

A first step to fifteen

Raising wages for all federal contract workers

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While the new economic crisis has made the path ahead less certain, persistent high unemployment will hold down wage growth in the immediate future. The next administration should use its procurement authority to issue an executive order ensuring that many of this country's lowest-paid workers receive a decent wage, and a down payment on a long-overdue path to a \$15 minimum wage.

Summary

The federal government must continue to be an important driver of job quality in the U.S., both in terms of direct federal jobs themselves and **jobs created by federal contractors**. The Obama administration took a number of actions to improve the quality of federal contracting jobs, including by issuing **an executive order in 2014** raising the minimum wage for workers on federal contracts to \$10.10 per hour with annual increases for inflation (**it will be \$10.95 on January 1, 2021**). It closed some key loopholes in coverage but left others. The Trump administration has not repealed this order, and the Wage and Hour Division has issued **annual increases on schedule**. But President Trump did issue **Executive Order 13658** in May 2018, carving out certain seasonal recreational workers from the minimum wage protection.

The political and economic landscape has changed significantly since the 2014 executive order. **Dozens of jurisdictions (states, cities, and counties)** around the country have raised their minimum wages so that they will reach \$15/hour in coming years. Meanwhile, though **tens of millions of workers** lost their jobs in recent months, it is unclear what COVID-19's long-term impact on the economy looks like, especially due to the murkiness of the public health situation. And while some will be pushing to shrink federal budgets—and contracting—in coming years, others have noted that we will have needs for contracting tracing, testing, and other public health jobs that may not have been previously anticipated.

The next administration should build upon the Obama administration's action and raise the minimum wage for *all* federal contract workers—like nursing assistants, concession workers, and people serving food to

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our troops, many of whom are women, people of color, or immigrants. Specifically, the next president should take the following concrete actions:

1. Issue an executive order that increases the minimum wage for federal contractors to \$15 per hour immediately, with annual updates to keep up with the overall growth in wages. The executive order should close loopholes to ensure that no workers are left behind, and should further establish that the minimum wage for federal contractors shall always be at least 10% above the federal minimum wage.
2. Direct the Department of Labor and the Federal Acquisition Regulatory Council to adopt new regulations that mirror the executive order's expanded scope, including by applying this requirement to option contracts renewed by the federal government and to concession contracts.
3. Direct the Department of Labor's Wage and Hour Division (WHD) to vigorously enforce these new wages standards on contracts covered by the executive order.

Together, this effort would both boost wages and help build momentum to the push for [HR 582](#), the Raise the Wage Act.

The specifics

1. Issue an executive order raising wages broadly

The president has the legal authority to issue executive orders to promote the economy and efficiency in federal contracting under the Federal Property and Administrative Services Act (FPASA).¹ That law directly provides that “[t]he President may prescribe policies and directives that the President considers necessary to carry out this subtitle,” which policies are in turn “consistent with” this law.² For decades, presidents of both parties have relied upon this authority to issue executive orders that impact federal contracts and in turn the employment practices of federal contractors, including President Obama’s 2014 minimum wage executive order.³

In order to invoke this authority, the president must assert that the action in question promotes economy and efficiency in federal procurement. As a practical matter, at least in the Obama administration, the Council of Economic Advisers conducted an assessment of economy and efficiency to accompany each proposed executive order, and the Office of Legal Counsel at the Department of Justice had to sign off on that assessment before the action was approved.

Pursuant to this authority and process, to boost wages for workers in low-wage industries around the country, the next administration should issue an executive order to increase the minimum wage for federal contractors to \$15 immediately, without any phase-in period. Unlike current legislative proposals to raise the federal minimum wage for all employees, the economics of raising the minimum wage for workers on federal contracts does not

require a phase-in.

The executive order **should provide** for each of the following additional enhancements:

- **Interaction with federal minimum wage:** Congress should be passing a federal minimum wage increase applicable to all workers across the economy. In response, the minimum wage rate established by the executive order should automatically increase such that it is always at least 10% above the federal minimum wage.
- **Automatic annual adjustments:** The 2014 minimum wage executive order provided automatic annual adjustments to reflect the cost of living, and the Department has dutifully published annual increases without major controversy. The next administration should also include annual adjustments to keep up with growth in wages, which is also in keeping with the latest federal legislative proposal.
- **Tipped workers:** The 2014 executive order raised the minimum wage for covered tipped workers in increments to 70% of the regular minimum wage. The next administration should track the more recent House-passed minimum wage proposal and end the subminimum wage for tipped workers.
- **Workers with disabilities:** The 2014 executive order provided no exemption for workers with disabilities, who were **required to be paid at least \$10.10 per hour to start**. The next administration should track this executive order and end subminimum wages for workers with disabilities.⁴
- **Youth workers:** The next administration should also end the use of any subminimum wages for youth workers.
- **Workers providing recreational services on federal lands:** President Trump signed an executive order in May 2018 exempting certain outfitters and guides operating on federal lands from the 2014 minimum wage executive order.⁵ Though there was substantial (internal and external) lobbying in the Obama administration for these exemptions as well, any new executive order should eliminate them.

In addition, the next administration **should consider providing** the following enhancements:

- **Covering new contracts:** The 2014 executive order applied only to new contracts, but the next administration should broaden its coverage to apply to existing contracts, for example, by requiring contracting agencies to execute riders on existing contracts that incorporate the new requirements (with additional funds if needed). At a minimum, the next administration should decide to specify that any option contract that could be renewed by the federal government is a new contract that is indeed covered by this executive order. (The Labor Department's implementing rules from the Obama administration elected not to apply these requirements to any option contract that was simply renewed by the federal government, even though updated Service Contract Act and Davis Bacon Act prevailing wage schedules did apply to those options. A new administration should not do the same.)

- Enforcement:** The 2014 executive order gives only the Labor Department the authority to “investigate potential violations of and obtain compliance with” this order, and incorporating remedies and enforcement processes from the Fair Labor Standards Act, Service Contract Act, and Davis-Bacon Act, respectively.⁶ The next administration should consider expanding this section in the next executive order, given the Labor Department’s limited resources, such that any agency with contracting authority could take action against a contractor (or potential contractor) based on their failure to comply with the executive order.⁷
- Dissuading outsourcing:** In addition, the administration should explore a justification for raising wages even higher—to a level that dissuades outsourcing, for example, to the lowest pay of federal workers plus 20% to account for benefits.

2. Adopt new implementing regulations

After the executive order is issued, two agencies must issue rules implementing them. The Office of Federal Procurement Policy (OFPP) at the Office of Management and Budget must update the Federal Acquisition Regulations to ensure that new contracts issued mirror the executive order’s requirements. OFPP’s rulemaking process requires relatively straightforward documentation, but involves consultation with the **Federal Acquisition Regulatory Council**, which is a particularly involved and bureaucratic multiagency process requiring the concurrence of councils for defense acquisition and civilian acquisition, respectively.⁸

The executive order should also empower the Secretary of Labor (through the Wage and Hour Division) to implement and enforce the higher minimum wage requirements, which will require an additional agency-specific rulemaking. Likewise, the 2014 minimum wage executive order directed the Secretary of Labor to issue regulations to enforce the order, and provided a short, six-month time frame to final regulations.⁹ Either way, the Wage and Hour Division rule would be issued prior to the FAR rule, so that the latter can properly incorporate the former.

The executive order should therefore task OFPP and the DOL, respectively, to update their regulations to reflect the expanded coverage and additional requirements outlined above. In addition, these regulations should provide the following key regulatory changes:

- Concession contracts:** The 2014 executive order specifically includes concession contracts (which are excluded from the Service Contract Act [SCA] by regulations), but the Labor Department’s implementing regulations exclude other contracts that are too small for coverage under the SCA or Davis-Bacon Act.¹⁰ The next administration should include as many contracts as possible.
- Dual jobs and covered contracts:** The 2014 final rule excludes workers from coverage if they work on a covered contract for less than 20% of the time, with the remainder on noncovered contracts.¹¹ The next administration should explore a lower threshold.

3. Direct vigorous enforcement

The Obama administration's executive order also empowered the Secretary of Labor (through the Wage and Hour Division) to enforce the higher minimum wage requirements once they are attached through federal contracts, and the new executive order should do the same.

Why this is critical

Due to factors like occupational segregation, discrimination, and other labor market disparities rooted in structural racism and sexism, women and Black and Latinx workers are much more likely to be in very-low-wage jobs that will be affected by this EO, and will be more likely to get a raise. A \$15 minimum wage for federal contract workers will reduce gender and racial wage gaps. (An [analysis](#) of a proposal to raise the federal minimum wage to \$15 shows that a higher share of women than men would get a raise, and a disproportionate share of Black and Latinx workers would get a raise, when minimum wages are increased.)

This effort would also improve the number of good jobs created through government spending. Raising the minimum wage for federal contractors strengthens the bargaining position of unionized federal contractors because it means they start negotiations from a higher floor. It also protects federal contractors who pursue high-road business models from an undue disadvantage.

Finally, this effort would both boost wages and help build momentum to the push for [HR 582](#), the Raise the Wage Act, which was passed on July 18, 2019, by a bipartisan vote of 231–199. That bill would raise the minimum wage for all private-sector workers to \$15 an hour by 2025, phase out the subminimum wage for tipped workers, and sunset certificates that allow workers with disabilities to be paid a subminimum wage. (See [fact sheet](#).)

Overall impact

President Obama's 2014 executive order affected more than 180,000 workers, providing them with an additional \$500 million annually after it fully applied to multiyear contracts over five years. Raising the minimum wage and closing loopholes can have a particularly significant effect on enhancing equity in earnings between Black and white Americans.¹²

The precise impact of raising the minimum wage for workers on federal contracts to \$15 would depend on the implementation of federal and state minimum wages more recently established, and some of the other policy considerations listed above.

This policy memo was produced by the Economic Policy Institute and the National Employment Law Project. Contact Heidi Shierholz at hshierholz@epi.org or Judy Conti at jconti@nelp.org.

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Notes

1. P.L. 81-152, 63 Stat. 377 (June 30, 1949) (codified in Title 40 (government-wide) and Title 41 (civilian agencies) of the US Code). For more helpful background, see Vanessa K. Burrows and Kate M. Manuel, Presidential Authority to Impose Requirements on Federal Contractors (2011), *available at* <https://fas.org/sgp/crs/misc/R41866.pdf>.
2. 40 USC § 121.
3. The Obama administration relied upon this authority to issue a number of other executive orders related to federal contract workers, for example, requiring federal contractors to **provide paid sick days** to workers on federal contracts; forbidding them from **discriminating on the basis of sexual orientation** or from retaliating against employees who **inquire about, discuss, or disclose their pay or compensation**.
4. Raise the Wage Act, HR 582, 116th Cong. (2019-20), <https://www.congress.gov/bill/116th-congress/house-bill/582/text>. See *also* Alexa Beeson, “Raise the Wage Act 2019: Majority Looking to Lift Millions Out of Poverty,” National Consumers League, July 2019, https://www.nclnet.org/raise_wage_act.
5. Exemption from Executive Order 13658 for Recreational Services on Federal Lands, Executive Order 13838, 83 Fed. Reg. 25341 (June 1, 2018), <https://www.federalregister.gov/documents/2018/06/01/2018-11936/exemption-from-executive-order-13658-for-recreational-services-on-federal-lands>.
6. Establishing a Minimum Wage for Federal Contractors, *supra* note 5, at p. 9852.
7. For example, the 2014 executive order provides that it does not create any rights or remedies under the Contract Disputes Act, 41 USC § 7101 et seq, which provides a process by which orders of contracting officers may be resolved in the US Court of Federal Claims. See *id.* at 9852. It further provides that any disputes about payment of wages “shall be disposed of only as provided by the Secretary in regulations issued pursuant to this order,” i.e., by the Department of Labor. 79 Fed. Reg. 9852. If the next administration seeks to allow agencies to take action under this section, this limitation involving the Contract Disputes Act should be considered. See *also* U.S. Department of Justice, Civil Resource Manual, 70. The Contract Disputes Act, <https://www.justice.gov/jm/civil-resource-manual-70-contract-disputes-act> (last visited May 20, 2020).
8. See *generally* Office of the Secretary of Defense, Defense Acquisition System Rulemaking Process, https://www.acq.osd.mil/dpap/ops/docs/Defense_Acquisition_Regulations_System_Rulemaking_Process_Fact_Sheet.pdf (last accessed May 11, 2020).
9. Establishing a Minimum Wage for Contractors, Executive Order 13658, 79 Fed. Reg. 9851, 9852 (Feb. 20, 2014), <https://www.govinfo.gov/content/pkg/FR-2014-02-20/pdf/2014-03805.pdf>.

10. See Wage and Hour Division, *supra* note 6, at p. 60650 (discussing this decision in preamble text).
11. *Id.* at p. 60660.
12. See Ellora Derenoncourt and Claire Montialoux, “Minimum Wages and Racial Inequality,” August 2020, <http://www.clairemontialoux.com/files/DM2020.pdf>. See also Derenoncourt and Montialoux, “To Reduce Inequality, Raise the Minimum Wage,” *New York Times*, Oct. 25, 2020, <https://www.nytimes.com/2020/10/25/opinion/minimum-wage-race-protests.html>.