



Regulatory Roundup

Changes to Davis-Bacon: What We **Do** and **Don't** Know

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By now, you may have heard that changes are coming to the regulations concerning the Davis-Bacon Act (DBA)—the prevailing wage law for direct federal and federal-aid projects. First proposed by the U.S. Department of Labor (DOL) Aug. 8, the new regulations take effect Oct. 23, and the Federal Highway Administration (FHWA) has already published a new Form 1273. Contractors with direct federal and federal-aid projects are affected.

ARTBA submitted comments to DOL prior to the rule's finalization, pointing out that the draft language was too broad and overly burdensome. DOL's final product was somewhat responsive to ARTBA's concerns and specifically referenced our comments. But it also left a number of gray areas. For example:

1. The initial proposal expanded DBA coverage beyond active project sites. The new rule narrows the scope of coverage to locations where a significant portion of work is performed, and where the site is established for the exclusive performance of the covered contract.
2. ARTBA raised concerns that the prevailing wages for the time that off-site drivers and materials providers spend on the worksite would be subject to DBA wages even if that time was negligible. In the final rule, DOL allows for "de minimis" exceptions and/or exemptions but as several members have alluded to, there are gray areas and questions about when these exemptions apply.
3. The initial proposal redefined the term "area" for highway construction projects. DOL now allows multi-county wage data to be averaged together to calculate the prevailing wage. This means that rural and urban wage data may be combined.
4. The final rule clarifies the difference between licensed surveyors that are salaried professionals—and not subject to the DBA—and workers surveying on sites. The rule allows for "learned professional" exemptions but the definition of learned professional may vary depending on state licensing requirements.

Additional provisions of note:

1. DOL will be permitted to issue wage determinations when survey data is insufficient. As a result, wage determinations can be based on factors that may not paint the entire wage picture. DOL can use any number of sources for determining the wage including existing project labor agreements.
2. The prevailing wage will now be set if it's paid to at least 30 percent of surveyed workers in a given area. This is a change from the current 50 percent and may result in wage rate increases.
3. Prime contractors are responsible for DBA compliance by subcontractors and will be liable if subcontractors don't pay a prevailing wage.

A recently-recorded ARTBA webinar with DOL and labor law experts is available in the members' only section of **artba.org** to help our members better understand these changes and how they will impact their firms.

As the new DBA rule moves to the implementation stage, ARTBA remains in close contact with both DOL and FHWA. If you encounter questions working with your state DOT on this, please contact me so we can seek any answers or clarifications you may need.

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