Respondent Statement to DOL Notice of Proposed Rulemaking on Updating Davis-Bacon and Related Acts Regulations (RIN 1235-AA40) [1]

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Summary

On page 15776 of RIN 1235-AA40 Updating Davis-Bacon and Related Acts Regulations, the U.S. Department of Labor (DOL) stated that it "welcomes comments and data on the benefits of this proposed rulemaking". To this purpose, the present document examines ample scientific evidence related to the effects of Davis-Bacon and Related Acts Regulations (DBRA) on several labor market outcomes for the construction industry as a whole, its agents, and the U.S. taxpayers. The evidence shows that DBRA (or prevailing wage laws [PWLs]) benefit covered workers with higher wages, benefits, and improved social outcomes. Contractors also gain from the protection of PWLs through increased worker productivity, reduced workplace injuries and disabilities, and lower worker absenteeism. Furthermore, as a result of PWLs, the industry benefits from increased and more efficient apprenticeship training without higher average construction costs. Thus, the DOL claims on the benefits of adopting the proposal (available on page 15776), specifically those related to improved wages, increased productivity, and reduced absenteeism, are sustained by scientific evidence.

[1] This study was conducted with support from the Mechanical Contractors Association of America (MCAA), the National Electrical Contractors Association (NECA), the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), the Signatory Wall and Ceiling Contractors Alliance (SWACCA), and The Association of Union Constructors (TAUC) through the Institute for Construction Economic Research, an independent, non-profit network of academic scholars. The study that follows is the independent work of the authors.

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Introduction

The Wage and Hour Division of the U.S. Department of Labor (DOL) has asked for public comment on various proposals to update and strengthen the regulations that implement the Davis-Bacon and related Acts (DBA).

The DBA establishes a wage floor (known as a "prevailing wage") that prevents contractors on federal and federally-assisted projects from driving down local area labor standards. Without the wage floor, cutthroat bidding practices result in a race to the bottom in wages and benefits for construction workers in an industry where wage theft is rampant. Previous administrations have chipped away at the regulatory system that is responsible for administrating the DBA which has resulted in lower wages for construction workers and unpoliced wage theft.

DOL's proposed rule will restore the DBA's promise to protect the hard-earned wages of construction workers and ensure that contractors compete for government contracts based on merit, rather than on who can exploit the cheapest labor. It will also restore the law to its intended purpose of ensuring prevailing wages reflect those wages actually paid to workers in the community and will protect construction workers from exploitation. In 1982, DOL changed the original regulatory definition of "prevailing wage" that had been in place almost 50 years. The result has been that some DBA rates are now based upon artificial weighted averages that do not resemble any actual wages paid to workers. Average rates paid to no one are not "prevailing" and watered-down wages not only hurt workers but make it difficult for high-road contractors to compete for government services.

DOL's proposal will restore the original method of determining prevailing wages (known as the "three-step process"), and ensure that DBA rates reflect the ***actual wages*** that most frequently appear in a county, rather than an arbitrary mathematically-contrived average.

Under the three-step process, the DOL calculates the prevailing wage for each job classification in a county, as follows:

1. The prevailing wage is the same wage paid to a majority of workers in a job classification.
2. If no single wage is paid to a majority of workers, then the wage rate becomes that which is paid to the greatest number of workers, provided it was paid to at least 30 percent of workers
3. If, however, no single wage is paid to at least 30% of workers, then the weighted average of all wages paid is deemed to be the prevailing wage.

The first two steps of the three-step process increase the likelihood that the prevailing wage will reflect the actual wages paid to workers in a county. This removes the need to calculate an artificial weighted average that does not reflect any specific wage that is paid to workers. The 1982 ruling distorted the definition of prevailing wage by eliminating the second step of the three-step process which resulted in the utilization of weighted averages that effectively reduced the prevailing wage rates.

The legislative history of the DBA and subsequent amendments show that Congress delegated to the Secretary of Labor the broadest definition imaginable to determine which rates prevail.[4] In fact, during a House floor debate, Rep. William Kopp (R-IA) emphasized that although "the term 'prevailing rate' has a vague and indefinite meaning…the power will be given…to the Secretary of Labor to determine what the prevailing rates are."[5]

In eliminating the three-step process in 1982, the DOL improperly relied on factors that Congress did not intend for it to consider: the maximization of resources at the expense of blue-collar workers in the construction industry. Legislative history shows that the Act's sole focus is on protecting construction workers from substandard wages.[6] In fact, during the 74th Congressional Hearing in 1931, Congressman Mead stated "[I]t is our chief concern to maintain the wages of our workers and to increase them wherever possible. . . for to fail in this regard would be…permitting a gross injustice to be perpetrated upon our citizens."[7]. Moreover, the preponderance of peer-reviewed studies conclude that prevailing wage laws have no significant effect on overall construction costs.

[4] Building Trades v. Donovan, 712 F.2d 611 D.C. Cir (1983).
[5] 74 Cong. H6516 (Feb. 28, 1931).
[6] See U.S. v. Binghamton Constr. Co., Inc., 347 U.S. 171 (1954).
[7] 71 Cong. Third Session. (Feb. 28, 1931).

In 2006, the definition of "prevailing wage" was further diminished when DOL's Administrative Review Board forced the agency to abandon its long-standing policy of treating variable rates paid to union-represented workers in the same classification as a single rate for purposes of calculating the prevailing wage[8]. This change has generated even more prevailing wage rates based on artificial weighted averages.

If adopted, DOL's proposal will rectify this problem by restoring its pre-2006 practice of treating negotiated wage differentials that form part of a worker's total compensation package as one single rate. In the construction industry, such privately-negotiated differentials include shift premiums for work performed during late or undesirable hours, hazard pay for workers exposed to extraordinary hazards on the job, call-back work, and zone pay for work in certain geographic locations. DOL's pre-2006 policy is consistent with the DBA's legislative history and DOL's longstanding preference for prevailing wages that reflect *actual* wages paid to workers instead of artificial averages. Moreover, the current policy has created a chilling effect with respect to negotiated wage differentials, resulting in artificially depressed wages. Contractors are reluctant to agree to such premiums out of concern that such differentials will produce Davis-Bacon rates based on artificial averages, making it difficult for them to compete for DBA projects. By restoring the pre-2006 policy, DOL will restore the economic freedom of workers and contractors to negotiate over wage differentials.

We support DOL's proposal to establish a process for regularly updating wage rates using DOL's Bureau of Labor Statistics' Employment Cost Index data. Although it is preferable for Davis-Bacon rates to reflect ***actual*** wages paid to workers in their communities, where a weighted average prevails it is critical that DOL does not allow those rates to become stagnant. Outdated wages not only undermine the purpose of the DBA to protect local area wages, but also discourage workers from entering the construction workforce. The ability to attract and recruit new entrants into the construction industry is especially important today given the unprecedented amount of infrastructure work that the Bipartisan Infrastructure Law will generate.[9] The construction industry will need to attract

[8] See Mistick Construction, ARB Case No. 04-051 (Mar. 31, 2006).
[9] Littlehale, Scott, "Rebuilding California: The Golden State's Housing Workforce Reckoning". SmartCitiesPrevail.org (2019). Available at: https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf

thousands of workers to meet the demand for labor, but it will not be able to do so by offering artificially low wages. In a 2020 survey of construction firms across the country, over 70% of respondents reported that they anticipate a labor shortage to be the biggest hurdle in coming years[10]. It is therefore critical that DOL update its current policy for determining wage rates to ensure that such rates keep up with the times.

DOL's proposal to strengthen enforcement on Davis-Bacon projects is long overdue. The construction industry is a sector in which wage and hour requirements are too often ignored. According to DOL data, the construction industry consistently ranks among the top three industries for noncompliance.[11] Because construction bids are typically awarded to the lowest bidder, cutthroat competition in the sector leads to razor thin profit margins and a race to the bottom in labor practices. Many contractors have responded to such competitive pressures by minimizing costs using illegal means. As a result, the construction industry is awash with illegal labor practices, including wage theft, the exploitation of undocumented workers, cash-only payments, employee misclassification, tax fraud and unsafe job sites. Studies show that by ignoring federal and state labor laws, low-road employers are able to reduce costs (although the effects of this on productivity are not considered).[12] As a result, the modus operandi in the construction sector has become one of brazen lawbreaking. Indeed, some observers suggest that certain sectors of the construction industry are akin to the "Wild West" in terms of lawbreaking.[13]

Enforcement efforts in the construction industry are further complicated by the fact that many aggrieved workers are undocumented immigrants. Undocumented workers are easy prey for low-road contractors because of their reluctance to report illegal activity to government officials for fear of deportation. While some may turn to local unions and other workers' rights organizations, many labor violations simply go unreported.

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[10] Associated General Contractors of America, 2020 Construction Outlook Survey. https://www.agc.org/sites/default/files/Files/Communications/2020_Outlook_Survey_National.pdf

[11] U.S. DOL Website, WHD by the Numbers 2021, https://www.dol.gov/agencies/whd/data/charts/low-wage-high-violation-industries.

[12] National Employment Law Project, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries* (July 22, 2015); Russell Ormiston, Dale Belman, Julie Brockman, & Matt Hinkel, Rebuilding Residential Construction, in Creating Good Jobs: An Industry-Based Strategy 75, 81 & 84 (Paul Osterman ed., MIT Press 2020).

[13]Tom Juravich, Essie Ablavsky, & Jake Williams, *The Epidemic of Wage Theft in Residential Construction in Massachusetts*, UMass-Amherst Labor Center Working Paper Series, (May 2015), https://www.umass.edu/lrrc/research/working-papers-series/wage-theft (last visited Apr. 15, 2022).

It is critically important that DOL implement front-end measures to help mitigate the risk of noncompliance and strengthen back-end enforcement. We fully support front-end enforcement measures, including DOL's proposal requiring that covered contracts include a provision expressly stating that independent contractors are also entitled to the prevailing wage, strengthened record-keeping requirements, and clarification that Davis-Bacon requirements apply by operation of law and are binding on contractors regardless of whether contracting agencies erroneously omit such contractual requirements.

DOL's back-end enforcement proposals are especially important, given that a number of courts have suggested that workers on Davis-Bacon jobs are not entitled to take their wage theft claims straight to court and that their only recourse is DOL's administrative complaint process. We therefore support DOL's proposal to protect workers from retaliation, strengthen procedures for cross-withholding to ensure recovery of back wages, and to adopt a strong and uniform standard for contractor debarment.

Wages

Prevailing wage laws (PWLs) help maintain living standards of blue-collar workers, ensuring that their hard, hazardous labor is rewarded with pay that keeps them in the middle-class. Enforcing the "three-step rule" will lead to sustained higher wage rates for construction workers. All of the evidence to date shows that wages in construction increase after enacting state PWLs, decrease following repeals, and these effects continue over time. Thus, it follows that an enforced DBRA such as the one proposed by the DOL will lead to higher wages.

Philips et al (1995) found that repeals in nine states in the 1970s and 1980s were associated annually with a lowering of construction wages.[14] Kessler and Katz (2001) compared relative wages for blue-collar construction and non-construction workers on repeal and non-repeal states using data from the Current Population Survey (CPS; for years 1977 to 1993) and the Decennial Census (for years 1970, 1980, and 1990). They found that repeals decrease the wages of construction workers by 2% to 4%, relative to non-construction workers. Furthermore, repeals hurt union workers by reducing their wage

[14] Philips, Mangum, Waitzman, and Yeagle, "Losing Ground: Lessons from the Repeal of Nine 'Little Davis-Bacon' Acts" (The University of Utah, Salt Lake City, February 1995).

premium over non-union workers by 5.9%, but this grows to a 9.8% after three years of the repeal and 11.2% following five or more years after repeal.[15] This is important since it is well-known within the industry that union workers are better trained, and higher union wages provides an incentive for a new generation of workers to begin a career in construction.

Clark (2005) surveyed primary contractors on 345 public construction projects in Kentucky that had activity in either 1999 or 2000 and obtained wages for the same individual workers under prevailing wage projects as well as under non-prevailing wage projects, finding that work covered by the legislation received an additional average remuneration of $3.68 or more per hour.[16] The greatest strength of Clark's piece is that he was able to control for differences in the skill levels of workers. However, as Duncan and Ormiston (2018) argue, Clark is unable to account for differences in intensity and productivity that may arise under the two different labor conditions.[17]

Using CPS data from 1979 to 2002, Harris, Mukhopadhyay, and Wiseman (2017) estimated a fixed-effects model for the mountain states in the US discovering that, on average, repeals of prevailing wage laws decreased wages by 4.4% in a state 10 years after the repeal.[18]

Benefits

The effect of prevailing wage laws on the living standards of construction workers is also channeled through legally required and non-legally required benefits. The "three-step" process will also lead to higher benefits for construction workers, and the literature supports the DOL's claim on page 15705 that "Overall under the estimate, the percentage of fringe benefit rates based on collective bargaining agreements would increase from 25

[15] Daniel P. Kessler and Lawrence F. Katz, "Prevailing Wage Laws and Construction Labor Markets," ILR Review 54, no. 2 (January 2001): 259–74, https://doi.org/10.1177/001979390105400204.
[16] Mike Clark, "The Effects of Prevailing Wage Laws: A Comparison of Individual Workers' Wages Earned on and off Prevailing Wage Construction Projects," Journal of Labor Research 26, no. 4 (2005): 725–37.
[17] Kevin Duncan and Russell Ormiston, "What Does the Research Tell Us about Prevailing Wage Laws?", Labor Studies Journal, April 6, 2018, 0160449X18766398, https://doi.org/10.1177/0160449X18766398.
[18] Thomas Russell Harris, Sankar Mukhopadhyay, and Nathan Wiseman, "An Application of Difference-in-Difference-Difference Model: Effects of Prevailing Wage Legislation in Mountain States of the United States," Public Works Management & Policy 22, no. 2 (April 1, 2017): 165–78, https://doi.org/10.1177/1087724X16665369.

percent to 34 percent. The percentage of fringe benefit rates not based on collective bargaining rates would increase from 3 percent to 7 percent"

Petersen (2000) used the Form 5500 Series, the Census of Construction Industries (CCI), the Current Employment (CES) Statistics, and the CPS, to estimate a fixed-effects model, finding that states with prevailing wage legislation had higher total compensation (12%), wages (11%), benefits (61%), and pension benefits (105%) when compared to states which repealed[19]. Price (2005) used CPS data from 1977 to 2002 and found that state prevailing wage laws repeals decreased the average hourly wages of construction workers as well as pension and health insurance provided by the employer.[20] Finally, Fenn et al (2018) used quinquennial data from the Economic Census of Construction from 1972 to 2012 to show that repeals led to a decrease in construction blue-collar income of 1.9% to 4.2%. They also found that repeals were associated with a decrease in average legally-required benefits of 3.8% to 10.1% for blue and white-collar workers, as well as a decrease in average voluntary benefits (including apprenticeship training) by 11.2% to 16.0%.[21]

Poverty reduction and other social outcomes.

Construction work requires enduring hazardous working conditions, exposure to chemicals, and working outside. According to the Occupational Safety & Health Administration, about 20% of worker fatalities in the private industry came from construction in 2019.[22] Unfortunately, being a hard-worker in a risky industry does not warrant that the worker's family will remain above poverty. Because of this, it is important to consider what the evidence shows could be the consequence of the increased wages and benefits for construction workers following the adoption of the DOL's proposal. The literature on this is quite clear: Higher construction wages and benefits translate to a

[19] Jeffrey S. Petersen, "Health Care and Pension Benefits for Construction Workers: The Role of Prevailing Wage Laws Health Care and Pension Benefits for Construction Workers," Industrial Relations: A Journal of Economy and Society 39, no. 2 (2000): 246–64, https://doi.org/10.1111/0019-8676.00165.
[20] Mark Price, "State Prevailing Wage Laws and Construction Labor Markets" (Doctoral dissertation, Salt Lake City, The University of Utah, 2005).
[21] Ari Fenn, Zhi Li, Gabriel Pleites, Chimedlkham Zorigtbaatar, and Peter Philips. "The Effect of Prevailing Wage Repeals on Construction Income and Benefits," Public Works Management & Policy 23, no. 4 (October 1, 2018): 346–64, https://doi.org/10.1177/1087724X18758340.
[22] See Occupational Safety & Health Administration (2022) Available at: https://www.osha.gov/data/commonstats

reduction in poverty, less dependence in public assistance, increased access to health insurance, greater chance of home ownership, and increased tax contributions.

Manzo, Lantsburg, and Duncan (2016) showed that the absence of prevailing wage statutes increases the probability that construction workers will earn incomes below the poverty level, will become more dependent on public assistance programs, and will not have health and insurance benefits.[23] In addition, prevailing wage statutes prevent leakages of construction funds, jobs, income, and spending in the local economy since it is known within the industry that projects covered by PWLs are more likely to be completed by local contractors and local workers.

Weakening or repealing prevailing wages does not reduce construction costs but increases poverty and decreases economic activity. The results of their study showed that, because of higher incomes, blue-collar workers in the 25 states with average or strong prevailing wage statues contribute $3,289 per year in federal income taxes; in those states with weak or no prevailing wage statute, they only contribute $1,964 in federal taxes. The authors also found that only 9.4% of construction workers in states with average/strong prevailing wage statutes earn incomes below the poverty level while 15.2% of these same workers in states with weak or no prevailing wage laws earn below poverty-level incomes. Manzo, Lantsburg and Duncan also found that only 5.1% of blue-collar construction workers receive aid from the Supplemental Nutrition Assistance Program (SNAP) in states with average/strong prevailing wage laws while 9.2% of construction workers in states with weak or no wage policies receive SNAP. Additionally, they found 12.2% of construction workers in states with at least average laws receive Earned Income Tax Credits (EITC) while 15.3% of counterparts in states with less than average prevailing wage laws qualify for these credits.

Opponents of prevailing wage laws believe that the policy leads to racial discrimination in the construction industry. However, this claim is unfounded. Belman (2005) using BLS data shows that presence of PWLs is not associated with the racial composition of workers in construction once racial composition of labor supply in

[23] Manzo, Landsberg, and Duncan. The Economic, Fiscal, and Social Impacts of State Prevailing Laws: Choosing the High Road and the Low Road in the Construction Industry. (2016)

construction are taken into account.[24] Using Census data, Azari-Rad and Philips (2003) have similar results, and affirm that the proportion of African Americans in construction across states is not driven on whether the state is covered by prevailing wage laws, but on racial differences across states. [25]

Prevailing wage statutes establish a wage floor for skilled construction labor on public construction projects. Prevailing wage statutes are linked to higher incomes and provide a ladder to the middle class. Manzo, Gigstad, and Bruno (2020) examined the link between prevailing wage statutes, housing wealth, and property tax revenues for these blue-collar construction workers and the communities they live in and to which they contribute.[26] Among their most important findings were (1) the average home value for construction workers in states with prevailing wage laws was $235,515 compared to only $166,200 in states without prevailing wage laws, (2) prevailing wage laws significantly impacts African-American construction workers by increasing their homeownership rate by 7.52 percent and increasing their housing wealth by 18.26 percent. Although the authors did not find a statistically significant on the probability that Latino construction workers own homes, the study found that prevailing wage laws are associated with an 18.8 percent increase in housing wealth for people of color.

Apprenticeship training

Construction, and particularly skilled trade workers who complete apprenticeship training programs, has historically offered a pathway into the middle class. Reed, et al. (2012) found that workers in a registered apprenticeship program earn, on average, $123,906 more in compensation over their career than nonparticipants. As construction

[24] Dale Belman, "Prevailing Wage Laws, Unions and Minority Employment in Construction.," in Azari-Rad, P. Philips and M. Prus, "The Economics of Prevailing Wage Laws" (Hampshire, England: Ashgate, 2005), 101–22.
[25] Hamid Azari-Rad and Peter Philips, "Race and Prevailing Wage Laws in the Construction Industry: Comment on Thieblot," Journal of Labor Research 24, no. 1 (Winter 2003): 161–168.
[26] Manzo IV, Gigstad, Jill and Robert Bruno. Prevailing Wages and the American Dream. Impacts on Homeownership, Housing Wealth, and Property Tax Revenues. Illinois Economic Policy Institute. https://faircontracting.org/wp-content/uploads/2020/02/ilepi-pmcr-prevailing-wage-the-american-dream-final-1.pdf

workers earn more income and are able to have home ownership, they contribute more in taxes that strengthen communities.[27]

As a result, the literature suggests that the DOL's proposal of only considering lower wage rates for apprentices if they are part of a "program registered by a recognized [State Apprenticeship Agency (SAA)]"[28] or else "be paid the full prevailing wage"[29], along with other proposed improvements, are likely to improve the enrolment of apprentices in construction and increase the efficiency of the training programs.

This is because the evidence shows that PWLs (and their considerations regarding apprentices) lead to these outcomes. Bilginsoy (2005) examined data from the Apprenticeship Information Management Systems (AIMS) that tracks apprentices since they begin training until they complete or cancel their apprenticeship. Comparing states with and without PWLs, Bilginsoy found that states with PWLs have more apprentices, even after considering size differences between states. Furthermore, apprenticeship enrolment increases even more in states with "stronger" PWLs. Bilginsoy also discovered that apprentices graduate more slowly in states without PWLs, suggesting that states with PWLs are more efficient at training workers, although it is unclear if this is because of the policy, or because there is an association between having PWLs and union density, and it is unions who are more efficient at training workers.[30]

Workplace injuries

With increased training, PWLs also reduce injury and disability rates in the construction industry of the states covered by the policy. In fostering the enrollment of workers in apprenticeship programs, the DOL's proposal will lead to reduced workplace injuries, disabilities and fatalities. The evidence shows that states covered by PWLs have lower injury and disability rates. Using state-level data from the 1976-99 Survey of Occupational Injuries and Illnesses from the BLS, and controlling for unemployment and

[27] Reed, Debbie, Albert Yung-Hsu Liu, Rebecca Kleinman, Annalisa Mastri, Davin Reed, Samina Sattar, and Jessica Ziegler. An effectiveness assessment and cost-benefit analysis of registered apprenticeship in 10 states. Mathematica Policy Research, 2012.
[28] Page 15737, brackets are ours.
[29] Page 15737.
[30] Cihan Bilginsoy, "Wage Regulation and Training: The Impact of State Prevailing Wage Laws on Apprenticeship," in Azari-Rad, P. Philips and M. Prus, "The Economics of Prevailing Wage Laws" (Hampshire, England: Ashgate, 2005), 149–68.

fixed state differences, Azari-Rad (2005) found that states with prevailing wage laws had lower injury rates for different severity measurements not encompassing fatalities[31]. Philips (2014) noted that construction workers in state without PWLs report 12% more disabilities than workers in states covered by PWLs.[32] Using state-level data from the BLS on injury rates of seven construction subindustries from 1976 to 2016, Li et al (2019) demonstrate that repealing state PWLs increase injury rates from 11.6% to 13.1% as the seriousness of the injury increases (measured by the injury rate), with disabilities increasing by up to 8.2%[33].

Worker Productivity

Higher income and benefits are linked with higher productivity and better paid workers do not necessarily mean more costly workers. Labor productivity is a critical component to the long run economic health of the United States. Given the size of the construction industry in the United States, productivity changes within the construction sector have large direct impacts on the national productivity and economic well-being of the United States. In December 2021, total construction spending accounted for 8.5% of the Real Gross Domestic Product in the United States.[34,35]

Critics offer a number of arguments against prevailing wage regulations. A crucial assumption of the critics of prevailing wage regulations is that prevailing wage laws increase the costs of public construction due the impact of higher wage rates on total construction costs. Implicit in that assumption is that productivity remains constant with lower wage payments to construction workers and coworkers with less safety training. Yet, the empirical evidence clearly suggests otherwise. Close examination of the wage component in overall costs of construction has shown that wages have had a decreasing

[31] Hamid Azari-Rad, "Prevailing Wage Laws and Injury Rates in Construction," in Azari-Rad, P. Philips and M. Prus, "The Economics of Prevailing Wage Laws" (Hampshire, England: Ashgate, 2005), 169–87.
[32] Peter Philips, "Kentucky's Prevailing Wage Law: An Economic Impact Analysis," January 2014, 57.
[33] Zhi Li, Gabriel Pleites, Chimedlkham Zorigtbaatar, Ari Fenn, and Peter Philips. "The Effect of Prevailing Wage Law Repeals and Enactments on Injuries and Disabilities in the Construction Industry," Public Works Management & Policy, January 13, 2019, 1087724X18822600, https://doi.org/10.1177/1087724X18822600.
[34]U.S. Census Bureau. Annual Rate for Total Construction, December 2021. Series Report – 202205011514. http://fred.stlouisfed.org/series/GDP1.
[35] St. Louis Federal Reserve Bank. http://fredhelp.stlouisfed.org. Real Gross Domestic Product – December, 3032. Chained 2012 Dollars.

impact on the total costs of construction. Labor costs account for far less than a third of total construction costs and that percent has been decreasing over time. According to the Census of Construction, labor costs including voluntary benefits and required fringe benefits paid to all employees in the construction sector were 26.2% of total costs in 1987, 25.5% in 2002, 24.6% in 2007, and 22.8% in 2012.

In a study of the productivity of unionized workers, Allen (1984) showed that unionized labor productivity is 17%-52% higher than non-union labor.[36] In addition, the higher wage rates that prevail may induce contractors to substitute capital and other inputs for labor; this would further mitigate the effect of higher labor costs on total construction costs. In a study of unionization and productivity in office buildings and school construction, Allen (1986) found that union productivity in office building projects was at least 30% higher than non-union productivity and from 0%-20% in school projects.[37] In a study by Belman (1992), the union productivity effect was between 17%-38%. In a report by Phillips (2015), he showed that states that have a prevailing wage law have 13%-15% higher value added per worker.

Analyzing of the North Central States region, Kelsay (2016) found that the eight states that have a prevailing wage law have 16.2% higher value added per worker than do the four non-prevailing wage states.[38] Phillips (2016) examined the productivity effect of better wages and benefits that are associated with common construction wage laws in Indiana by an examination of the difference in value added per worker compared to states without prevailing wage laws. The value added per worker is 14% higher than in states without a prevailing wage law. For public work projects, the value added per worker is 21% higher than in non-prevailing wage states.[39]

The Construction Labor Research Council has conducted two major studies on wages, productivity, and highway construction costs in the fifty states. The first study was an analysis of highway construction costs for the period 1980-1993 for all fifty states. The

[36] Allen, Steven G. "Unionized Construction Workers are More Productive." Quarterly Journal of Economics, Vol. 99, No. 2 (May, 19843) https://econpapers.repec.org/article/oupqjecon/v_3a99_3ay_3a1984_3ai_3a2_3ap_3a251-274.htm.
[37] Allen, Steven G. "Unionization and Productivity in Office Buildings and School Construction. Sage Journals. https://doi.org/10.1177/001979398603900202. 1986
[38] Kelsay, Michael. *The Adverse Impact of Real of Prevailing Wage in Missouri*. 2016.
[39] Philips, Peter. *Indiana's Common Construction Wage Law.* January 2015.

updated analysis was conducted for the period 1994-2002.[40] Critics of prevailing wage legislation assume that a reduction in wages in the construction sector has no impact on the number of hours of labor to be employed and that the productivity of labor is constant. However, empirical evidence clearly indicate that the payment of higher wages attracts a more highly skilled labor force that is more productive. The increase in productivity may more than offset the higher wage rates paid. Their report showed that higher wage rates resulted in lower highway costs per mile. For example, between 1980 and 1993, the study showed that the total cost per mile in high-wage-states was 11% lower than the per mile cost in low-wage states even though the wage rate in high-wage states was more than double the wage rate in the lower wage states ($18.39 versus $8.16). The study further showed that labor-hours per mile were 42% less in high-wage states, implying high-wage workers were more productive.[41]

All of this evidence points to the fact that the DOL's claim on page 15776 that "higher wages could lead to benefits such as … increased productivity" are true. All of the evidence above shows that in the construction industry, higher wages are associated with more productive workers.

Bid competition

One may make the argument that PWLs could affect construction costs if the advent of the legislation led to a decrease in the number of bidders or increased the project bids. However, this is not the case.

In an examination of 497 bids on highway construction projects in Colorado, Duncan (2015) found that the level of bid competition did not differ between federally funded projects and state-funded projects.[42] Onsarigo, Duncan, and Atalah (2020) examined the impact of federal prevailing wage laws on construction costs and bid

[40] Construction Labor Research Council. The Impact of Wages on Highway Construction Costs. 2004. http://niabuild.org/WageStudybooklet.pdf

[41] The low wage rate states were Alabama, Florida, Georgia, Texas, and Virginia. The high wage rate states were California, Illinois, Missouri, New York, Ohio, and Pennsylvania. All the low wage states, except Texas, never had a prevailing wage statute or repealed the statute prior to the data collection period from 1980 to 1993. All the high-wage-states have a prevailing wage statute.

[42] Kevin Duncan, "The Effect of Federal Davis-Bacon and Disadvantaged Business Enterprise Regulations on Highway Maintenance Costs," ILR Review 68, no. 1 (January 2015): 212–37, https://doi.org/10.1177/0019793914546304.

competition in Ohio finding that prevailing wage laws do not have a statistically significant impact on building costs or bid competition.[43] In another study, Kuo-Liang, Philips, and Kim (2012) found no evidence that prevailing wage policies impacted the number of bidders.[44]

Atalah (2013) examined whether there was a union vs. non-union difference, in Ohio.[45] The author examined 8,093 bids received from the years 2000-2007 for school construction, finding that the average bid per square feet for the non-union contractors ($20.49/SF) was greater than the bids for union contractors ($19.22/SF), concluding that there was no statistical difference between union and non-union bids after accounting for sample size.

In a study examining the impact of prevailing wage laws and bid competition, the authors found that prevailing wage laws have no statistically significant impact on bid competition (Onsarigo, Duncan and Atalah, 2020).[46] Manzo, et al. (2020) found that repeal of the prevailing wage law in Wisconsin did not increase competition on highway projects.[47] Prior to repeal, the authors found that the average number of bids per project was 3.48, with a decrease post-repeal to 2.92. Empirical evidence from Manzo and Kelsay (2019) examining construction costs in West Virginia suggests that repeal has led to more out-of-state securing work paid for by West Virginia taxpayers.[48] In the same study, the authors found that, after repeal of the state's prevailing wage law, seven of 22 school construction projects using state funding were awarded to union contractors and 15 were awarded to nonunion contractors. Of the known subcontractors on each of these projects,

[43] Lamackc Onsarigo, Kevin Duncan, and Alan Atalah. "The Effect if Prevailing Wage on Building Costs, Bid Competition, and Bidder Behavior: Evidence from Ohio School Construction". Construction Management and Economics, 2020, Vol 38, Issue 10: 917-933.
[44] Kim, Jae-Whan, Kuo-Liang, Change, and Peter Philips. The Effect of Prevailing Wage Regulations on Contractor Bid Participation and Behavior: A comparison of Palo Alto, California with Four Nearby Prevailing Wage Municipalities. Industrial Relations: A Journal of Economics and Society, Vol. 51, Issue 4, pp.87f4-891, 2012. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2148260
[45] Atalah, Alan. Impact of Prevailing Wages on the Costs of Various Construction Trades. Journal of Civil Engineering and Architecture. ISSN 1934-7349, USA, June 2013, Volume 7, No. 6 (Serial No. 671), pp. 670-676.
[46] Onsarigo, Lameck, Kevin Duncan, and Alan Atalah. The Effect of Prevailing Wages on Building Costs, Bid Competition, and Bidder Behavior: Evidence from Ohio School Construction. 2020.
[47] Manzo IV, Frank, Kevin Duncan, Jill Gigstad, and Nathaniel Goodell. The Effects of Repealing Prevailing Wage in Wisconsin. Impacts on Ten Construction Market. 2020.
[48] Kelsay, Michael P. and Frank Manzo IV. The Impact of Repealing West Virginia's Prevailing Law: Economic Effects on the Construction Industry and Fiscal Effects on School Construction Costs. (2019) https://faircontracting.org/wp-content/uploads/2019/05/THE-IMPACT-OF.pdf

only one out of 12 subcontractors on the union projects were from another state (8.3 percent). In comparison, seven of the 38 subcontractors on nonunion projects were from out of state (18.4 percent). If repeal of prevailing wage law increased nonunion contractors' market share, a consequence is that a larger share of out-of-state firms came to West Virginia, performing work on taxpayer-funded school projects, and taking their earnings back with them to their home states upon project completion. These findings are supported in a recent study by (Manzo & Duncan, 2018b) in Minnesota, where the authors found that local contractors accounted for a 10 percent higher market share when prevailing wages were included on public school construction projects[49].

Worker absenteeism

Higher wages are linked with lower absenteeism. The evidence is clear about the fact that as PWLs increase construction wages, these in turn lead to increases in productivity and also, reduced worker absenteeism and turnover, often resulting in lower construction costs. Thus, the DOL's claim on page 15776 that "increased productivity could occur through numerous channels, such as employee morale, level of effort, and reduced absenteeism" rings with the scientific findings.

Examining absenteeism in the Canadian industrial construction sector, Sichani, Lee and Fayek (2011) analyzed the adverse impact of absenteeism in the industrial construction sector.[50] They found that the adverse impacts of absenteeism include, but are not limited to, (1) an increase in manpower to meet the needs of the project, (2) the loss of revenue in not meeting construction project schedules, (3) inefficient use of capital investments. (4) interruption of workflow, and (5) increased overtime. There have been a number of empirical studies that have shown there is a negative impact on productivity as absenteeism increases. Studying wages and absences using the Quality of Employment Survey and the Current Population Survey, Allen (1984) found that a 10-percentage point increase in the absence rate was associated with a 2.1 percent decrease in the wage rate. In the production

[49] Frank Manzo and Kevin Duncan. An Examination of Minnesota's Prevailing Wage Law. Effects on Costs, Training, and Economic Development. July, 2018.

[50] Sichani, Mahdi Sichani, Lee, SangHyun, and Amish Robinson Fayek. Understanding Construction workforce absenteeism in Industrial Construction. Canadian Journal of Civil Engineering. 8 August 2011. https://doi.org/10.1139/l11-052

function used by Allen in his analysis, he found that the elasticity of the absence rate was -0.015. This implies that an increase in the absent rate from 10% to 20% decreased the output per hour by one percent.[51]

Construction costs[52]

Increased safety in the workplace, higher productivity, unchanged bid competition, and lower absenteeism, could justify higher wages and benefits. The evidence for the U.S. construction industry shows that the level of productivity augment following increases in the wages and benefits received by workers, and other effects from PWLs such as reduced injury rates and more efficient apprenticeship training could also lead to productivity improvements. Because of this, reducing the analysis of construction costs to a simple "wage before" vs. "wage now" differential is a critical flaw.

Thus, although the DOL proposal will likely increase wages and benefits for construction workers, they will not necessarily lead to higher construction costs after considering productivity increases. As mentioned by the literature on page 15777 of the proposal, and other empirical evidence, PWLs have no impact on total construction costs (Duncan & Ormiston, 2017; Mahalia, 2008, and Kelsay and Manzo, 2019).[53,54,55]

Kelsay and Manzo (2019) reviewed 28 research papers that analyzed the impact of prevailing wage laws on school construction; Of the 20 studies reviewed that utilized regression analysis or other advanced econometric techniques, 19 found no statistical impact of prevailing wage standards on school construction costs.[56] After an examination of peer-reviewed research, Kelsay and Manzo found that when wages in construction

[51] Allen, Steven G. How Much Does Absenteeism Cost? The Journal of Human Resources. Summer, 1983, Vol 18, No. 3 (Summer, 1983), pp. 379-393.
[52] Although we will only include the school construction sector in this section, throughout this document we have pointed out to other cost studies that are not about school construction.
[53] Duncan, Kevin and Russell Ormiston. Prevailing Wage Law: What Do We Know. Institute for Construction Economic Research. http://iceres.org/wp-content/uploads/2014/10/prevailing-wage-review-duncan-ormiston.pdf
[54] Mahalia, Nooshin. Prevailing Wages and Government Contracting Costs. Economic Policy Institute. Briefing Paper No. 215. July 2008. https://www.epi.org/publication/bp215/
[55] Kelsay, Michael P. and Frank Manzo IV. The Impact of Repealing West Virginia's Prevailing Law: Economic Effects on the Construction Industry and Fiscal Effects on School Construction Costs. https://faircontracting.org/wp-content/uploads/2019/05/THE-IMPACT-OF.pdf
[56] Studies that rely on the "wage differential" method—simply comparing prevailing wage rates to some arbitrary lower wage as a means of estimating the cost effects of the law--are not considered viable contributions to the literature given the flaws in the approach as identified by Duncan and Ormiston (2018).

increase, contractors respond by using more capital equipment and by hiring skilled workers in place of their less productive counterparts (Balistreri, et al, 2003; Blankenan & Cross, 2011).[57]

As examples of studies on school construction costs, Azari-Rad, Philips, and Prus (2002) used data from F.W. Dodge on accepted bid prices for new schools built in the US from 1991 to 1999 but did not find statistically significant cost effects.[58] In a follow up study in 2003, these authors find that differences in the strength of PWLs regulations across states are virtually insignificant on school construction costs. With the same database, but covering the years from 1993 to 2002, Kaboub and Kelsay (2014) compared mean square foot costs across different types of construction in states with and without PWLs, finding that there was no statistically significant difference in the mean square foot costs of construction.[59]

Using bid data in 14 Northern Indiana counties, Manzo and Duncan (2018a) found that repealing Indiana's prevailing wage law had no statistical impact on the average cost of public-school projects in Northern Indiana.[60] Duncan and Waddoups (2020) discovered that reducing Nevada's prevailing wage rates on education-related construction in 2015 to 90% of the applicable rate for other state-funded construction had no statistically significant effect on school construction costs. In fact, reduced bidding and contractor shifts to other projects led to a 20% increase of bid costs.[61]

Duncan (2018) examined side-by-side bids for school construction costs in Maryland, where contractors were asked to submit two bids for the same project: one with prevailing wage rates and one without prevailing wage rates. Utilizing fixed effects

[57] Balisteri, Edward J., McDaniel, Christine A, and Vivian Wong. An Estimation of US Industru-Level Capital-Labor Elasticities: Support for Cobb-Douglas. North American Journal of Economics and Finance. Volume 14, Issue 3, December 2003, pages 343-356. https://www.sciencedirect.com/science/article/abs/pii/S106294080300024X

[58] Hamid Azari-Rad, Peter Philips, and Mark Prus, "Making Hay When It Rains: The Effect Prevailing Wage Regulations, Scale Economies, Seasonal, Cyclical And Local Business Patterns Have On School Construction Costs," Journal of Education Finance 27, no. 4 (2002): 997–1012.

[59] Fadhel Kaboub and Michael Kelsay, "Do Prevailing Wage Laws Increase Total Construction Costs?," Review of Keynesian Economics 2, no. 2 (April 2014): 189–206, https://doi.org/10.4337/roke.2014.02.04.

[60] Frank Manzo and Kevin Duncan, "The Effects of Repealing Common Construction Wage in Indiana: Impacts on Ten Construction Market Outcomes," January 2018, http://www.faircontracting.org/wp-content/uploads/2018/03/mepi-csu-effects-of-repealing-common-construction-wage-in-indiana-final-1.pdf.

[61] Kevin Duncan and Jeffrey Waddoups, "Unintended Consequences of Nevada's Ninety-Percent Prevailing Wage Rule," Labor Studies Journal 45, no. 2 (2020): 166–85.

regression of an unbalanced panel of nonunion roofing contractors, Duncan found that the gap between the two bids decreased as the level of bid competition and accumulated contractor experience increased. Duncan also found that the apparent 10 percent cost inflation associated with prevailing wage rates disappeared entirely when bid behaviors and factors were accounted for.

Conclusion

We support the Proposed Rulemaking on Updating Davis-Bacon and Related Acts Regulations (RIN 1235-AA40) on the grounds that regulations such as the one proposed show positive effects for workers, improving their living conditions, increasing their access to fringe benefits, reducing their risk for injuries and disabilities in the workplace, and augmenting their productivity. We also support the proposed rulemaking based on the fact that prevailing wage policies motivate current construction workers to continue in the industry, and prospective construction workers are incentivized to enter the industry and access more efficient training without higher construction costs for the taxpayers through higher worker productivity, less cutthroat competition and detrimental competitive practices, as well as reduced absenteeism and employee turnover.