July 22, 2014

Mary Ziegler, Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3510
200 Constitution Avenue, NW
Washington, DC 20210

Re: RIN 1235-AA10 - Proposed Rule – Establishing a Minimum Wage for Contractors

Dear Ms. Ziegler:

Demos is a non-partisan public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. We were proud to be among the advocates who called for an executive order establishing a minimum wage for federal contractors. **We write today in strong support of the executive order and the proposed rule implementing it.** Demos research has quantified how the federal contracting system funds low-wage work and fuels inequality.[i] Raising the minimum wage to $10.10 for workers employed through federal contracts, concessions, and contract-like instruments is an important step toward reversing this process, rebuilding the country's middle class and reaffirming the nation's long-standing commitment to protecting workers working on behalf of America. At the same time, the Executive Order and proposed rule will contribute to improved quality, economy, and efficiency in government procurement at little cost to contractors. Our comment offers additional input on four primary issues:

- The proposed rule is reasonable and appropriate – the definitions of workers and work covered by the executive order are apt and essential provisions barring retaliation and prohibition on employee waiver of rights are included;

- Enforcement should be strengthened by mirroring provisions under the under the Fair Labor Standards Act which require that workers whose wages have been unlawfully withheld be paid additional damages;

- Increasing the minimum wage of federal contract workers has additional public benefits – in addition to the benefits described by the Department, the proposed rule will also

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increase tax revenue and cut taxpayer costs by reducing reliance on public benefits, while producing a modest increase in Gross Domestic Product;

- We recommend methodological improvements for estimating the number of workers covered by the proposed rule, which bring the estimated number of workers to approximately 350,000.

The proposed rule is reasonable and appropriate

In general, the Department has defined the scope of coverage of the Executive Order correctly. Demos has recommended additional reforms, including a higher minimum wage for contract workers, inclusion of manufacturing workers covered by the Walsh-Healey Public Contracting Act, and a broader Good Jobs Executive Order directing all key spending agencies to incorporate higher workforce standards in awarding and evaluating federal contracts and other forms of federal purchasing.[ii] Within scope of the current Executive Order, the proposed rule is reasonable and appropriate.

Under the proposed rule, the Department defines a concessions contract to mean "a contract under which the federal government grants a right to use federal property, including land or facilities, for furnishing services." Appropriately, this definition does not establish restrictions on the beneficiary of services offered by parties to a concessions contract with the federal government – the Department notes that such contracts may be of direct or indirect benefit to the federal government, its property, its civilian or military personnel, or the general public. A contract to use federal land or facilities inherently establishes a compelling Federal Government interest in economy, efficiency, and high-quality service on the part of any entity using federal property to furnish services regardless of the beneficiary of the services. Similarly, the Department correctly interprets the Executive Order to cover "private entities that lease space in a Federal building to provide services to Federal employees or the general public." Under these definitions, examples include employees of restaurants, child care centers, credit unions, gift shops, barber shops, or fitness centers that rent space in federal buildings and employees of businesses selling of food, lodging, fuel or recreational equipment that have concessions agreements to use federal land or facilities would all be correctly covered by the Executive Order.

For workers on federal contracts and subcontracts, the proposed rule covers employees either performing the specific services called for the by contract's terms or in performing other duties necessary to the performance of the contract. We urge the Department to adopt an expansive interpretation of the duties necessary to the performance of a contract so that this clause does not become an unwarranted loophole used to limit the coverage of the Executive Order.

The proposed rule is reasonable in stipulating that the minimum wage must be paid to employees of federal contractors and subcontractors only for the hours that employee spends performing work covered by Executive Order. The Department is also reasonable in requiring that if an employee is working at a time and place when covered work is performed but is *not* working on covered work and is *not* paid the minimum wage, then the employer must provide records showing that the employee was not doing covered work. This clause gives employers flexibility because they do not need to keep detailed hour-by-hour records if they want to organize the covered work more broadly, such as by work shifts, departments, days or weeks when the covered work is performed. At the same time, employers are required to either pay the minimum wage as stipulated by the Executive Order or produce records proving that the employee was not performing covered work, making it more difficult for employers to evade their obligations under the Executive Order. The Department is right to note that "no rational basis exists for creating an exemption from compliance and recordkeeping requirements for small businesses."

The anti-retaliation provision and prohibition on employee waiver of rights are particularly important elements of the proposed rule, as they will be critical to enforcement of the Executive Order. Current, former, and prospective employees of a federal contractor must be free to complain to the Department or internally to their employer about perceived violations of the Executive Order without retaliation so that alleged violations can be investigated and violations can be curtailed. Similarly, if contractors could persuade or compel their employees to waive their right to the minimum wage under the Executive Order, the goal of increasing efficiency and cost savings in procurement would be obstructed.

Enforcement should be strengthened

The Executive Order directs that Department to incorporate existing procedures, remedies and enforcement processes into the proposed rule. One way enforcement could be strengthened by mirroring provisions under the under the Fair Labor Standards Act (Section 216(b)) which require that workers whose wages have been unlawfully withheld be paid additional liquidated damages. Mandating payment of double damages as compensation to workers gives employers greater incentive for future compliance, deterring violations.

Increasing the minimum wage of federal contract workers has additional public benefits

Raising the minimum wage to $10.10 for workers employed on federal contracts will lead to improved quality, economy, and efficiency in government procurement. The supplementary information to the proposed rule details several benefits, including decreased workplace absenteeism, reduced employee turnover, improved morale, higher productivity, lower supervisory costs and better quality government services. As the Department notes, these benefits are well-documented in the social science literature.[iii] In addition, we find that increasing the minimum wage for federal contract workers will also produce a small increase of $87.9 million in federal tax revenue and cut taxpayer costs by reducing the need for workers employed on federal contracts to rely on public benefits. Raising the wages of low-paid workers likely to spend their additional income immediately will also produce a modest increase in economic growth, lifting the nation's gross domestic product by an estimated $448.2 million.

The estimated $448.2 million increase in GDP is based on widely accepted multipliers for consumer spending by lower-income households. Families living in or near poverty spend close to 100 percent of their income just to meet their basic needs, so when they receive an extra dollar in pay, they spend it on goods or services that were out of reach before. This ongoing unmet need makes low-income households more likely to spend new earnings immediately – channeling any addition to their income back into the economy, creating growth and jobs. Our estimate uses a multiplier based on Moody's chief economist Mark Zandi's February 2012 Congressional Testimony.[iv] We also assume that contractors do not increase the price of their services to the general public (when applicable) to derive the multiplier (i.e. we assume that the cost of the increase is either paid out of profits or reflected in higher bids). For additional detail on our GDP calculations, see Appendix B of Demos' study, "Retail's Hidden Potential."[v]

We predict that an increase in the minimum wage for federal contractors will produce a small increase of $87.9 million in federal tax revenue. This calculation is based on the estimate of increased GDP: we calculate that each additional dollar of GDP generates $.196 dollars of additional federal tax revenue, which is a weighted average of the average individual and corporate tax rates of 18.1% and 23.2% respectively. Combined with reduced spending on public benefits, the additional revenue will provide a modest benefit to the federal budget.

We are unable to quantify budget savings due to reduce spending on public benefits, but will explain why savings should be anticipated. The Department estimates that affected workers are currently paid an average wage of $8.79 an hour and will ultimately see an increase of $1.31 cents to the $10.10 minimum when the contracts they work under are renewed. If workers work 2,080 hours per year on Executive Order covered contracts, their average income will increase from approximately $18,280 per year to $21,000. While public benefit levels depend on household size and additional sources of income, the $2,730 in additional income annually will likely push some households above the threshold to qualify for federal benefits such as SNAP, Medicaid, and home heating assistance. Other workers will receive benefits at reduced levels due to their increased income. By enabling employees of federal contractors to be more selfsustaining, a wage increase will reduce need for the social safety net and cut federal taxpayer costs for these programs.

Recommended methodological improvements for estimating the number of workers covered.

Due to a lack of more specific data, the Department notes that it has over-estimated the number of small businesses affected by the proposed rule. In addition, Demos believes that the Department's estimate for the number of workers affected by the order is considerably low compared to estimates generated using more robust data sources.

In the supplementary information to the proposed rule, the Department estimates that 183,814 workers will be affected by the executive order based on calculations using the Current Population Survey (CPS). Due to its small sample size, the CPS is less than ideal to use to estimate the number of workers within a state within the applicable NAICS category receiving less than $10.10 an hour. A better and more accurate alternative for estimating the number of impacted workers can be derived from the Census Bureau's American Community Survey (ACS), which provides a significantly larger sample size.

Demos used the ACS to estimate the number of workers impacted by the Executive Order to be 350,721. We combined USASpending.gov data on contracting spending by industry with our calculations of wage distributions by industry to create an estimate of the wage distribution for the contracting workforce. We believe this estimate is much more commensurate with the size of the contracting footprint, excluding manufacturing, which accounts for 1.1 percent of gross private sector output. If we extend this estimate to calculate that 1.1 percent of all private-sector workers—or 1.28 million, as of 2013—thus work on federal contracts, we can then produce an estimate of the number of low-wage workers on federal contracts by applying the overall share of workers in the private sector earning less than $10.10 an hour—24.1 percent, as of 2013. If the same share of federal contractors earns less than this wage threshold, an estimated 308,000 workers would be impacted by the executive order. This result is closer to our ACS estimate than to the Department's estimate using CPS data. We argue that applying the overall private-sector share of low-wage workers to the federal contracting workforce is reasonable because although employees of federal contractors tend to be higher-wage than the private sector as a whole, workers at federal contractors outside of the manufacturing sector are not, which lends further credence to a higher estimate. In addition, low-wage workers at companies with federal concession agreements and private entities that lease space in Federal buildings must be accounted for in the estimate of workers affected. While there is little comprehensive data on these workers, we estimate that they include more than 10,000 additional workers impacted by the proposed rule.

The combined over-estimate of small firms affected by the rule and under-estimate of workers affected by the rule results in a likely inaccurate projection of the Executive Order's costs and benefits. For this reason, we recommend that the Department to provide alternative estimates using the methodology we outlined in our report and in this comment.

Conclusion

Demos finds the proposed rule reasonable and appropriate and suggests that there are additional public benefits to paying federal contract workers more, including modest increases in economic growth, small increases in tax revenue, and a reduction in the number of federal contract workers relying on federally-funded public assistance. We recommend methodological for estimating the number of workers covered by the Executive Order and proposed rule so that the benefits can be correctly measured.

Thank you for the opportunity to comment. Please do not hesitate to contact us with questions or clarifications.

Respectfully,

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[i] Amy Traub and Robert Hiltonsmith, "Underwriting Bad Jobs," Demos 2013. http://www.demos.org/publication/underwriting-bad-jobs-how-our-tax-dollars-are-funding-low-wage-work-and-fueling-inequali

[ii] Robert Hiltonsmith and Lew Daly, "Underwriting Good Jobs," Demos 2014. http://www.demos.org/publication/underwriting-good-jobs-how-place-over-20-million-americans-pathway-middle-class-using-fe

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[iv] Mark Zandi, ""Bolstering the Economy: Helping American Families by Reauthorizing the Payroll Tax Cut and UI Benefits," Testimony before the Joint Economic Committee of U.S. Congress, February 7 2012. http://www.economy.com/mark-zandi/documents/2012-02-07-JEC-Payroll-Tax.pdf.

[v] Catherine Ruetschlin, "Retail's Hidden Potential," Demos, 2012. Appendix B. http://www.demos.org/sites/default/files/publications/RetailsHiddenPotential.pdf