLICAN STUDY COMMITTEE

H. J. Res. 37 - Providing for congressional disapproval of the rule submitted by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration relating to the Federal Acquisition Regulation (Foxx, R-NC)

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FLOOR SCHEDULE:

Expected to be considered on February 2, 2017 subject to a closed rule.

TOPLINE SUMMARY:

H.J. Res. 37 would use the Congressional Review Act to provide for the disapproval of the rule submitted by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration relating to the Federal Acquisition Regulation, which imposed burdensome reporting requirements on contractors bidding on federal projects valued at more than $500,000.

COST:

A Congressional Budget Office (CBO) estimate is not yet available.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.J. Res. 37 would provide for congressional disapproval of a rule submitted by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration relating to the Federal Acquisition Regulation (published at 81 Fed. Reg. 58562 (August 25, 2016)). This rule implements Executive Order 13673 and 13683, and has been named the Fair Pay and Safe Workplaces Executive Order. Effective October 25, 2016, the new rule would have imposed significant and stringent reporting requirements on contractors bidding on federal projects valued at more than $500,000 by requiring that contractors disclose violations of 14 basic workplace protections from the prior three years, including

those addressing wage and hour, safety and health, collective bargaining, family and medical leave, and civil rights protections. Deemed the "blacklist", many businesses fear if they report any violations they will be blocked from any contracting opportunities with the federal government. In addition, former-Chairman of the Education and Workforce Committee Kline labeled this rule as "redundant" and "unnecessary". According to the Regulatory Impact Analysis, the calculated costs of the regulation was $458,352,949 imposed on contractors/subcontractors and $15,772,150 imposed on the government for the first year of the implementation of the new requirements, with second year costs of $413,733,272 for contractors/subcontractors and $10,129,299 for the government.

Both the House and Senate attempted to undercut the Executive Order through the FY2017 National Defense Authorization Act; however, this provision was left out of the conference report.

On October 24, 2016, Judge Marcia A. Crone of the U.S. District Court for the Eastern District of Texas entered a nationwide preliminary injunction which prevented the Federal Acquisition Regulatory (FAR) Council from implementing the rule. It is important to note this injunction did not affect certain provisions of the rule that require federal contractors to provide wage statements and information regarding their hours worked, overtime hours, pay, and any additions or deductions to their pay to workers starting on January 1, 2017.

The Congressional Review Act provides an expedited legislative process for Congress to disapprove of administrative rules through joint disapproval resolutions. Regulations issued by executive branch departments and agencies, as well as issued by independent agencies and commissions, are all subject to CRA disapproval resolutions. In order for a regulation to take effect, the issuing agency must produce a report to Congress. Generally, Congress then has 60 days to pass a resolution of disapproval under the CRA. However, this timeline is shifted in circumstances when rules are submitted to Congress within 60 legislative days of adjournment. In this case, the clock for the 60-day consideration timeline will restart 15 days into the 115th Congress, giving Congress the full window for consideration. While the parliamentarian will determine the exact cut off day after which rules may be subject to the CRA, Congress will be able to consider rules going back to roughly mid-May. Regulations that are successfully disapproved of will then either not go into effect or will be looked at as if they have not gone into effect. The CRA also prevents any new regulation that is substantially similar to a disapproved regulation from being promulgated in the future, absent action from Congress. Rules must be disapproved of on a rule-by-rule basis, and must be disapproved of in their entirety.

Under the CRA process, if a joint resolution is introduced in the Senate within the permitted time period and the resolution is not reported from committee on a timely basis, 30 Senators may petition to bring the resolution to the floor. This resolution would not be subject to the filibuster. When debate commences, the Senate must fully consider the resolution before moving on to any other business, with only 10 hours of debate. Finally, enactment of a joint resolution under the CRA would require a majority vote in each chamber and a presidential signature. Though the CRA has only been used once, in 2000 against Clinton-era ergonomic regulations, conditions today are largely the same as they were that year – with Republicans securing control of the House, Senate, and presidency.

COMMITTEE ACTION:

H.J. Res. 37 was introduced on January, and referred to the House Committee on House Committee on Oversight and Government Reform where it awaits further action.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not yet available.

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: Article I, section 8 of the Constitution of the United States.

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