

Congress of the United States
House of Representatives
Washington, DC 20515

August 7, 2015

The Honorable Thomas E. Perez
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

The Honorable Denise Turner Roth
Administrator
General Services Administration
1800 F Street, NW
Washington, D.C. 20405

Re: Comments on FAR Case, 2014-0025, Regulations Implementing the Fair Pay and Safe Workplaces Executive Order and ZRIN Number: 1290-ZA02, Guidance Implementing the Fair Pay and Safe Workplaces Executive Order

Dear Secretary Perez and Administrator Roth:

Thank you for this opportunity to offer comments on the proposed regulations and guidance to implement the Fair Pay and Safe Workplaces Executive Order (E.O. 13673).

We strongly support the draft regulations and guidance and urge the Administration to quickly implement final regulations. Federal contractors that commit labor law violations harm their workers and cost taxpayers money. As the proposed rules note, almost two-thirds of the 50 largest wage-and-hour violations and almost 40 percent of the 50 largest workplace health-and-safety penalties issued between FY 2005 and FY 2009 involved companies that went on to receive new government contracts.¹ Not surprisingly, such labor law violators also tend to have significant performance problems.² The Executive Order and the proposed rules are critical to closing gaps in the federal government's system for ensuring that contractors that do business with the federal government abide by labor laws.

In order to strengthen the regulations and guidance even further, we recommend the following:

- The proposed requirement that prospective federal contractors disclose labor law violations within the past three years will be crucial to the federal government's ability to make responsibility determinations and will also help correct the conduct of those who have a history of violations. Prospective contractors should be required to report not only the history of the entity that is seeking to bid on a contract, but also their parent, subsidiaries, and affiliates.
- We strongly recommend the creation of a robust process for stakeholders such as unions, worker centers, and advocates to both report violations and provide information on compliance with labor compliance agreements. Moreover, for labor compliance agreements to be effective, it is crucial that they be made public and that the regulations and guidance provide for appropriate remedies in the event a labor compliance agreement is violated.

¹ *Federal Labor Law Violations by Selected Federal Contractors*, September 2010, <http://www.gao.gov/new.items/d101033.pdf>.

² *At Our Expense: Federal Contractors That Harm Workers Also Shortchange Taxpayers*, December 2013, <https://www.americanprogressaction.org/issues/labor/report/2013/12/11/80799/at-our-expense/>.


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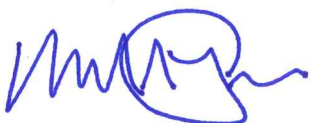
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- We recommend that the Department of Labor be tasked with evaluating subcontractors' history of violations and assessing the need for a labor compliance agreement, rather than having the prime contractors carry out that function. The process of evaluating compliance history and weighing the frequency and gravity of violations should be treated as an inherently governmental function.
- The Executive Order requires a determination to be made about prospective federal contractors' compliance with a range of federal laws, and their state law equivalents. The proposed rules do not address the question of what constitutes an equivalent state law, but explain that this will be addressed in a subsequent rulemaking. It is important to set a timeline for this rulemaking to ensure timely implementation of this important piece of the Executive Order. We urge that the definition of "state law equivalent" should encompass not only those state laws that are identical to the federal laws included in the Executive Order, but also those that effectuate the purpose of the federal laws. For example, federal law prohibits discrimination on the basis of sex, and the EEOC and many courts have held that this includes a prohibition on sexual orientation discrimination. We urge the proposed rulemaking to include those state laws that explicitly prohibit sexual orientation discrimination as equivalent state laws.
- The proposed rule on pay transparency will help ensure that employees of federal contractors receive enough information in their paychecks to be able to determine whether they have been paid what they are owed. We urge that the final rule ensures that "substantially similar" state laws requiring disclosure of wage statements are those that require disclosure of the essential elements of overtime earnings, straight time earnings, total hours, gross pay, and any additions or deductions. Disclosing whether workers have been paid at the overtime rate is critical to enabling workers to discern whether they have been paid fairly.

In closing, we urge the Administration to move forward with the regulations and guidance in order to help protect workers, ensure law-abiding businesses can compete on an even playing field, and ensure taxpayers receive a good value. We appreciate the benefit of additional time to review the proposed regulations and guidance that the extension of the comment period made possible. Thank you for this opportunity to comment.

Sincerely,



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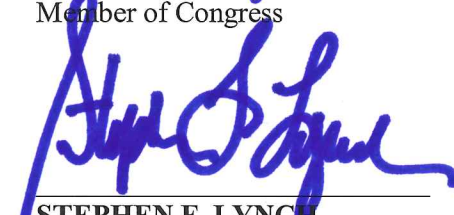

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