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November 25, 2014

The Honorable Tom Harkin
Chairman
The Honorable Lamar Alexander
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable John Kline
Chairman
The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Office of the Secretary: Establishing a Minimum Wage for Contractors*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor (Labor), Office of the Secretary entitled “Establishing a Minimum Wage for Contractors” (RIN: 1235-AA10). We received the rule on November 13, 2014. It was published in the *Federal Register* as a final rule on October 7, 2014. 79 Fed. Reg. 60,634.

The final rule issues final regulations to implement Executive Order 13,658, *Establishing a Minimum Wage for Contractors*, which was signed by the President on February 12, 2014. Executive Order 13,658 states that the federal government’s procurement interests in economy and efficiency are promoted when the federal government contracts with sources that adequately compensate their workers. The Executive Order therefore seeks to raise the hourly minimum wage paid by those contractors to workers performing work on covered federal contracts to \$10.10 per hour, beginning January 1, 2015. Beginning January 1, 2016, and annually thereafter, the amount will be determined by the Secretary of Labor. The Executive Order directs the Secretary to issue regulations by October 1, 2014, to the extent permitted by law and consistent with the requirements of the Federal Property and Administrative Services Act, to implement the Order’s requirements. The final rule establishes standards and procedures for implementing and enforcing the minimum wage protections of Executive Order 13,658. As required by the Order, the final rule incorporates to the extent practicable existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, the Service Contract Act, and the Davis-Bacon Act.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The final rule has a stated effective date of

December 8, 2014. The rule was published in the *Federal Register* on October 7, 2014, and received by the House of Representatives on November 14, 2014. 79 Fed. Reg. 60,634; 160 Cong. Rec. H8130 (Nov. 19, 2014). It was received by the Senate on November 13, 2014. 160 Cong. Rec. S6145 (Nov. 19, 2014). Therefore, this rule does not have the required 60-day delay in effective date.

Enclosed is our assessment of Labor's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. With the exception of the required 60-day delay in effective date, our review of the procedural steps taken indicates that Labor complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Mary Ziegler
Director, Division of Regulations, Legislation
and Interpretation
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY
ENTITLED
"ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS"
(RIN: 1235-AA10)

(i) Cost-benefit analysis

Labor stated that it estimated in the Notice of Proposed Rulemaking (NPRM) that there are 183,814 workers who would be affected by the establishment of a minimum wage, leading to increased labor costs. Labor explained that it was additionally necessary in the NPRM to estimate both the average wage rate of affected workers and how many hours affected workers would spend on covered contracts. Labor estimated affected workers receive an average wage of \$8.79, or \$1.31 below the Executive Order minimum wage, and work 2,080 hours per year on Executive Order covered contracts. Labor further estimated that 20 percent of contracts extant in 2015 will qualify as “new” for purposes of the Executive Order and that approximately all contracts extant by 2019 will be “new” for purposes of the Executive Order. Based on these estimates, Labor anticipated that the annual effect of the rule in 2015 and 2019 would be approximately \$100.2 million and \$501 million, respectively.

Labor expects the increase in the minimum wage for federal contract workers to result in less absenteeism, reduced labor turnover, lower supervisory costs, and higher productivity. Moreover, Labor believes that higher-paid contract workers who demonstrate higher productivity may also boost the morale and productivity of those around them, including federal employees. Furthermore, according to Labor, the quality of government services may improve as contractors who raise the wage rates paid to their workers incur these benefits and attract better quality workers, thereby improving the experience of citizens who use government services. Labor also stated that commenters who mentioned increased labor costs did not account for the potential that increased efficiency and quality of services will attract more customers and result in increased sales. Labor states that it believes the combined benefits to contractors and the federal government will justify the costs that will be incurred as a result of this final rule, leading to improved economy and efficiency in government procurement.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

Labor states that in the NPRM, it published an initial regulatory flexibility analysis to aid stakeholders in understanding the economic impact of the proposed rule upon small entities and to obtain additional information on any such impact. See 79 Fed. Reg. 34,602. Labor states that it requested comments on the initial regulatory flexibility analysis set forth in the NPRM, including information regarding the number of small entities affected by the minimum wage requirements of Executive Order 13,658, compliance cost estimates for such entities, and whether regulatory alternatives exist that could reduce the burden on small entities while still remaining consistent with the objective of the Order. See 79 Fed. Reg. 34,602–09. Labor states that it received several comments on the initial regulatory flexibility analysis, but that after consideration of the comments received and based its analysis, Labor believes that the final rule

will not have an appreciable economic impact on the vast majority of small businesses subject to the Executive Order. However, Labor states that in the interest of transparency, it prepared a Final Regulatory Flexibility Analysis to aid the public in understanding the small entity impacts of the final rule. Labor modified its analysis to some extent from the initial regulatory flexibility analysis based on comments received from the public and discussed those changes in the final rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Labor states that it does not expect that the promulgation of this final rule will result in the expenditure by state, local, and tribal governments, in the aggregate, of \$141 million per year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On June 17, 2014, Labor published the NPRM in the *Federal Register*, inviting public comments for a period of 30 days on a proposal to implement the provisions of Executive Order 13,658. See 79 Fed. Reg. 34,568 (June 17, 2014). On July 8, 2014, Labor extended the period for filing written comments until July 28, 2014. See 79 Fed. Reg. 38,478. Labor states that more than 6,500 individuals and entities commented on the NPRM. Comments were received from a variety of interested stakeholders, such as labor organizations; contractors and contractor associations; worker advocates, including advocates for people with disabilities; contracting agencies; small businesses; and workers. Relevant comments, including comments raising specific concerns regarding interpretations of the Executive Order set forth in Labor's NPRM, were addressed in the final rule. After considering all timely and relevant comments received in response to the June 17, 2014, NPRM, Labor issued this final rule to implement the provisions of Executive Order 13,658.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Office of Management and Budget (OMB) has assigned control number 1235–0018 to the general recordkeeping provisions of various labor standards that the Wage and Hour Division administers and enforces and control number 1235–0021 to the information collection that gathers information from complainants alleging violations of such labor standards. In accordance with the PRA, Labor solicited public comments on the proposed changes to those information collections in the NPRM. See 79 Fed. Reg. 34,568 (June 17, 2014). Labor also submitted a contemporaneous request for OMB review of the proposed revisions to the information collections in accordance with 44 U.S.C. § 3507(d). On August 15, 2014, OMB issued a notice that continued the previous approval of the information collections under the existing terms of clearance and asked Labor to resubmit the information collection requests upon promulgation of the final rule and after consideration of public comments received.

According to Labor, the total burden for the recordkeeping and complaint process information collections, including the burdens that will be unaffected by this proposed rule and any changes are summarized as follows:

- Type of review: Revisions to currently approved information collections.
- Agency: Wage and Hour Division, Department of Labor.
- Title: Employment Information Form.

- OMB Control Number: 1235–0021.
- Affected public: private sector, businesses or other for-profits, and individuals or households.
- Estimated number of respondents: 35,350 (350 from this rulemaking).
- Estimated number of responses: 35,350 (350 from this rulemaking).
- Frequency of response: On occasion.
- Estimated annual burden hours: 11,783 (116 burden hours due to this rulemaking).
- Estimated annual burden costs: \$286,562.00.
- Title: Records to be kept by Employers.
- OMB Control Number: 1235–0018.
- Affected public: private sector, businesses or other for-profits, and individuals or households.
- Estimated number of respondents: 3,911,600 (0 from this rulemaking).
- Estimated number of responses: 40,998,533 (0 from this rulemaking).
- Frequency of response: weekly.
- Estimated annual burden hours: 1,250,164 (0 from this rulemaking).
- Estimated annual burden costs: 0.

Statutory authorization for the rule

The President issued Executive Order 13,658 pursuant to his authority under “the Constitution and the laws of the United States,” expressly including the Federal Property and Administrative Services Act (Procurement Act), 40 U.S.C. § 101 *et seq.* 79 Fed. Reg. 9,851. The Procurement Act authorizes the President to “prescribe policies and directives that the President considers necessary to carry out” the statutory purposes of ensuring “economical and efficient” government procurement and administration of government property. 40 U.S.C. § 101, 121(a). Executive Order 13,658 delegates to the Secretary of Labor the authority to issue regulations to “implement the requirements of this order.” 79 Fed. Reg. 9,852. The Secretary has delegated authority to promulgate these regulations to the Administrator of the Wage and Hour Division. Secretary’s Order 05–2010 (Sept. 2, 2010), 75 Fed. Reg. 55,352 (published Sept. 10, 2010).

Executive Order No. 12,866 (Regulatory Planning and Review)

Labor has determined that this final rule is a “significant regulatory action” under section 3(f) of Executive Order 12,866 because it is economically significant based on Labor’s estimate of the annual effect of the rule exceeding \$100 million. As a result, OMB has reviewed this final rule.

Executive Order No. 13,132 (Federalism)

Labor determined that the final rule does not have federalism implications. The final rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Executive Order No. 13,132 (Indian Tribal Governments)

Labor determined that this final rule would not have tribal implications, nor would it have substantial direct effects on one or more Indian tribes, on the relationship between the federal

government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Effects on Families

Labor certified that the final rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

Executive Order 13045 (Protection of Children)

Labor stated that the final rule would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment under the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. § 4321

Labor stated that the final rule would not have a significant impact on the quality of the human environment, and thus, that there is no corresponding environmental assessment or an environmental impact statement.