

# Quick Guide:

## USDOL's Proposed Changes to DBRA



This guide is meant to highlight some of the more prominent changes proposed by the USDOL earlier this year to the Davis-Bacon and Related Acts (DBRA). As of now, these changes are **not final** due to the ongoing commentary process. Below is a rundown of how these proposed changes could affect the DBRA legislation – if they are eventually adopted by the U.S. Department of Labor (USDOL).

### Proposed Change 1: Provide a mechanism that will regularly update non-collectively bargained prevailing wage rates.



Non-collectively bargained prevailing wage rates are pulled from the traditional method of USDOL survey data. However, collectively bargained rates are sent in to the USDOL by their respective union as they are updated. Because of this, the non-collectively bargained wage rates on a wage determination are updated less frequently than the “union” rates. This proposed change will aim to create a level playing field so that regardless of whether a wage determination has collectively bargained rates, or not, the entire wage determination will be updated on a more unified schedule – to get rid of this discrepancy.

### Proposed Change 2: Return to the definition of “prevailing wage” that was used from 1935 to 1983. And return to the “three-step” method (also known as the 30% rule) to determine prevailing rates.

The three-step method is as follows:

- 1 Use the wage rate paid to a majority of the workers.
- 2 If no such majority wage exists, use the wage paid to the largest number of workers, as long as it was paid to at least 30% of the workers (30% rule).
- 3 If the 30% rule could not be met, then use the weighted average rate (the largest proportion of rates in the set).

In 1983, the second step was removed from the above process. This proposed change would bring it back and restore the three-step method in its entirety – as seen above.

### Proposed Change 3: Give the U.S. Department of Labor (USDOL) the authority to adopt state or local prevailing wages.



As it currently stands now, the USDOL has to frequently duplicate the work of a state or local agency by performing a wage survey that has already been performed to create a state or local prevailing wage. This proposed change would eliminate this extra work and save the USDOL time and money, by allowing them to utilize wage surveys already created by other agencies.

*This content is intended for general information only and should not be construed as legal, tax, or financial advice. Furthermore, the information is based upon rules in place at the time of publication. | 11-22*

# USDOL's Proposed Changes to DBRA: Continued

## Proposed Change 4: Reduce the need for conformance requests by adding frequently requested conformances to wage determinations.

Today, most wage determinations are released missing craft classifications that tend to be common among many construction projects. For instance, there are many highway determinations in open-shop areas that do not list carpenters in the wage determination. This ends up creating many conformance requests. This proposed change would update wage determinations to include the most commonly requested craft classifications via SF-1444's – regardless of construction type – to cut down on the number of conformances that must be filed.

## Proposed Change 5: Update federal legislation to better reflect modern construction practices.



These proposed changes would simply improve the language of the DBRA to reflect modern construction practices and get rid of some outdated language.

This would mean:

- Including all counties where work will happen into the contract
- Adding language to require agencies to include the applicable wage determination in any task order, purchase order, or other “different” type of contract model
- Adding new language to 29 CFR Part 5 (Labor Standards Act) to reference the Wage & Hour Division (WHD) website
- Modernizing the definition of the term “building” or “work” to include:
  - Solar panels
  - Wind turbines
  - Broadband installation
  - Installation of electric car chargers

## Proposed Change 6: Clarify definitions within the Davis-Bacon and Related Acts code.

Again, these proposed changes would simply improve the language of the DBRA to reflect modern construction practices and address the lack of clarity of certain definitions.

Some of these updates would include:

- Revising the definition of “area” to include projects that span multiple counties – specifically highway projects.
- Clarifying the language to state that if funding was not included in the contract language at the beginning of a project, but added later by a change order, then the applicable wage determination must be incorporated retroactively to the date of the contract award. Note: This could require restitution to be paid going back as far as the beginning of the project.

*This content is intended for general information only and should not be construed as legal, tax, or financial advice. Furthermore, the information is based upon rules in place at the time of publication. | 11-22*

# USDOL's Proposed Changes to DBRA: Continued

## Proposed Change 6 (continued): Clarify definitions within the Davis-Bacon and Related Acts code.

- Updating the definition of “Site of Work” to:
  - Include secondary construction worksites
  - Clarify that flaggers engaged in traffic control and related activities near or virtually adjacent to the site of work are covered by prevailing wage
  - Add a new definition for material supplier: it must meet three criteria in order to not be considered covered at site of work:
    - Only delivering or picking up materials
    - Supplying materials to the general public
    - The employer’s facility is not set-up specifically to support project site of work
- Truck driver’s coverage updates are:
  - Any transportation taking place within the site of work
  - Any transportation from a secondary site to a primary site
  - Any transportation from a nearby dedicated support site to a primary or secondary site
  - Making the driver’s (or driver’s assistants) time spent on the site of work that is not de minimis considered covered work
    - This could include loading, unloading, and any waiting time
  - Any transportation related activities, on or off site, by any laborer or mechanic

## Proposed Change 7: Strengthen worker protections and enforcement of laws.



These proposed changes would simply improve the language of the DBRA to strengthen worker protections and enforcement of laws by new contract clause requirements.

Some of the most notable changes could include:

- Adding contract clauses to require interest to be paid on restitution
- Adding new language to state that contractors who fail to provide documentation during a Wage & Hour Division audit or investigation may not be allowed to do so under additional administrative proceedings
- Adding new language to clarify that prime contractors can get debarred for the actions of their subcontractors
- Adding new verbiage stating that contract clauses and wage determinations may simply be included by reference only (such as a hyperlink) – in order to streamline the process
- Adding new language on how contractors may claim a fringe benefit credit for the costs of an apprenticeship program
- Adding the ability for a prime contractor be compensated for any increases in wages resulting from a post-award incorporation of a contract clause or wage determination, with the possibility to be retroactive to the beginning of the project

*This content is intended for general information only and should not be construed as legal, tax, or financial advice. Furthermore, the information is based upon rules in place at the time of publication. | 11-22*