



441 G St. N.W.  
Washington, DC 20548

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December 27, 2023

The Honorable Bernard Sanders  
Chairman  
The Honorable Bill Cassidy  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Virginia Foxx  
Chairwoman  
The Honorable Bobby Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

Subject: *Department of Labor: Nondisplacement of Qualified Workers Under Service Contracts*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor (DOL) entitled “Nondisplacement of Qualified Workers Under Service Contracts” (RIN: 1235-AA42). We received the rule on December 14, 2023. It was published in the *Federal Register* as a final rule on December 14, 2023. 88 Fed. Reg. 86736. The effective date is February 12, 2024.

According to DOL, the final rule establishes standards and procedures for implementing and enforcing the nondisplacement protections of Executive Order 14055. DOL stated the Order requires that when a service contract with the federal government expires and a follow-on contract is awarded for the same or similar services, the federal government’s procurement interests in economy and efficiency are best served when the successor contractor or subcontractor hires the predecessor’s employees, thus avoiding displacement of these employees. The Order, DOL explained, provides that contractors and subcontractors performing on covered federal service contracts must in good faith offer service employees employed under the predecessor contract a right of first refusal of employment.

Enclosed is our assessment of DOL’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Robert Waterman  
Senior Policy Advisor  
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF LABOR  
ENTITLED  
“NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS”  
(RIN: 1235-AA42)

(i) Cost-benefit analysis

The Department of Labor (DOL) estimated the costs of the final rule in the first year consists of \$11,124,370 in rule familiarization costs, \$35,471,685 in implementation costs (\$7,518,342 for contractors and \$27,953,342 for contracting agencies), and \$6,014,674 in recordkeeping costs. Therefore, DOL estimated total first year costs are \$52,610,728. DOL estimated costs in the following years consist only of implementation and recordkeeping costs and amount to \$41,486,358. DOL finally estimated the average annualized costs over 10 years are \$43 million using a 7 percent discount rate, and \$52 million using a 3 percent discount rate.

DOL also estimated the final rule reduces disruption in the delivery of services during the period of transition between contractors, maintains physical and information security, and provides the federal government with the benefits of an experienced and well-trained workforce that is familiar with the federal government’s personnel, facilities, and requirements. DOL further estimated the final rule will lead to cost savings for new contractors and the federal government, because of the extensive security clearance process required to enter federal buildings.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

DOL prepared a Final Regulatory Flexibility Analysis. In the Analysis, DOL discussed: (1) the need for, and objectives of, the final rule; (2) a summary of comments submitted in response to the initial analysis; (3) estimated the number of small businesses affected by the final rule; (4) a summary of compliance requirements of the rule, including reporting and recordkeeping requirements; (5) a discussion of the impact of the final rule on small business firms; and (6) a discussion of regulatory alternatives and the impact on small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

DOL determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million (adjusted annually for inflation) or more.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and

Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

In its submission to us, DOL did not discuss the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On July 15, 2022, DOL published a proposed rule. 87 Fed. Reg. 42552. DOL received 33 timely comments from a variety of interested stakeholders, such as labor organizations, nonprofit organizations, contractors, and contractor associations. DOL responded to the comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

DOL determined the final rule contained information collection requirements (ICRs) subject to PRA. One of the ICRs is entitled “Employment Information Form” associated with OMB Control Number 1235-0021. This ICR has an estimated annual burden of 9,003 hours. The other ICR is entitled “Nondisplacement of Qualified Workers Under Service Contracts” associated with OMB Control Number 1235-0033. This ICR has an estimated annual burden of 205.232 hours and annual costs of \$13,307,567.

Statutory authorization for the rule

DOL promulgated the final rule pursuant to section 301 of title 5, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOL stated OMB reviewed the final rule and determined it was significant.

Executive Order No. 13132 (Federalism)

DOL stated the final rule does not have federalism implications. DOL determined the final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.