

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

September 28, 2023

The Honorable Julie A. Su  
Acting Secretary  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, D.C. 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 to Davis-Bacon Act and related acts. The final rule makes two major changes to the methodology used to determine the prevailing wage for construction workers employed in federal and federally subsidized construction projects.<sup>1</sup> The final rule implements the three-step method, known as "30 percent rule," to identify prevailing wage.<sup>2</sup> This method increases prevailing wages for approximately 32 percent of construction workers and also revokes the separation of metro and rural wage data.<sup>3</sup> It appears that the DOL may not have properly considered small entities during this rulemaking process.

The DOL estimates that the total number of potentially affected small businesses ranges from 101,700 to 127,800 out of the total number of 152,900 to 184,500 of affected firms.<sup>4</sup> This means the majority of the affected firms are small businesses. Besides the shocking 32 percent increase in prevailing wages, revoking the separation of metropolitan and rural data sets will improperly skew the data towards metropolitan cost of living prices rather than rural cost of living.<sup>5</sup> The direct employer costs for small businesses are estimated to be an additional \$39.3 million during the first year.<sup>6</sup> Additionally, the rule change strengthens enforcement of minimum wages, adds new anti-retaliation provisions, and reinforces cross-withholding procedure for recovering back wages.<sup>7</sup>

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 October 12, 2023:

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<sup>1</sup> Davis-Bacon and Related Acts, 88 FR 57526 (2023) (to be codified at 29 CFR 1, 3, and 5).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Isabella Hindley, *DOL's Davis-Bacon Final Rule Could Worsen Inflation*, AM. ACTION FORUM (Aug. 16, 2023).

<sup>6</sup> *Id.*

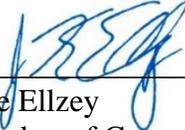
<sup>7</sup> *Id.*

1. Several commenters brought up the concern that the number of small businesses is underestimated, so the number of affected small businesses might be higher.<sup>8</sup> Did the DOL consider any other options that would lessen disproportionate impact on small businesses compared to other businesses?
2. The DOL has estimated regulatory familiarization costs to be \$25.5 million, based on the assumption that it will take 4 hours of a human resources staff member to review the rulemaking.<sup>9</sup> However, since small entities often have limited human resources or legal personnel on staff, how did the DOL reach the conclusion that it will only take four hours?
3. Where can small businesses go to examine your analysis on the impacts this rule will have on their operations?
4. The DOL acknowledges that one potential alternative to this rule would be to relax the requirements regarding recordkeeping.<sup>10</sup> The DOL has discretion not to require some of the records, which would lessen the burden on small entities.<sup>11</sup> Why did the DOL not utilize this discretion to help small businesses?
5. Revoking the separation of metropolitan and rural data sets will likely result in higher prevailing wage rates in rural communities. How was the cost of living in rural versus metropolitan communities factored into the decision to revoke this separation?

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,

  
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Roger Williams  
Chairman  
Committee on Small Business

  
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Jake Ellzey  
Member of Congress  
Committee on Small Business

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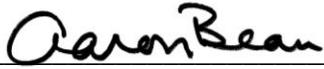
<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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A handwritten signature in black ink that reads "Aaron Bean". The signature is written in a cursive style with a horizontal line underneath it.

Aaron Bean  
Member of Congress  
Committee on Small Business

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