

**NATIONAL CENTER FOR LAW
AND ECONOMIC JUSTICE**
275 Seventh Ave, Suite 1506
New York, NY 10001
(212) 633-6967 – (212) 633-6371 (fax)
pelaez@nclej.org – www.nclej.org

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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: Proposed Rule, Establishing a Minimum Wage for Contractors (RIN 1235-AA10)

The National Center for Law and Economic Justice (NCLEJ) appreciates the opportunity to submit comments on the proposed rule implementing President Obama's Executive Order 13658, "Establishing a Minimum Wage for Contractors" (EO).

We urge federal policymakers to see this measure as a first step in a longer process to make federally contracted jobs high quality ones, and to continue to address the myriad workplace problems that these workers face. Numerous investigations by federal officials have found, for instance, that many employers who hold federal contracts also have records of breaking employment laws. The quality of service on these contracts can also suffer unless measures are implemented to ensure workforce stability. Worker retention and labor peace policies, such as those adopted by numerous cities and states as part of their living wage policies, would provide critical protections for federally contracted workers and the agencies that pay for their labor.

Proposed §10.2 details how the Department would implement the provision to incorporate existing definitions under the Fair Labor Standards Act, and other federal worker protection laws, and we applaud the Department for doing so in such a way as to extend coverage to workers who have previously been excluded from some protections. However, NCLEJ is disappointed that the EO did not include workers subject to the Walsh-Healey Public Contracts Act. We encourage policy makers to further the process started by this EO to create fair wage floors for these important, and still excluded, federally-funded workers.

We also note that the starting cash wage for tipped workers as set by the EO (\$4.90) constitutes just over 40 percent of the minimum wage floor being set for federally contracted workers, and that the proposed pace for increasing that cash wage until it reaches 70 percent of the wage in effect under section 2 could prove slow for workers who are struggling to make ends meet.

NCLEJ endorses the Administration's assertion in section 2(a) of the EO that compliance with the minimum wage obligation rises to the level of an express "condition of payment" to a

contractor or subcontractor. This sends a clear message to employers that fair payment of employees is a priority for federal agencies, and that those who abide by the law will not find themselves unfairly competing with those who would cheat workers of pay.

In an enforcement system that depends upon worker reports of wrongdoing, every effort must be made to ensure workers know their rights and the amount of payment that they are due. Proposed §10.12(c) provides that the Secretary will notify contractors and subcontractors of the applicable minimum wage each year, and states that the Administrator of the WHD will publish the information on the DOL website and “may” publish the applicable wage in “any other media the Administrator deems appropriate.” This is inadequate notice to affected workers in a system that depends upon their monitoring of their own pay. The Administrator of the WHD should be required to publish the annual applicable minimum wage in mainstream media outlets, and employers should be required to provide the applicable wage rate to employees on a regular basis and workers should be provided with clear information about which of their hours of work were performed in connection to a contract subject to the EO if the employer intends assign them to both covered and uncovered job duties.

Section 4(c) of the Order directs that the regulations the Secretary issues should, to the extent practicable, incorporate existing procedures, remedies, and enforcement processes under the FLSA, SCA and DBA. We would therefore urge that proposed §10.44(a), which provides for the remedies available to a worker whose wages have been unlawfully withheld, be expanded to include an additional amount of damages equal to the unpaid wages as liquidated damages, as provided for under Section 216(b) of the FLSA. Such a “double damages” provision is crucial in deterring violations in the first instance.

Thank you again for the opportunity to share NCLEJ’s reactions to the Proposed Rule, Establishing a Minimum Wage for Contractors (RIN 1235-AA10). We believe that the President’s EO and the Department of Labor’s commitment to implementing and enforcing it are an important first step toward reinstating the premise that all federal taxpayer-funded jobs should be good jobs. This long-overdue raise for low-wage contracted workers will improve the lives of workers, their families, and their communities and allow them to be full participants in the American economy.