

*Testimony before the House Committee on Small Business Subcommittees on Investigations, Oversight,  
and Regulations and Contracting and Workforce*

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Thank you Chairmen Hardy and Hanna, Ranking Member Adams, and Members of the Subcommittees for the invitation to appear before you today.

My name is David Madland and I am a Senior Fellow at the Center for American Progress Action Fund. CAP Action is an independent, nonpartisan, and progressive education and advocacy organization dedicated to improving the lives of Americans through ideas and actions.

Today's hearing is focused on the impact of President Obama's contracting executive actions. While the title of this hearing implies that the Presidents' actions are a burden, his actions will benefit workers, taxpayers and businesses.

The President's executive actions draw widespread support from a broad coalition of supporters. Not only do organizations representing workers, veterans, women, the elderly, and taxpayers support a number of these contracting actions, but so too do a number of small businesses.<sup>1</sup> Many small businesses feel that these executive actions will help them compete on a level playing field and make the contracting process more welcoming to businesses like theirs. Indeed, in 2015 small business contracting as a percentage of total government contracting was at record high levels.<sup>2</sup>

Though I think the general points I make could be applied to most if not all of the President's contracting reforms, I will focus my remarks on contracting executive actions that establish a minimum wage, require paid sick leave, ban discrimination based on sexual orientation and gender identity and ensure companies comply with workplace laws before receiving new government contracts.

## Government can be a leader setting standards

Because President Obama's executive actions are part of a tradition of presidential actions involving federal contractors, I think it is important to provide some history on similar executive actions before discussing the policies that are the focus of today's hearing. The federal government has a long and successful history of starting important social changes with federal contractors. And these kinds of actions have been taken by presidents of both parties.

For example, Executive Order 11246, signed in 1965 by President Lyndon Johnson, prevented companies that contract with the federal government from discrimination on the basis of race, color, religion, sex, or national origin. The executive order helped to significantly increase the percentage of women and minority managers at firms that contract with the federal government. Employment increased 6 percent faster for black males working for government contractors than those in non-contractor establishments,

12 percent faster for other minority males, 3 percent faster for white females, and 11 percent faster for black females.<sup>3</sup>

Actions by President Richard Nixon furthered the protections articulated by President Johnson. Under his administration, the Department of Labor issued “Order No. 4,” which required contractors to analyze their workforce and determine if they were hiring fewer minority workers than would be expected based on the local labor market.<sup>4</sup> If contractors found that this was the case, they were to set goals to remedy this underrepresentation.<sup>5</sup>

Virtually every recent president has used their power over federal procurement to pursue social goals. Ronald Reagan sought to promote minority contractors.<sup>6</sup> Bill Clinton encouraged contractors in economically distressed areas.<sup>7</sup> George W. Bush sought to ensure contractors employed only American citizens or legal residents.<sup>8</sup>

## President Obama’s Executive Actions Address Significant Problems

President Obama’s efforts to raise standards for workers on federal contracts build on this history and are an important part of making the economy work for everyone not just the wealthy few. In the United States today, wages have been nearly stagnant for decades, while economic inequality is near record levels.<sup>9</sup> Too many people are struggling to pay bills, especially those working in low-wage industries where wage theft is rampant as employers pay workers less than legally required. Many Americans cannot take time off if they get sick, and people often face discrimination because of their sexual orientation and gender identity. And discrimination based on race and gender still occurs, despite advances made in part because of previous federal actions.

The President’s executive actions address significant problems with today’s economy. For example:

**Low minimum wage:** The federal minimum wage today remains at \$7.25 per hour and has not been increased since 2009. That means someone working full time can still be in poverty – they would earn just \$15,080 annually, which is below the federal poverty line for a family of two.<sup>10</sup> If the minimum wage had merely kept pace with inflation since 1968 it would be worth \$11.06.<sup>11</sup> And if the minimum wage had kept up with productivity, it would be even higher. We are a much richer and more productive nation than we were in the 1960s, and yet the minimum wage is worth less today than it was fifty years ago.

**Lack of paid sick leave:** Currently, 36 percent of private sector workers lack paid sick leave.<sup>12</sup> Without this vital protection, workers can be forced to choose between caring for themselves or a family member and keeping their job. This not only harms workers, but the economy as a whole, as workers without access to paid sick leave are more likely to spread contagious diseases like the flu.<sup>13</sup>

**Absence of protections for LGBT Americans:** Today, there are no explicit protections under federal law to prevent workers from being fired based on their sexual orientation or gender identity. Unfortunately, LGBT Americans often face discrimination and harassment in the workplace. Up to 43 percent of gay, lesbian, and bisexual workers have been discriminated against or harassed at work, as have up to 90 percent of transgender workers.<sup>14</sup>

**Weak review of contractors' records:** Despite the fact that federal law requires the government to award contracts only to companies with a satisfactory record of performance, integrity, and business ethics our current system fails to actually achieve this in practice, nor does it adequately impose conditions on violators to encourage them to improve their practices.<sup>15</sup>

As a result, billions of federal dollars flow to companies that break the law. According to a 2013 report from the Senate Health, Education, Labor, and Pensions Committee, 30 percent of the top violators of workplace safety and wage laws between fiscal years 2007 and 2012 continued to receive federal contracts despite their violations.<sup>16</sup> And these violations can have deadly consequences. During these years, at least 42 people died from workplace accidents and injuries at the companies with the highest penalties.<sup>17</sup> In fiscal year 2012, the government awarded \$81 billion in contracts to companies with large violations of labor law – nearly 16 percent of all spending on federal contracts.<sup>18</sup> The Government Accountability Office has come to similar conclusions, finding that one-third of companies with the largest penalties for violations of wage and hour and workplace safety laws went on to receive a government contract.<sup>19</sup>

Ideally, policies such as a higher minimum wage, paid sick days, and respect for LGBT rights should be applied to all workers. But until Congress acts, executive actions can produce important improvements for a large number of workers, high road businesses and taxpayers.

## Executive actions also promote economy and efficiency

At the same time these executive actions address important economic and social challenges, they also promote economy and efficiency in government contracting.

The basic idea is that treating workers fairly leads to better results for taxpayers. Human capital is the core input into many federal contracts and taxpayers receive “the most efficient and effective utilization of all available manpower” when workers are treated fairly.<sup>20</sup> When workers are adequately paid, have safe workplaces, do not need to fear losing their job because they or their children get sick, and are not discriminated against, they can efficiently produce high quality work. In contrast, when basic standards are not upheld, contracting becomes a race to the bottom that does not deliver for workers or taxpayers.

There is a large body of academic research backing up these basic ideas. For example, paying higher wages has been shown to decrease absenteeism and turnover.<sup>21</sup> Higher wages can also lead to higher performance from employees. Often called the efficiency wage theory, this body of research finds that wages and working environment can affect productivity, through effects on morale.<sup>22</sup> Paid sick leave can increase efficiency by allowing workers to stay home when sick instead of spreading their illness to their coworkers and customers and letting them take time off to get necessary preventative health care.<sup>23</sup> And a more diverse workforce can lead to less discrimination and more openness, greater job commitment, improved workplace relationships, and increased productivity.<sup>24</sup>

Moreover, there is also a body of research showing that when contractors cut corners with their workers, they often do so with taxpayers. A CAP Action report analyzing the businesses that received federal contracts despite having committed the worst workplace violations between FY 2005 and 2009 found that 25 percent of them had significant performance problems.<sup>25</sup> According to the report, these problems ranged from:

“... contractors submitting fraudulent billing statements to the federal government; to cost overruns, performance problems, and schedule delays during the development of major weapons systems that cost taxpayers billions of dollars; ... to an oil rig explosion that spilled millions of barrels of oil into the Gulf of Mexico.”<sup>26</sup>

This connection has been known for decades. The U.S. Department of Housing and Urban Development found a “direct correlation between labor law violations and poor quality construction” on HUD projects thirty years ago, also finding that this poor performance led to increase maintenance costs.<sup>27</sup> According to a 2003 study, construction contractors in New York with workplace law violations were more than five times more likely to have low performance than contractors without workplace law violations.<sup>28</sup> Similarly, a 2008 CAP Action report found that labor law violations by contracting companies were associated with wasteful practices.<sup>29</sup>

## State and Local Governments and Many Businesses Already Have Similar Policies

Not surprisingly, given the benefits to taxpayers, businesses and workers, many state and local government have already implemented policies similar to these federal actions. And the evidence from these policies shows that they work well and that opponents’ concerns are often overblown.

A number of states and local governments have policies similar to the Fair Pay and Safe Workplaces executive order and require companies to report on their workplace records. California<sup>30</sup>, Connecticut<sup>31</sup>, Illinois<sup>32</sup>, Massachusetts<sup>33</sup>, Minnesota<sup>34</sup>, and New York<sup>35</sup>—as well as the District of Columbia<sup>36</sup> and other major cities, such as Los Angeles<sup>37</sup> and New York City<sup>38</sup>— all have responsible bidder programs that use self-reporting to improve contractor quality by identifying companies with long track records of committing fraud, wasting taxpayer funds, and violating workplace laws.

Similarly, since Baltimore passed the country’s first living wage law for contractors in 1994, more than 100 municipalities and one state – Maryland – have instituted living wage laws that require contractors to pay a higher minimum wage.<sup>39</sup> Requirements to provide paid sick leave are not uncommon. Five states and many municipalities set paid sick leave standards for area employers.<sup>40</sup> Local governments have also used their contracting power to protect LGBT workers from discrimination. As of 2012, 61 localities prohibited local contractors from discriminating based on sexual orientation, with 42 also banning discrimination due to gender identity.<sup>41</sup>

The experience from state and local governments and private businesses with these kinds of policies has been quite positive.

After the implementation of San Francisco’s paid sick leave ordinance, a majority of employers – including a majority of firms with fewer than 10 employees – reported that they supported the ordinance.<sup>42</sup> Similarly, a study of New York City’s paid sick leave policy found that one and a half years after the law went into effect, 86 percent of employers supported the policy.<sup>43</sup> The study also found that 85 percent of employers reported that the new law had no effect on their overall business costs, and a two percent actually reported a decline in overall costs.<sup>44</sup> A study examining LGBT contracting policies found that that businesses were generally willing to adopt and comply with local ordinances to

protect LGBT workers, noting that “in almost all localities that responded, any resistance to these policies was minimal and short-lived.”<sup>45</sup>

A study of Maryland’s living wage conducted by the state’s Department of Legislative Services found that the number of bids actually increased after the state adopted the policy. The study found that the average number of bidder per contract increased from 3.7 to 4.7, a nearly 30 percent increase.<sup>46</sup> What’s more, of the contracting companies interviewed by the state of Maryland, nearly half indicated that the higher standards made them more likely to bid because it leveled the playing field.<sup>47</sup>

Similar results have been found by a number of studies of local efforts to raise contracting labor standards. According to a study of the Boston, Hartford and New Haven living wage laws, “competitive bidding remains strong under living wage ordinances, and ... such laws may even boost the number of bidders on city contracts.”<sup>48</sup> And statements from officials in San Francisco and Los Angeles indicate that their responsible contracting “prequalification” system has increased the pool of highly experienced firms willing to bid for its work and created an environment in which firms of similar caliber compete against one other for agency contracts.<sup>49</sup> As Russell Strazzella, a chief construction inspector for the Los Angeles Bureau of Contract Administration explained, with strong responsibility reviews, “you get a level playing field and a pool of good contractors.”

Private sector companies are also increasingly adopting similar policies to help their bottom line.

Companies that hire contractors in the private sector are finding that reviewing potential contractors’ workplace safety records is a cost effective way to ensure future compliance. Raytheon Company, for example, requires that companies it contracts with follow safety requirements and report any safety citations “from any U.S. Government, city, or local entity for the past ten years.”<sup>50</sup> So too do smaller companies. Family-owned construction contractor Lawrence Building Corp. requires bidders to report if they have had any Occupational Safety and Health Administration citations in the past 3 years.<sup>51</sup> And industry associations—such as the Construction Users Roundtable<sup>52</sup>, the American National Standards Institute<sup>53</sup>, and FM Global—recommend evaluating the safety record of companies bidding for contracts.<sup>54</sup>

Similarly, many companies already provide high wages, paid leave and respect LGBT rights. About 60 percent of U.S. workers currently have access to paid sick leave.<sup>55</sup> One in three small business owners have a policy in place protecting LGBT employees, with many noting that it improves their ability to attract and retain talented employees.<sup>56</sup> And of course, many companies pay their workers well above the minimum wage.

## Small Businesses Often Support These Policies

Finally, there are a number of small businesses that support these kinds of contracting policies. When low standards prevail in government contracting, many high-road companies stay away. But when higher standards become the norm, high road companies feel that the competition is fair and want to do business with the government.

As previously mentioned, the state of Maryland found that more companies wanted to do business with the state after they raised standards. According to the official state report on the impact of the living wage, several companies commented that in the future they will only bid on living wage contracts because of the leveling effect it has on competition. One contractor noted that her contract was the first state procurement for which her firm had submitted a bid. She explained that without strong labor standards, “the bids are a race to the bottom. That’s not the relationship that we want to have with our employees. [The living wage] puts all bidders on the same footing.”<sup>57</sup>

Raising the minimum wage is also popular among small business owners. As the president of the American Small Business Chamber of Commerce explained, the president’s executive order will “help level the playing field,” making sure that companies that pay their workers good wages are not undercut by low-road employers.<sup>58</sup> A poll from Small Business Majority finds that 60 percent of U.S. small businesses support raising the minimum wage to \$12 by 2020.<sup>59</sup> And leaked polling by Republican pollster Frank Luntz for the Chamber of Commerce found that 80 percent of business executives supported increasing the minimum wage in their state.<sup>60</sup> That same poll found that 73 percent of respondents supported requiring paid sick leave.<sup>61</sup>

A poll from Small Business Majority and CAP found that a majority of small business owners believe that owners should not be allowed to fire or refuse to hire LGBT employees based on their religious beliefs.<sup>62</sup> That same poll found roughly 80 percent of small business owners support a federal law to ban discrimination against LGBT employees in the workplace.<sup>63</sup>

In localities that have mandated paid sick leave, companies’ often find that the law is less disruptive than anticipated. As one San Francisco business owner explained about their city’s paid leave policy: “A lot of small business owners were really freaked out when this first went into effect, especially smaller retail stores and restaurants. I don’t hear too many griping about it any longer...It’s made a highly positive impact on staff morale. I think it’s a win/win situation for employees and employers.”<sup>64</sup> Experiences like these are why the Main Street Alliance, a national network of small business coalitions strongly supports the paid sick leave executive order.<sup>65</sup> As Main Street Alliance explained in their comments supporting the paid sick leave executive order: “Preventing the spread of illness in the workplace saves money; healthy employees are more productive. Further, providing earned sick time improves morale and keeps turnover low.”<sup>66</sup> Indeed, the Main Street Alliance found that 65 percent of the over 1,000 small businesses they questioned would support a national sick time standard.<sup>67</sup>

Similarly, many small businesses support responsible contractor policies. High-road businesses have reported that they are more likely to bid on contracts since Washington DC enacted its enhanced responsibility review process. Allen Sander, chief operating officer of Olympus Building Services Inc. wrote that:<sup>68</sup>

“Too often, we are forced to compete against companies that lower costs by short-changing their workers out of wages that are legally owed to them. The District of Columbia’s contractor responsibility requirements haven’t made the contracting review process too burdensome. And now we are more likely to bid on contracts because we know that we are not at a competitive disadvantage against law-breaking companies.”

That’s why many law-abiding businesses are supporting the Fair Pay and Safe Workplaces Executive Order: because they believe it will help them compete on an even playing field without representing an

undue burden on their company.<sup>69</sup> Indeed, in 2015 at a hearing in this very committee, construction contractor Bill Albanese stated, “It makes good business sense to vet the contractor before he gets the job. It’s common in our industry; we do it all the time, and we don’t see it as being a burden to any legitimate fair contractor that’s playing by the rules.”<sup>70</sup>

## Conclusion

President Obama’s contractor executive actions can help address significant problems in the economy, benefiting not only workers, but also businesses and taxpayers. The President’s actions often build upon similar policies at the state and local level that have proven quite successful. What’s more, many private companies already employ similar practices.

Not surprisingly, these executive orders draw a wide range of support. Organizations ranging from civil rights groups to good government groups, worker organizations, people with disabilities, veterans groups, women’s organizations, and a number of businesses have expressed support for many of these executive actions.<sup>71</sup> In short, these executive actions represent good policy.

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<sup>1</sup> Below is a partial list of supporters of some of the executive actions. For example, the NAACP, AFL-CIO, National Women’s Law Center, and National Disability Rights Network have supported Executive Order 13658 to increase the minimum wage for federal contractors. The Leadership Conference on Civil and Human Rights, NAACP, National Women’s Law Center, and National Employment Law Project, support Executive Order 13706 to extend paid sick leave to federal contractors. The Human Rights Campaign, Anti-Defamation League, American Civil Liberties Union, and NCAAP have supported an executive order to ban federal contractors from discriminating against LGBT employees. The Leadership Conference on Civil Rights the Project on Government Oversight, AARP, SEIU, the Consortium for Citizens with Disabilities, Paralyzed Veterans of America, and the Campaign for Quality Construction, a coalition of 20,000 employers, have supported the Fair Pay and Safe Workplaces Executive Order. NAACP, “NAACP Statement on Increasing the Minimum Wage of Employees of Federal Contractors,” available at <http://www.naacp.org/press/entry/naACP-statement-on-increasing-the-minimum-wage-of-employees-of-federal-cont> (last accessed September 2016); U.S. Department of Labor, “Establishing a Minimum Wage for Contractors: Final Rule,” available at <https://www.federalregister.gov/articles/2014/10/07/2014-23533/establishing-a-minimum-wage-for-contractors>; Leadership Conference on Civil and Human Rights, “Comments Re: Paid Sick Leave for Federal Contractors,” available at <http://www.civilrights.org/advocacy/letters/2016/proposed-rule-regarding-paid-sick-leave.html> (last accessed September 2016); Anti-Defamation League and others, “Comments on an executive order that would bar discrimination by federal contractors on the basis of sexual orientation and gender identity,” July 15, 2014, available at <http://www.adl.org/assets/pdf/civil-rights/religiousfreedom/relatedmats/lgbt-eo-sign-on-president-obama-letter-2014-07-15.pdf> (last accessed September 2016); Leadership Conference on Civil and Human Rights, “The Fair Pay and Safe Workplaces Executive Order,” available at <http://www.civilrights.org/advocacy/letters/2014/the-fair-pay-and-safe.html> (last accessed September 2016); Project on Government Overreach, “POGO Supports Government Access to Contractor Labor Violations to Improve Compliance, Avoid Bad Actors, and Level the Playing Field,” available at <http://www.pogo.org/our-work/letters/2015/pogo-supports-government-access.html> (last accessed September 2016); Consortium for Citizens with Disabilities, “Concerned About NDAA Language on VEVRAA and Section 503,” available at <http://www.c-c-d.org/fichiers/CCD-Concerned-About-NDAA-Language-on-VEVRAA-and-Section-503.pdf> (last accessed September 2016); Campaign for Quality Construction, “Comments on Executive Order 13673: Fair Pay and Safe Workplaces,” August 2015, available at <http://src.bna.com/vU> (last accessed September 2016).



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