



September 20, 2023

The Honorable Bernie Sanders  
Chairman  
U.S. Senate Committee on Health,  
Education, Labor and Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Bill Cassidy  
Ranking Member  
U.S. Senate Committee on Health,  
Education, Labor and Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20510

Chairman Sanders, Ranking Member Cassidy and Members of the HELP Committee:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 22,000 member companies, I appreciate the opportunity to comment on the committee's markup of S. 2840, the Bipartisan Primary Care and Health Workforce Act. ABC members stand ready to support the construction, renovation and modernization of our nation's community health centers and health care facilities and recognize the important investment that S. 2840 makes to support health care access for all Americans.

The continued use of flawed policy on federal and federally assisted projects will continue to burden contractors and taxpayers with anti-competitive red tape and inflated construction costs, respectively. ABC appreciates the amendment offered by Ranking Member Cassidy that recognizes this impediment to completing needed construction projects and ensures that prevailing wages set by the U.S. Department of Labor's unscientific, untimely and broken methodology will not apply to construction projects funded by S. 2840.

The Congressional Budget Office estimates that repealing the 1930s-era Davis-Bacon Act would save the federal government \$24.3 billion in spending between 2023 and 2032.<sup>1</sup> A May 2022 study found that the Davis-Bacon Act costs taxpayers an extra \$21 billion a year, increases the price tag of construction projects by at least 7.2% and inflates construction workforce wages by 20.2% compared to local market averages if the DOL calculated prevailing wages using modern and scientific methodology via the U.S. Bureau of Labor Statistics.<sup>2</sup>

ABC and other construction industry and taxpayer-advocate stakeholders have long sought to rectify concerns with unclear prevailing wage regulations and the DOL's flawed wage determination process under the Davis-Bacon Act.<sup>3</sup> For decades, ABC,<sup>4</sup> the GAO<sup>5</sup> and the DOL Office of Inspector General<sup>6</sup> have been critical of the unscientific and unrepresentative survey process that results in a government-set prevailing wage that does not reflect a local prevailing rate in many markets. Unfortunately, the DOL failed to address regulatory uncertainty or correct its flawed wage determination process in its Aug. 23, 2023, final rule implementing radical changes to Davis-Bacon Act regulations,<sup>7</sup> which will affect prevailing wage rates and discourage small business participation on future federally funded construction projects.

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<sup>1</sup> <https://www.cbo.gov/budget-options/58674>

<sup>2</sup> <https://www.beaconhill.org/BHIStudies/2022/FINAL-BHI-DBA-2022-05-16.pdf>

<sup>3</sup> <https://www.heritage.org/jobs-and-labor/report/labor-department-can-create-jobs-calculating-davis-bacon-rates-more>

<sup>4</sup> <https://www.abc.org/News-Media/Newsline/dol-inspector-general-releases-report-on-davis-bacon-wage-audit>

<sup>5</sup> <https://www.gao.gov/assets/gao-11-152.pdf>

<sup>6</sup> <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf>

<sup>7</sup> <https://www.federalregister.gov/documents/2023/08/23/2023-17221/updating-the-davis-bacon-and-related-acts-regulations>

Most notably, the new rule implements more than 50 significant changes to DBA regulations, including:

- Weakening the definition of “prevailing wage” to a wage paid to at least 30% of workers in a locality, down from 50%.
- Revoking a Reagan-era rule separating metropolitan and rural wage data, ensuring any future wage calculation will overcount inflated urban wages as prevailing in smaller rural areas.
- Undermining the procedural due process rights of contractors and increase administrative costs by expanding DOL’s debarment powers.
- Imposing DBRA obligations through “operation of law,” regardless of contract language, deterring many small and minority-owned construction firms without administrative resources from bidding on contracts.
- Expanding the term “site of work” to include material suppliers and off-site construction in certain circumstances. This contradicts the plain language of DBRA and legally binding D.C. Circuit precedent.

As discussed in ABC’s analysis,<sup>8</sup> the final rule fails to fix the DOL’s unscientific and inefficient wage determination process, increases regulatory burdens on small businesses, new industries and additional public works projects and rescinds modest pro-taxpayer reforms that have been in place for nearly 40 years.

The final rule also makes it much more likely that the DOL will adopt union wage scales as the prevailing wage at a greater frequency than in current practice, which already adopts union wage scales at improbable rates considering just 11.7%<sup>9</sup> of the construction industry is unionized.

The construction industry continues to face challenging economic conditions including high materials costs, delayed supply chains and a skilled labor shortage of more than half a million in 2023.<sup>10</sup> The onerous new requirements and artificial inflation of construction costs imposed by this new Davis-Bacon rule will only exacerbate these headwinds and undermine taxpayer investments in much-needed infrastructure.

ABC appreciates Ranking Member Cassidy’s efforts to highlight the burden that this new DOL rule and Davis-Bacon requirements place on our nation’s contractors and thanks the committee for its consideration of ABC’s concerns.

Sincerely,



Kristen Swearingen  
Vice President, Legislative & Political Affairs

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<sup>8</sup> <https://www.abc.org/News-Media/Newsline/dol-increases-costs-for-contractors-and-taxpayers-with-davis-bacon-final-rule>

<sup>9</sup> <https://www.bls.gov/news.release/union2.t03.htm>

<sup>10</sup> <https://www.abc.org/News-Media/News-Releases/construction-workforce-shortage-tops-half-a-million-in-2023-says-abc>