July 28, 2014

Ms. Mary Ziegler  
Director, Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division  
U.S. Department of Labor  
Room S-3510  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Establishing a Minimum Wage for Contractors; RIN 1235-AA10 (Docket No. WHD-2014-14130)

Dear Ms. Ziegler:

The Independent Electrical Contractors (IEC) appreciates the opportunity to submit the following comments in response to the above-referenced notice of proposed rulemaking (NPRM) published in the Federal Register on June 17, 2014, at 79 Federal Register 116.

About IEC

Founded in 1957, IEC is the leading national trade association representing merit shop electrical and systems contractors, with 3,000 members across 55 chapters in the United States. A majority of IEC’s members are small businesses with under $14 million in annual revenue.

IEC believes in developing and fostering a stronger economy through the high level of quality services its members provide to the industry. Drawing from the dedication, desire, experience, and safe, efficient, and productive work practices of contractors in the independent sector, our country is able to benefit from a flexible array of services and competitive pricing, which helps maintain an affordable level of costs on energy and utilities.

For more than five decades, IEC has faced the challenges imposed by the ever-changing world of the electrical industry. IEC has built a reputation as the premier trade association for America’s independent electrical and systems contractors, actively working with the industry to establish a competitive, merit-based environment for electricians and their contracting company employers.
As an entity that represents many contractors that perform work for federal construction projects, IEC is concerned that the Department of Labor’s (DOL) proposed rule leaves important questions unanswered regarding the scope of coverage, cost estimates, and definitions that could have significant economic implications for small businesses, the federal government, and taxpayers. While IEC has determined that a majority of electricians are already paid above the proposed minimum wage rate of $10.10 per hour, support staff and apprentices with electrical contracting companies will likely still be affected by the provisions of the NPRM. In particular, it remains unclear whether certain types of workers are covered by this rule, especially apprentices receiving on-the-job training.

The following comments are reflective of IEC’s concerns about the proposed rule and seek further clarification on definitions and covered parties therein.

**Comments on the Proposed Rule**

I. **The Department failed to consider important factors in preparing its cost estimates.**

The mere 30-day comment period with a subsequent ten-day extension is insufficient to properly assess the full cost impact of the proposed rule. That said, the cost estimates included in the NPRM provide a minimalistic and deceptively low assessment of the per-employee cost absorbed by businesses as a result of the proposed wage increase. In its estimates and as outlined in the chart provided in 79 Federal Register 116 at 345605, DOL fails to factor in the cost of the inevitable upward pressure on the wage rates of employees who are currently paid rates above the proposed $10.10 threshold. The data accounts only for the cost of the minimum wage increase for entry level workers rather than the much larger increase in wage rates that will certainly result for the rest of the workforce.¹ For example, the wage rate of an employee currently earning $11 per hour will rise in lock-step with the rates paid to workers that are closer to entry level.

Likewise, the effect of raising the minimum wage for federal work will seep into private sector pay as well, driving up the wages of employees within a company that are assigned to private or commercial projects and are not performing federal work. When human resources compliance costs, the subsequent cutting back of worker hours by employers, the firing of workers to reduce expenditures on higher wages, and costs associated with paperwork requirements under the rule are considered, the overall economic impact of the proposed rule on employers increases exponentially.

The direct impact of these added costs for businesses will reduce the incentives for companies – particularly smaller businesses – to contract with the federal government, which will eliminate longstanding cost-saving relationships and narrow the pool of qualified competitors on projects open for bidding. Even those small contractors that are able to pursue federal work will likely be forced to submit bids that are less competitive because they cannot absorb the higher overhead as easily as larger companies. These costs will be ultimately passed on to taxpayers. Companies that do choose to perform federal work may also consider workforce reorganization to reduce the number of people working on a federal contract.

¹ 79 Federal Register at 345605.
IEC strongly recommends DOL reexamine its cost estimates for this proposed rule and consider alternatives to the $10.10 increase given the Department’s own survey which determined “estimated affected workers receive an average wage of $8.79, or $1.31 below the Executive Order minimum wage.”

II. Significant clarification is necessary with regard to apprenticeship programs based on the definitions of “covered workers” in the NPRM.

The NPRM has resulted in significant confusion regarding which employees are exempt from the minimum wage increase. Of chief concern to IEC is whether apprentices in IEC’s registered apprenticeship program are exempt.

Section 10.5 of the proposed rule requires contractors to pay the new minimum wage to “workers,” and Section 10.2 defines “worker” as including “any person working on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor’s Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.” This implies that all workers, including apprentices, would need to be paid the new minimum wage.

However, Section 10.4 (e)(1) counts “learners, apprentices, or messengers employed under special certificates pursuant to 29 U.S.C. 214(a)” among those excluded from the new wage requirements.

In any final standard, the Department must clarify that apprentices in DOL-approved programs are exempt from the minimum wage. IEC’s DOL-approved standards establish a progressive wage scale for registered apprentices that IEC Chapters tailor to provide a percentage of the average prevailing journeyman wage based on an apprentices’ level of instruction. In some Mid-Atlantic States and parts of Texas, for example, the starting wage for a first-year apprentice may be at or below the proposed new minimum wage, which would cause great confusion for IEC’s members over whether the $10.10 minimum or the percentage rule established in IEC’s apprenticeship standards applies. IEC recommends that DOL amend its definition of “worker” in Section 10.2 and expand upon the exemptions in Section 10.4 to address the discrepancy regarding the application of the minimum wage requirement to registered apprentices.

III. Clarification is also necessary with regard to the definitions of “covered workers” and “covered work” in the NPRM.

At the same time, there is further confusion as to which workers within a company that contracts with the federal government would fall under the broad definition of “worker.” The definition of “worker” in Section 10.5 includes “any person engaged in the performance of a contract covered by EO 13658 whose wages under such contract are covered by the Fair Labor Standards Act

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3 79 Fed. Reg. at 34577.
(“FLSA”), the Service Contract Act, or the Davis-Bacon Act, other than individuals who are employed in a bona fide executive, administrative, or professional capacity as defined by the DOL’s regulations implementing the FLSA’s exemptions from its minimum wage and overtime requirements.” The Department also interprets Section 7(d)(ii) of the Executive Order as extending coverage to workers who are not laborers or mechanics but are governed by the FLSA and extends coverage to “FLSA-covered employees working on DBA-covered contracts regardless of whether such employees are physically present on the DBA-covered construction worksite.”

With regard to these workers, the proposed rule uses vague and poorly defined terms such as “in connection with the contract” and “other duties necessary to the performance of the project” to delineate cases in which the minimum wage increase would apply to additional employees within a contracting company. The extent of coverage over workers within a company with federally contracted work remains unclear. Any final regulation should clarify that only those workers performing labor on a specific federal project, directly supervising labor on a federal project, or assigned directly to a specific federal project are subject to the minimum wage requirements. Particularly within a small company performing government work where off-site staff may have split responsibilities between multiple projects (including human resources, payroll processing, materials delivery, or even answering phones), the proposed rule’s application is unclear and may be interpreted as casting a net that is simply too wide. IEC asks for further clarification on these issues.

**In Conclusion**

Should the Department of Labor choose to proceed with a rulemaking to increase the minimum wage for federal contractors, IEC again would like to stress the importance of reevaluating cost estimates of the impact of the rule on the construction sector, especially beyond simply raising wages for the lowest tier of earners. Additional clarifications of key terminology and definitions are also necessary before the Department proceeds further. Lastly, we urge the Department to ensure that any final rule language ensures employers are able to continue utilizing apprentices on-the-job at wage and fringe benefit rates according to their DOL-approved standards.

Sincerely,

Alexis Moch  
Vice President, Government Affairs  
Independent Electrical Contractors

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5 79 Fed. Reg. at 34577.