

1310 L Street, NW, 7th Floor
Washington, DC 20005
cei.org

202 331 1010 *main*
202 331 0640 *fax*



May 17, 2022

Via Regulations.Gov

Hon. Marty Walsh
Secretary of Labor
United States Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Updating the Davis-Bacon and Related Acts Regulations

Docket Number: WHD-2022-0001 – March 18, 2022

Letter from the Competitive Enterprise Institute Opposing the Department of Labor’s Proposed Changes to the Davis-Bacon Act

On behalf of the Competitive Enterprise Institute (CEI), I respectfully submit the following comments in response to the Department of Labor (DOL) Wage and Hour Division’s Notice of Proposed Rulemaking on “Updating the Davis-Bacon and Related Acts Regulations.” Founded in 1984, the Competitive Enterprise Institute is a non-profit research and advocacy organization that focuses on regulatory policy from a pro-market perspective.

The Competitive Enterprise Institute opposes implementation of the Department of Labor’s proposed rule Regulatory Information Number (RIN) 1235-AA40. That is because the proposed rule would transform enforcement of the Davis Bacon Act in an unnecessary and ill-advised manner. The public interest would be better served if the Biden Administration were to reexamine the underlying need for Davis-Bacon Act in the first place, given that the law’s primary effect is to increase the cost of federal construction projects well beyond what they would be in a truly competitive open market bidding process.

However, because rewriting the Davis-Bacon Act is outside the scope of the Department of Labor’s authority, at the very least, any rules that implement Davis-Bacon should operate so as to minimize its negative effects. The Department of Labor’s proposed updates instead make an already dubious law even less practical. CEI urges DOL to reconsider the proposal.

The 30 Percent Standard Would Be Contrary to the Definition of “Prevailing” Wage

Specifically, CEI opposes the administration's proposal to revert to the pre-1983 "Three-Step" process to allow the wage rates of just 30 percent of the workers surveyed to satisfy the Davis-Bacon's Act's requirement for determining the prevailing local wage. The purpose of the law is to ensure that workers on federal contract projects are paid at the same rate as most others doing comparable work. Using a 30 percent standard does not accord to the concept of a "prevailing" local wage by any reasonable standard. It will impose an unnecessary burden on potential contractors, drive many of them away, and place a greater burden on taxpayers by increasing federal contracting costs.

The Merriam-Webster Dictionary defines "prevailing" as "accepted, used, or practiced by most people."¹ The words "most people" in this context can only mean "a majority." Therefore, 30 percent is not "prevailing" under any meaningful sense of the term. Even if 30 percent could be said to represent a significant plurality of the workers surveyed, that would still not "more accurately reflect modern labor force realities," as the administration claims. That fact that other workers earn less is highly significant, as it indicates that the labor market is more competitive in terms of wages.

The 30 Percent Standard Would Inflate Worker Wages, Creating a Burden on Taxpayers

Setting 30 percent as the standard would likely cause labor costs to rise by creating a tendency to focus on a smaller subsection of higher-earning workers, rather than looking at workers in the contractor industry as a whole. The Davis-Bacon Act's history illustrates this. As the administration notes, from 1935 to 1983, the government allowed a 30 percent standard to be used by the DOL in assessing the prevailing wage required by the law.

The Congressional Budget Office (CBO) estimated in 1983 that the Davis-Bacon Act's requirements added 3.7 percent to the overall cost of federal construction projects.² Davis-Bacon was revised the following year, when DOL adopted the current two-step process of using either the rates earned by an absolute majority of workers or a weighted average of the workers surveyed. CBO subsequently estimated that the Davis-Bacon Act's requirements added only 3.4 percent to the cost of federal construction projects, a reduction of about 8 percent in the overall cost of complying with the Act.³

In February, the Biden administration estimated that there was \$262 billion in federal construction contract spending in Fiscal Year 2021.⁴ Reverting to the Davis Bacon's Act's 30 percent standard would likely raise those costs by approximately \$20 billion, a substantial additional burden to taxpayers.

The proposal is also unnecessary because workers' wages are rising on their own. The Department of Labor's Bureau of Labor Statistics reported that compensation for private sector construction workers increased by 4 percent for the 12-month period ending in March 2022.⁵

If anything, wages are rising too quickly, which makes the timing of this proposal especially ill-advised. Economists fear that the economy in 2022 could be on the verge of a wage-price spiral: the cyclical phenomenon whereby rising wages cause a concurrent rise in consumer prices.⁶ That results in wages continually rising in an effort to keep pace with escalating prices, which in turn sparks yet more inflation.

Since the economic history shows that the 30 percent standard would artificially inflate worker wages, returning to it would likely contribute to the pressures that could create a wage-price spiral. The resulting inflation would erode gains from higher pay, and could leave workers in an economically worse

situation. This would not be confined to workers in fields related to federal contracting either, as the effects of a wage-price spiral would be felt across the entire economy.

Conclusion

The need for the Davis Bacon Act itself is dubious, and its principal impact is to inflate the cost of federal contracting and makes projects take longer. The Department of Labor itself acknowledges in its proposal that the law creates “costly delays” as agencies determine appropriate wage rates for the classifications. That raises questions about the efficacy and need for the law itself.

The history of the Act indicates that DOL’s proposal will directly increase the costs to taxpayers. Basic math indicates that it will result in less accurate results in determining the prevailing wage. The current economic climate suggests the proposal could exacerbate existing inflationary pressures, leaving all workers—not just those involved in federal contracting—worse off.

For the above reasons, CEI urges the Department of Labor to withdraw the 30 percent proposal and retain the Davis-Bacon Act’s current process for determining prevailing wages.

Respectfully submitted,

Sean Higgins
Research Fellow
Competitive Enterprise Institute

¹ “Prevailing,” Merriam-Webster Dictionary, accessed May 17, 2000, <https://www.merriam-webster.com/dictionary/prevail#:~:text=1%20%3A%20to%20succeed%20in%20convincing,Good%20will%20prevail%20over%20evil>.

² Congressional Budget Office, “Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget,” July 1983, https://www.cbo.gov/sites/default/files/98th-congress-1983-1984/reports/doc12-entire_0.pdf.

³ Congressional Budget Office, “Toll Funding of U.S. Highways,” December 1985, https://www.cbo.gov/sites/default/files/99th-congress-1985-1986/reports/1985_12_tollfinancing.pdf. [Note: No more recent data is available on the economic impact of the change to the 30% standard on Davis-Bacon compliance costs. 1983 was when the DOL last allowed using 30% of wages surveyed to determine prevailing wages and 1985 was when it was fully implemented.]

⁴ White House “FACT SHEET: President Biden Signs Executive Order to Boost Quality of Federal Construction Projects” February, 3, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/03/fact-sheet-president-biden-signs-executive-order-to-boost-quality-of-federal-construction-projects/>

⁵ Bureau of Labor Statistics, “Employment Cost Index March 2022,” USDL-22-0712, April 29, 2022 <https://www.bls.gov/news.release/pdf/eci.pdf>.

⁶ Jon Hilsenrath, “See Wall Street Journal ‘Echoes of the Wage-Price Spiral of the 1970s,’” Wall Street Journal, February 22, 2022, <https://www.wsj.com/articles/echoes-of-the-wage-price-spiral-of-the-1970s-11644575402> and Jeanna Smialek, “New York Times ‘Could Wages and Prices Spiral Upward in America?’” New York Times, February 17, 2022, <https://www.nytimes.com/2022/02/17/business/economy/wages-rise-labor-shortage.html>.