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August 23, 2021

Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW, Washington, DC 20210

**Comment of A Better Balance on RIN 1235-AA41 - Increasing the Minimum Wage for
Federal Contractors
Submitted by Meghan Racklin, Staff Attorney
A Better Balance**

Dear Director DeBisschop,

Thank you for the opportunity to submit comments on the proposed rulemaking to increase the minimum wage for federal contract workers to \$15 per hour in 2022 and index it to inflation.

A Better Balance (ABB) is a national nonprofit advocacy organization that uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security. Through legislative advocacy, direct legal services and strategic litigation, and public education, our expert legal team combats discrimination against pregnant workers and caregivers and advances supportive policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare. ABB recognizes that the way we work is changing. Millions of Americans are working in ways that do not fit neatly within the traditional employer/employee framework; at the same time, many of those in traditional employee roles have work that is unreliable and underprotected. We are fighting for a fairer future of work that ensures all workers have the rights and protections they need, regardless of the way they work or how they are classified. ABB supports the draft regulations which promise to improve the lives of more than 300,000 workers; increase equity in the contract system; level the playing field for companies that pay fair wages; and support the efficient use of federal funds.

There is a long history of standards geared towards upholding high standards for federal contractors, but more needs to be done to guarantee that all jobs supported by federal spending



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are good jobs accessible to Americans from all walks of life.¹ Experience at all levels of government demonstrates that minimum standards laws can improve conditions for working people. The draft regulations build on past efforts to use the federal government’s power over federal contracting to advance worker’s rights, including President Barack Obama’s 2016 Executive Order 13706, which established a crucial right to paid sick leave for federal contractors. Additionally, in 2014, President Obama’s Executive Order 13658 establishing a minimum wage for contractors helped raise pay for hundreds of thousands of contract workers.² In addition, more than 100 American cities have adopted similarly structured living wage laws to raise standards for workers whose jobs are funded through government spending and dozens of state, local, and county governments have raised minimum wage laws to \$15 per hour in recent years.³

The draft regulations take concrete steps to raise pay for the low-wage contract workers and help to lay the groundwork for future action to improve job quality for millions more workers whose jobs are funded through federal spending. Better quality jobs will result in better servicing of important public programs and a better use of public revenues.

A recent report from the National Employment Law Project estimates that 26 million workers have earned more than \$150 billion in additional income from a combination of state and local minimum wage increases and the federal contractor minimum wage since 2012.⁴ Workers on federal contracts should not be left behind. A minimum wage of \$15 is critical to lift contract workers and their families out of poverty and ensure that they are able to care for themselves and their families without sacrificing their economic security. Currently, the federal contractor

¹ See, for example, Karla Walter and Anastasia Christman, “Service Contract Workers Deserve Good Jobs,” (Washington, D.C.: Center for American Progress, 2021) available at <https://www.americanprogressaction.org/issues/economy/reports/2021/04/09/179997/service-contract-workers-deserve-good-jobs>.

² Department of Labor, “Fact Sheet: Final Rule to Implement Executive Order 13658, Establishing a Minimum Wage For Contractors,” available at <https://www.dol.gov/agencies/whd/government-contracts/minimum-wage/fact-sheet> (last accessed July 2021).

³ National Employment Law Project, “Local Living Wage Laws and Coverage,” available at <https://www.nelp.org/wp-content/uploads/2015/03/LocalLWLawsCoverageFINAL.pdf> (last accessed July 2021).

⁴ Yannet Lathrop, T. William Lester, and Mathew Wilson, “Quantifying the Impact of The Fight for \$15: \$150 Billion in Raises for 26 Million Workers, with \$76 Billion Going to Workers of Color,” (New York, NY: National Employment Law Project, 2021) available at <https://www.nelp.org/publication/quantifying-the-impact-of-the-fight-for-15-150-billion-in-raises-for-26-million-workers-with-76-billion-going-to-workers-of-color/>.



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minimum wage of \$10.95 per hour—or \$22,776 for a year-round, full-time worker—falls short of the 2020 Census Poverty Threshold for a family of four.⁵

The Department of Labor estimates that the new threshold would increase wages for more than 327,000 contract workers. Moreover, the draft language ensures that a significant portion of these workers will experience the benefits in the first year of its implementation since the new standard will apply to any new contracts, contract-like vehicles, solicitations as well as contract extensions and renewals.

By rescinding the Trump era exclusion of outfitters and guides operating on federal lands, and by including SCA-covered workers regardless of employers' alleged definition of the employment relationship, the rules end unjust exceptions to the contractor minimum wage standard.

The rules will also help boost equity in the contracting system; an analysis from EPI estimates that roughly half of workers who will see a raise will be women and workers of color; DOL similarly estimates that the biggest beneficiaries will be women, Black and Hispanic workers, as well as younger workers.⁶ Furthermore, by extending coverage to workers with disabilities, to contracts performed in Puerto Rico and other U.S. Territories, and by ending the subminimum wage for tipped workers by 2024 the proposed rules build on the Obama legacy and expand efforts to end long standing discriminatory practices in federal contracting.

Moreover, due to occupational segregation, women and people of color are overrepresented in industries that the federal government contracts out and that in many regions pay very low wages.⁷ According to the Labor Department's own analysis, women as well as Black and Latinx

⁵ U.S. Census Bureau, "Poverty Thresholds," available at <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html> (last accessed July 2021).

⁶ Ben Zipperer and Heidi Shierholz, "Up to 390,000 federal contractors will see a raise under the Biden-Harris executive order," (Washington, D.C.: Economic Policy Institute, 2021) available at <https://www.epi.org/blog/up-to-390000-federal-contractors-will-see-a-raise-under-the-biden-harris-executive-order/>; Department of Labor analysis of CPS data, Table 7 of WHD-2021-0004-0001.

⁷ Karla Walter, "Federal Contracting Doesn't Go Far Enough To Protect American Workers," available at: <https://www.americanprogressaction.org/issues/economy/reports/2020/11/19/179390/federal-contracting-doesnt-go-far-enough-protect-american-workers/>.



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workers are more likely to earn under \$15 per hour.⁸ Similarly, a 2006 study by the Economic Policy Institute found that local living wage laws effectively targeted workers of color and low-income workers.⁹

In addition to improving the lives of contract workers, raising the contractor minimum wage will also support economy and efficiency in the contracting system, since better standards support a stable and productive workforce. With numerous corporations realizing that a \$15 wage is critical to recruitment, federal contractors working with the current rate of \$10.95 cannot adequately compete for quality staffing. Reviews of state and local contracting find that the adoption of wage standards often decreases employee turnover, which leads to savings in re-staffing costs, a more productive workforce, and improvements to the quality of service provided to the public – thereby helping to offset the cost of such a standard.¹⁰

For example, after the San Francisco International Airport adopted a wage standard, annual turnover among security screeners fell from nearly 95 percent to 19 percent.¹¹ Turnover reductions saved employers about \$4,275 per employee per year in re-staffing costs and employers reported that customer service improved, as did indicators of security. Similarly, a 2015 study examining the Los Angeles Living Wage Ordinance found that labor turnover was 17 percentage points lower in firms covered by the ordinance and that the cost savings associated with lower turnover partially covered the cost of raising wages for workers.¹²

⁸ 86 Federal Register 38816, “Increasing the Minimum Wage for Federal Contractors,” available at <https://www.federalregister.gov/documents/2021/07/22/2021-15348/increasing-the-minimum-wage-for-federal-contractors>.

⁹ Jeff Thompson and Jeff Chapman, “The Economic Impact of Local Living Wage Laws,” (Washington, DC: Economic Policy Institute, 2006) available at <https://files.epi.org/page/-/old/briefingpapers/170/bp170.pdf>.

¹⁰ Paul Sonn and Tsedeye Gebreselassie, “The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services,” (Washington: National Employment Law Project, 2009), available at https://www.inthepublicinterest.org/wp-content/uploads/The_Road_to_Responsible_Contracting.pdf; Karla Walter, David Madland, Paul Sonn and Tsedeye Gebreselassie, “Contracting that Works,” available at <https://www.americanprogressaction.org/issues/economy/reports/2015/11/13/125359/contracting-that-works-2/>.

¹¹ Michael Reich, Peter Hall, and Ken Jacobs, “Living Wages and Economic Performance: The San Francisco Airport Model,” (UC Berkeley Labor Center, 2003), available at <https://laborcenter.berkeley.edu/living-wages-and-economic-performance-the-san-francisco-airport-model/>.

¹² David Farris and others, “Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses,” (Los Angeles, CA: Institute for Research on Labor and Employment, 2015), available at <https://escholarship.org/uc/item/0b73b6f0> (last accessed July 2021)



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Evidence suggests that implementing contractor wage standards also helps level the playing field for companies that pay decent wages, and thereby encourages more companies to bid for contracts. Without strong standards, companies that pay good wages are frequently forced to compete against low-road contractors that undercut the market.¹³ For example, after Maryland implemented a contractor living standard, the average number of bids for contracts in the state increased by 27 percent.¹⁴ Contracting companies interviewed by the state explained that the new standards encouraged them to bid on contracts because it leveled the playing field.

Indeed, broadening the reach of the contractor minimum wage—such as by expanding its coverage to Puerto Rico and U.S. territories—will extend efficiency gains more broadly across the contracting system and improve consistency in the procurement system, since other wage laws, like the Service Contract Act and the Fair Labor Standards Act cover the same geography.

In order to strengthen the rule further, the Department of Labor must ensure that contractors and workers are fully aware of the wage standard as it applies to their worksites. It is critical that workers are educated about their rights, and able to easily access information about them, so that they are truly able to access and benefit from their protections. In addition to the posting suggested by the proposed rules, there should be opportunities to fully educate employers on their responsibilities and workers on their rights. The anti-retaliation language in the proposed rules is important to protect workers' ability to make claims of violations of the minimum wages.

Finally, raising the contractor minimum wage is not the only action needed to support shared prosperity in the federal contracting system and guarantee responsible use of public contracting dollars. We thank President Biden for additional actions underway to raise standards for contract workers--such as updating prevailing wage standards for the 21st century and rebuilding agency capacity to enforce these critical laws.

¹³ Robert Pollin, Mark Brenner and Stephanie Luce, "Living Wage Laws in Practice: Retrospective Studies on Boston, Hartford, and New Haven" in *The Economics of Living Wages and Minimum Wages in the United States* (Ithaca, N.Y.: Cornell University Press, 2008); Kevin Duncan and Jeffrey Waddoups, "Unintended Consequences of Nevada's Ninety-Percent Prevailing Wage Rule," *Labor Studies Journal* 45 (2) (2020), available at <https://doi.org/10.1177/0160449X19897961>

¹⁴ Michael C. Rubenstein, "Impact of the Maryland Living Wage" (Annapolis, MD: Maryland Department of Legislative Services, 2008), available at http://dlslibrary.state.md.us/publications/OPA/I/IMLW_2008.pdf.



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A Better Balance applauds the Department of Labor for offering thorough draft regulations and strongly supports their implementation to raise standards for contract workers earning poverty wages. When President Biden announced Executive Order 14026 this spring, he stated that “no one should work full-time and still live in poverty.”¹⁵ The draft regulations represent an important step towards fulfilling this commitment to working people and will help ensure that more workers are able to care for themselves and their loved ones without sacrificing their economic security by ending pay disparities based on race and gender and helping businesses that pay decent wages to compete on an even playing field.

Sincerely,

Meghan Racklin
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A Better Balance

¹⁵ Noam Scheiber, “Biden Orders \$15 Minimum Wage for Federal Contractors,” *The New York Times*, April 27, 2021, available at <https://www.nytimes.com/2021/04/27/business/economy/biden-minimum-wage-federal-contractors.html>.