

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

February 1, 2024

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Acting Secretary Su:

The House Committee on Small Business (the Committee) writes to inquire about the Department of Labor’s (DOL) recent rule change titled “Nondisplacement of Qualified Workers Under Service Contracts” which forces contractors and subcontractors engaged in federal service contracts to first offer employment to qualified workers previously employed under the predecessor contract.¹ The final rule imposes far-reaching compliance costs for small entities and could result in inefficiencies in the procurement process since the contractor cannot bring its own uniquely qualified employees to the project.² Furthermore, the rule disproportionately impacts small entities—up to 74 percent of impacted entities are small contractors and subcontractors—and might discourage these small businesses from federal contracts.³ It appears that the DOL may not have properly considered small entities during this rulemaking process.

According to the final rule, the contractor must offer a job not only to former service employees who appear on the certified list of all service employees on the predecessor contract, but also to employees who offer other “reliable” evidence that they are eligible to a job offer.⁴ The rule creates multiple time consuming and costly requirements, such as notices to affected workers and their representatives, possible location-continuity notices, and successor contractor’s mandatory offer letters.⁵ However, the DOL estimates that these requirements would take only 45 minutes. Furthermore, according to the DOL, it will take about 30 minutes for a human resources staff member to review this rule and about 30 minutes for contractors to incorporate the contract clause into their covered subcontracts.⁶ Further, though the DOL is issuing this rulemaking to implement the Executive Order 14055 and thus has limited instances

¹ Nondisplacement of Qualified Workers Under Service Contracts, 88 F.R. § 86736 (2023) (to be codified at 29 C.F.R. § 9).

² *Id.*; *DOL Issues Nondisplacement of Qualified Workers Under Service Contracts Final Rule, ABC Disappointed*, ASSOC. BUILDERS & CONTRACTORS (Dec. 18, 2023).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Nondisplacement of Qualified Workers Under Service Contracts, 88 F.R. § 86736 (2023) (to be codified at 29 C.F.R. § 9).

to use its own discretion, there are places where the DOL would have had the opportunity to lessen the impact on small businesses, but it chose not to do so.

It is important for agencies to examine small businesses interests—which make up 99.9 percent of all businesses in the United States—when passing any new rule. America’s small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than February 15, 2024:


1. Given that the information is not fully provided in the final rule, provide detailed justification for how the DOL came to the time estimates and why they were deemed sufficient.
2. How does the DOL address the concern that companies may be harmed by employees leaving their companies to work for the follow-on successors?
3. Provide evidence sufficient to show the reasoning behind the DOL’s decision to develop additional requirements beyond the requirements set forth in Executive Order 14055.
4. The rule has a short analysis of the benefits of the rule, however, there is very limited evidence to support these assertions. Provide any evidence relied upon by the DOL to conclude that the rule will result in more efficient processes.
5. Provide the DOL’s analysis behind the requirement that businesses must consider employees who are not on the list.

To schedule the delivery of your response or ask any related follow-up questions, please contact Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God We Trust,



Roger Williams
Chairman
Committee on Small Business

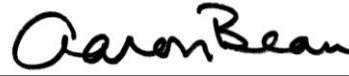


Blaine Luetkemeyer
Vice Chairman
Committee on Small Business

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Dan Meuser
Member
Committee on Small Business



Aaron Bean
Member
Committee on Small Business

cc: The Honorable Nydia M. Velasquez, Ranking Member
Committee on Small Business