Insight

DOL's Davis-Bacon Final Rule Could Worsen Inflation

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Executive Summary

- The Department of Labor recently issued the final rule entitled "Updating the Davis-Bacon and Related Acts Regulations," which will revise the Davis-Bacon and Related Acts that apply to federal and federally subsidized construction projects.
- The two most significant changes in the final rule will implement the "30 percent rule" – which would increase prevailing wages for approximately 32 percent of construction workers – and revoke the separation of metropolitan and rural wage data.
- These revisions will increase the cost of construction by mandating higher wages and, thus, raise federal and private spending – worsening the already high inflationary pressures plaguing the economy.

Introduction

On August 8, 2023, the U.S. Department of Labor (DOL) issued the final rule entitled "Updating the Davis-Bacon and Related Acts Regulations," which will revise the Davis-Bacon Act and Related Acts (DBRA) that apply to federal and federally subsidized construction projects. This rule is scheduled for publication in the Federal Register on August 23, 2023, and will become effective 60 days following publication.

The final rule will make two significant changes to the methodology used to determine the prevailing wage for occupations in a given geographic area. The first revision is to re-implement the "30 percent rule," the second step in the original three-step process for determining prevailing wages. This rule holds that if 30 percent of the workforce in a given area is paid the same rate, that rate will be considered the prevailing wage. Re-implementing the 30 percent rule would increase prevailing wages for approximately 32 percent of construction workers. The second revision is to revoke the separation of metropolitan and rural wage data, which would likely overinflate rural wages.

The cost-increasing revisions under the final rule would likely result in the need for additional federal infrastructure spending due to the higher cost associated with federal construction projects. The higher wage requirements will also increase costs for private businesses working on such projects. These cost increases will worsen the already significant inflationary pressures plaguing the economy.

Background

The Davis-Bacon Act (DBA), passed in 1931, requires all laborers working on federal construction projects valued at $2,000 or more to be paid at the prevailing wage in the geographical area in which the work took place. The law's intent was to prevent companies from offering lower wages than those prevailing in the area of construction by hiring workers from outside of the local area.

From the bill's passage until the early 1980s, the prevailing wage was determined by a three-step process. The first step was to determine if more than 50 percent of the relevant trade workers in a given area were paid the same rate. If so, that rate was considered the prevailing wage under the DBA. If not, the second step was to determine if at least 30 percent of the workers in that area were paid the same rate. If this 30 percent rule was still not satisfied, the DBA wage would be set using a weighted-average rate of those workers in the area.

In 1982, the Reagan Administration's DOL changed the methodology by removing the 30 percent rule, asserting that it had inflationary effects on the economy, contributed to higher wage rates than were actually prevailing, and failed to consider the wages paid to up to 70 percent of affected workers.

Around the same time, the Reagan Administration's DOL implemented a rulemaking that excluded metropolitan county wage rates from consideration in determination of prevailing wage rates for rural counties. This separation of metropolitan and rural wage data was intended to avoid conflation of these prevailing rates that could inflate rural wages. (See additional information on the DBA here.)

Revisions Under the Final Rule

The Updating the Davis-Bacon and Related Acts Regulations final rule under the Biden Administration's DOL would increase wage rates on most DBA projects, contributing to already significant inflationary pressures.

30 Percent Rule

DOL's final rule will reinstate the 30 percent rule. The agency argues that using weighted averages rather than the 30 percent rule to determine prevailing wages depresses worker wage potential. It also disputes the argument that the 30 percent rule led to a disproportionate use of collectively bargained rates for DBA purposes.

DOL expects that re-introducing the 30 percent rule will reduce the use of average rates by roughly half – from 63 percent to 31 percent. This would set the wage determinations at 37 percent of prevailing wage rates based on the 50 percent rule, with the balance of 32 percent based on the 30 percent threshold, and 31 percent based on the weighted average.

Separation of Metropolitan and Rural Wage Data

The rulemaking will revoke a Reagan-era rule that separated metropolitan and rural wage data. DOL argues that previous separation of this wage data did not adequately account for the heterogeneity of commuting patterns and local labor markets between metropolitan and rural communities and therefore undercuts the prevailing wages for rural areas. The agency also argues that construction jobs tend to be cyclical in nature and that, once a project ends, laborers often follow employment opportunities in surrounding communities.

Implications of the Final Rule

The final rule will increase labor costs and, thus, federal spending associated with federal construction projects, worsening inflationary pressures on the economy.

DOL acknowledges that the rule may have this effect but concluded that "even if concerns about an inflationary effect on government contract costs or speculative effects on the national macro economy were used to justify eliminating the 30 percent rule, the Department does not believe such reasoning now provides either a factual or legal basis to maintain the current majority rule."

The agency cites in its final rulemaking multiple public comments responding to the March 2023 proposed DBA rule

, which argue that the revisions of the final rule will increase construction costs. One such comment references a 2018 study by the Congressional Budget Office that examined the cost impact of DBA more generally and estimated that federal spending could be reduced by $12 billion from 2019–2028 if DBA requirements were not applied to federally subsidized projects. Another comment referenced a 2008 study by the Beacon Hill Institute that found DBA wage determinations increase the cost of federal construction by nearly 10 percent. The cost-increasing revisions under the final rule would likely result in the need for even more federal infrastructure spending, a contributing factor to inflation.

The rulemaking will also raise costs for many firms through higher wage requirements. Reinstating the 30 percent rule will increase prevailing wages for up to 32 percent of construction workers whose wages were previously determined by a weighted average. In addition, revoking the separation of metropolitan and rural data sets will likely result in the adoption of higher prevailing wage rates – in line with metropolitan incomes – in rural communities. Higher rural wages for laborers would likely throw off the balance of rural economies and disincentivize those workers from taking jobs in metro areas, thus driving up the cost of metropolitan construction jobs even further to attract rural workers.

Conclusion

The Department of Labor’s final rule revising the provisions of the Davis-Bacon Act would unnecessarily raise federal and private construction costs, distort local market conditions, and worsen inflationary pressures. The Biden Administration’s decision to amend DBA regulations is likely to result in greater levels of federal spending in order to fund the same construction projects that, under previous rules, would have been significantly less expensive.