

# Efforts to Define Recruitment Fees Move Forward as Newly-Revised Human Trafficking Rule Goes into Effect

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Late last week the **House Foreign Affairs Committee** approved **H.R. 400**, which would require the **Department of State** and the **United States Agency for International Development (USAID)** to propose a definition of recruitment fees within 180 days of the statute's enactment. H.R. 400 explains that "contractors sometimes employ foreign workers who are citizens neither of the United States nor of the host country and are recruited from developing countries where low wages and recruitment methods often make them vulnerable to a variety of trafficking-related abuses," including the charging of certain fees during recruitment. Highlighting the potential for harm associated with such fees, H.R. 400 discusses a report of the Office of the Inspector General for the Department of State, which found that 77 percent of foreign workers reported paying fees to recruiters and that a majority of these fees resulted in "debt bondage at their destinations."

In light of the renewed emphasis on this issue, companies are taking action to prohibit their suppliers from charging recruitment fees to foreign workers. For instance, within the last six months, two prominent electronics manufacturers have voluntarily prohibited their suppliers from charging recruitment fees to foreign workers. Nevertheless, while these voluntary steps are laudable, the GAO recently reported that agencies should develop a “more precise” definition of recruitment fees in order to better advance efforts to end the practice of charging these fees to foreign workers.

Notably, although the definition of recruitment fees developed pursuant to H.R. 400 would apply to the Trafficking Victims Protection Act of 2000 (the “TVPA”), 22 U.S.C. § 7104(g)(iv)(IV), this definition will inform the interpretation of the term in other contexts. Indeed, the current prohibitions on human trafficking arise from several sources, including the TVPA, title XVII of the National Defense Authorization Act of 2013, Executive Order 13627, FAR 52.222-50, -56 and DFAR 252.203-7004, -7040. However, none of these sources provide a definition of recruitment fees. For example, as we have [previously discussed](#), the revised FAR Human Trafficking Rule—which went into effect earlier this week and implements Executive Order 13627 and title XVII of the National Defense Authorization Act of 2013—prohibits the charging of recruitment fees. Similar to H.R. 400, the FAR Council observed that “[p]rohibiting recruitment fees for employees is a key anti-trafficking in persons principle, since being charged any recruitment fees increases workers’ vulnerability to debt bondage or involuntary servitude.” However, similar to the TVPA and other human trafficking provisions, the newly-revised FAR provision does not provide a definition of recruitment fees, but instead leaves this definition for further rulemaking.

To that end, the FAR Council is in the early stages of developing a definition of recruitment fees that would apply to the revised FAR Human Trafficking Rule. The draft definition currently provides that the term recruitment fees includes several types of charges to employees, including fees associated with interviewing, selecting, and placing potential employees, securing visas, and paying the employer’s recruiters and agents. The draft definition further provides that “[a]ny fee, charge, or cost may be a recruitment fee . . . regardless of whether it is deducted from the wages, . . . remitted in connection with recruitment, or collected by an employer or third party[.]” The FAR Council has provided an early engagement opportunity for public input on this draft definition, which will close early this month.

Therefore, although a definition of recruitment fees may help bring greater certainty to the obligations of contractors under current anti-human trafficking prohibitions, contractors should remain aware of the development of any proposed definitions. We will continue to monitor the progress of H.R. 400 and the FAR Council’s rulemaking efforts.

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