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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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August 6, 2015

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

**Re: ZRIN 1290-ZA02; Docket No. DOL-2015-0002; Proposed Guidance for
Executive Order 13673, “Fair Pay and Safe Workplaces”**

Dear Secretary Perez:

We are writing to express concern about the U.S. Department of Labor’s (DOL) incomplete guidance proposal to implement Executive Order 13673, “Fair Pay and Safe Workplaces.”¹ DOL’s current proposal lacks key information needed to properly evaluate the guidance and a companion proposed rule issued by the Federal Acquisition Regulatory (FAR) Council. Therefore, we urge DOL to withdraw the proposal. If the Department issues a complete version of the proposal, it should be treated as a new proposed guidance and provide for a significantly longer notice-and-comment period. Failure to take the requested action will deprive the public of the opportunity to fully review and respond to these proposals with substantive written comments.

DOL’s proposed guidance, issued on May 28, 2015, provided for a 60-day comment period ending on July 27, which was extended to August 26.² The proposal runs some 106 pages and was introduced simultaneously with the 130-page proposed rule issued by the FAR Council, which also carries an identical comment period. The FAR Council’s proposed rule requires federal contracting agencies to consider current and prospective contractors’ history of federal and state labor, employment and safety law violations when awarding certain federal contracts.³ DOL’s proposed guidance is intended to provide detail on which federal and state law violations

¹ The Department of Labor and Federal Acquisition Regulatory Council, May 27, 2015
<http://www.dol.gov/opa/media/press/asp/oasp20151046.htm>

² The Federal Register, *Guidance for Executive Order 13673, “Fair Pay and Safe Workplaces,”* August 5, 2015
<https://www.federalregister.gov/articles/2015/08/05/2015-19171/guidance-for-executive-order-13673-fair-pay-and-safe-workplaces>

³ The Federal Register, *Federal Acquisition Regulation; Fair Pay and Safe Workplaces,* May 28, 2015
<https://www.federalregister.gov/articles/2015/05/28/2015-12560/federal-acquisition-regulation-fair-pay-and-safe-workplaces>

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are reportable, how they should be reported, and how contractors' compliance records will ultimately be evaluated by contracting agencies once received.⁴

Unfortunately, DOL's proposed guidance was intentionally published before it was completed, leaving significant issues unresolved – including which state laws will be covered by the guidance, and whether prime contractors will be required to facilitate subcontractor reporting. These factors could significantly increase the compliance costs and administrative burdens of any final rule. It is simply not possible for federal contractors to provide useful feedback without this critical information. In light of these vital omissions, it is unclear how the FAR Council was able to fairly and adequately assess the costs of its proposal.

Because this incomplete proposal makes it impossible to gather a public record with all necessary feedback and accurate data from affected parties, we request that DOL immediately withdraw its proposal.

Should the Administration continue to pursue this policy, DOL must provide a completed guidance proposal to the FAR Council so the Council can more appropriately evaluate the costs of its proposed rule. Once both proposals are completed, they should undergo the same Office of Information and Regulatory Affairs (OIRA) review process as the original proposals. If approved by OIRA, both proposals should be published on the same date in the *Federal Register*, and made available for significantly longer public comment periods than were initially offered.

Please provide a full response to our requests no later than August 21, 2015. If you are unable to comply in this timeframe, or you have any questions, please instruct your staff to contact Patrick Bailey with the Committee on Homeland Security and Governmental Affairs at (202) 224-4751, or Kyle Fortson with the Committee on Health, Education, Labor, and Pensions at (202) 224-6770.

Sincerely,



Ron Johnson
Chairman
Senate Committee on Homeland Security
& Governmental Affairs



Lamar Alexander
Chairman
Senate Committee on Health,
Education, Labor and Pensions

⁴ The Federal Register, *Guidance for Executive Order 13673: "Fair Pay and Safe Workplaces,"* May 28, 2015
<https://www.federalregister.gov/articles/2015/05/28/2015-12562/guidance-for-executive-order-13673-fair-pay-and-safe-workplaces>


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Subcommittee on Regulatory Affairs and
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Senate Committee on Homeland Security
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