



Karen Ward
Director, Office of Private Sector Exchange Designation, Bureau of Educational and Cultural
Affairs
U.S. Department of State
2200 C Street NW
Washington, DC 20522-0505

Submitted via www.regulations.gov
Docket Number: DOS-2023-0025
RIN 1400-AF12

Re: Exchange Visitor Program–Au Pairs

Dear Ms. Ward:

I, Alex Nowrasteh, vice president for economic and social policy studies at the Cato Institute, submit the following comments on the above-referenced Department of State (DoS) Notice of Proposed Rulemaking (NPRM) seeking to amend existing Exchange Visitor Program regulations governing the au pair category, as published in the Federal Register on October 30, 2023.

The Cato Institute is a nonpartisan public policy research organization. For more than four decades, Cato Institute scholars have published original research on immigration policy and proposed policy changes based on its findings that immigrants and migrants significantly benefit the United States. DoS should seek to streamline, reduce the program's cost, and expand American and au pair participation in the Exchange Visitor Program for au pairs.

Unfortunately, the NPRM would complicate, increase the cost, and reduce American and au pair participation in the Exchange Visitor Program for au pairs. The NPRM proposes a massive increase in the cost to American families that host au pairs by mandating higher wages while inappropriately neglecting to increase the deduction for lodging and meal expenses. Indeed, the regulatory revisions proposed by the DoS are internally inconsistent and violate Department of Labor (DoL) Fair Labor Standard Act (FLSA) guidance. The NPRM will substantially burden American host families and reduce the number of au pairs in the United States, decreasing cultural exchange and undermining the stated reason for the existence of the au pair program. DoS should completely rescind this misguided proposed rule.

DoS should also request additional analysis by the Office of Information and Regulatory Affairs to include the additional costs of a large reduction in the number of au pairs following the modelled implementation of this rule to include the findings from recent empirical research. DoS should also analyze IRS data or conduct a survey of au pair compensation to gather a more accurate picture of au pair compensation to either calibrate wage changes in its proposed rule and to see whether it is even necessary to accomplish its goal. At a minimum, DoS should apply the same standards that it proposes to adjust upward the minimum stipend to also adjust the deductions that host families can make for lodging and meals.

Below are my comments and suggestions for improving the NPRM.



Sincerely,

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NPRM Proposal: 62.31(n) – Au Pair Stipend and Deductions for Lodging and Meals

The current compensation mechanism for au pairs mandates a minimum stipend of the federal minimum wage minus a 40 percent credit for the cost of lodging and meals. The DoS proposes replacing the current compensation mechanism with the maximum of the state, local, or federal minimum wage that is then adjusted according to a multitiered table whereby the maximum wage is paid.¹ Additionally, DoS proposes mandating time and a half for hours worked above 40 per week.²

The DoS proposed rule argues that a defect of the current compensation mechanism for determining the minimum weekly stipend for au pairs is the “geographically-specific variation in the costs of living.”³ The DoS additionally justifies this action by arguing that the “federal minimum wage no longer provides sufficient compensation to au pairs placed in geographic areas in which growing number of states and localities have adopted state or local minimum wages that exceed the federal minimum wage.” An additional justification is that “The Department of State proposes to adopt a national four-tiered wage formula to provide consistency in au pair compensation across geographic regions and in areas with similar local economic conditions.”

In addition to the compensation component of the au pair program that DoS proposes to reform is another component that allows host families to deduct 40 percent of the current stipend to reimburse host families for the cost of lodging and meals. Under current rules, that works out to \$130.50 per week, which can be deducted from the minimum weekly salary of \$326.25, resulting in a minimum weekly take-home pay of \$195.75. The lodging credit is based on FLSA standards of 7.5 hours per week X \$7.25 (the federal minimum wage). The meals credit is based on the following formula: \$7.25 (the federal minimum wage) X 37.5 percent for breakfast + \$7.25 X 50 percent for lunch + \$7.25 X 62.5 percent for dinner. The sum of the products is multiplied by 7 to determine the weekly deduction for meals. The DoS does not propose increasing the monetary cost of lodging and meals that host families can deduct from au pair compensation. In other words, the DoS proposes increasing the wages paid to au pairs but does not adjust the lodging and meals deduction formula to include those new higher minimum wages.

As a condition of hosting au pairs, host families must provide lodging and meals. Section 3(m) of the FLSA governs the deductions.⁴ Section 3(m) provides that the “‘Wage’ paid to any employee includes the *reasonable cost*, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees . . . [emphasis added]” under



certain provisions. The reasonable cost is defined by 29 C.F.R. § 531.3(a) and explained by DoL guidance, but “[T]here is no formula for determining the appropriate fraction of the mortgage, rental, or other costs of the lodging that applies to a particular employee; instead, the employer or WHI must take into account the specific circumstances.”⁵ The reasonable cost is not “more than the actual cost to the employer of board, lodging, or other facilities customarily further by him to his employees,” which sets an upper bound on the deduction.⁶ Other cultural exchange program visitors on the J-1 visa have higher dollar amounts deducted for housing, so the DoS has significant discretion in determining reasonable costs.⁷ As an example of an appropriate calculation of the cost of lodging, the DoL guidance gives the following example that is identical to au pair living arrangements:

For example, in a large house in which a family of five and a home care worker reside, the amount might most appropriately be determined based on the ratio of the square footage of the employee’s bedroom to the square footage of the entire house.⁸

The DoS should adopt the DoL standards and use its example for recalculating the lodging deduction under the proposed rule.

The DoS should also update the deduction for meals to account for the higher minimum wages that will be paid to au pairs under DoS’s proposed rule. It is inexplicable that the DoS would promulgate a rule that would increase the minimum wage for au pairs and not update the deduction formula for meals for host families by including that new minimum wage in the formula. The DoS copies the DoL regulation’s formula for calculating the wage deduction.⁹

The DoS should update the meal deduction formula in the proposed rule to include the minimum wage that au pairs will be paid.

Alternative Means to Deduct Lodging and Meals to Account for Higher Host Family Costs

The DoS is correct that the cost of living has increased, but so too has the cost of supplying lodging and meals to au pairs. If the DoS decides to increase wages for au pairs to compensate them for the higher cost of living, it must also adjust the deduction for the increase in the cost of lodging and meals. Below, I propose three Modified Rules to increase lodging and meal deductions consistent with DoL guidance and regulations while maintaining DoS’s proposed wage increase.¹⁰

Modified Rule 1

Table 1 models the new compensation for au pairs in Fairfax County, Virginia, under the current rule, the DoS proposed rule, and the alternative Modified Rule 1 created here. The Modified Rule 1 for Table 1 keeps the DoS proposed wage change and makes two additional changes: 1) Replaces the lodging deduction with an alternative formula based on the example from the DoL for calculating the lodging deduction and 2) Updates the meals deduction formula by using the \$12.00 minimum wage as the basis for that formula.¹¹



For the lodging deduction example in Modified Rule 1, the au pair is assumed to have a 600 square-foot bedroom in a house that is 3,000 square feet and that has a monthly mortgage payment of \$2,500. The calculation is share of square feet for the au pair’s lodging multiplied by the monthly mortgage payment, which is $0.2 \times \$2,500 = \500 , divided by 4 for the weekly stipend calculation that yields a quotient of \$125. The meals deduction example in Modified Rule 1 also replaces the federal minimum wage of \$7.25 that persists in the DoS proposed rule with the new minimum wage of \$12.00 that would be paid by a host family in Fairfax County, Virginia. The updated meals formula for Modified Rule 1 yields a weekly cost of \$126 ($(0.375 \times \$12 \text{ for breakfast} + 0.5 \times \$12 \text{ for lunch} + 0.625 \times \$12 \text{ for dinner}) \times 7 = \126).¹² The weekly lodging/meals deduction thus rises to \$251 (\$125 lodging + \$126 meals) from the proposed \$130.50 (\$54.38 lodging + \$76.13 meals).

According to Table 1, the DoS’s proposed rule would increase the weekly compensation for au pairs by 78.54 percent, or 100.86 percent per hour. The hourly and total compensation difference results from fewer hours worked, which is part of my model's assumption that there’s no time and a half. If there were time and a half, the difference would be even larger. Under Modified Rule 1 as proposed here, based on DoL guidance and updating the minimum wage rate for meal deductions, the total deduction for lodging and meals would rise to \$251, resulting in a 17 percent higher weekly stipend and 31.6 percent higher per hour wage relative to current regulations.

Table 1
Compensation and Lodging/Meal Deduction for Fairfax County, Virginia Under the Current Rule, DoS Proposed Rule, and Modified Rule 1

	Current Rule	Proposed Rule	Modified Rule 1
Hourly Wage	\$7.25	\$12.00	\$12.00
Hours	45	40	40
Weekly Wage Before Deduction	\$326.25	\$480.00	\$480.00
Lodging/Meal Deduction	\$130.50	\$130.50	\$251.00
Total Weekly Wage After Deduction	\$195.75	\$349.50	\$229.00
Per Hour Wage Paid by Host	\$4.35	\$8.74	\$5.73

Source: Author’s Calculations.

Modified Rule 2

Table 2 models the new compensation for au pairs in Fairfax County, Virginia, under the current rule, the DoS proposed rule, and the alternative Modified Rule 2 created here. The Modified Rule 2 presented in Table 2 keeps the DoS proposed wage change and makes two additional changes: 1) Updates the DoL lodging deduction formula by simply substituting what the minimum wage would be in Fairfax, County, Virginia under the DoS proposed rule into the lodging calculation (changing it from $\$7.25 \times 7.5 = \54.38 to $\$12.00 \times 7.5 = 90$), and 2) Updates the meals deduction formula by using the \$12.00 minimum wage as the basis for that formula.¹³ Relative to the current regulation, Modified Rule 2 would increase weekly compensation by 34.9 percent and per hour compensation by 51.7 percent relative to the current rules.



Table 2
 Compensation and Lodging/Meal Deduction for Fairfax County, Virginia Under the Current Rule, DoS Proposed Rule, and Modified Rule 2

	Current Rule	Proposed Rule	Modified Rule 2
Hourly Wage	\$7.25	\$12.00	\$12.00
Hours	45	40	40
Weekly Wage Before Deduction	\$326.25	\$480.00	\$480.00
Lodging/Meal Deduction	\$130.50	\$130.50	\$216.00
Total Weekly Wage After Deduction	\$195.75	\$349.50	\$264.00
Per Hour Wage Paid by Host	\$4.35	\$8.74	\$6.60

Source: Author's Calculations.

Modified Rule 3

Table 3 models alternative Modified Rule 3 that uses a slightly different lodging deduction formula based on the average gross monthly rent for Fairfax County, Virginia, for 2-4 unit structures, divided by 8 to approximate the weekly rent for each roommate, plus the same FLSA meal formula from Modified Rule 1 and Modified Rule 2.¹⁴ A living situation with roommates whereby each lodger has their own bedroom and they share other spaces is similar to au pair living conditions. Under the alternative Modified Rule 3, the meal deduction remains the same at \$126 per week and the lodging deduction increases to \$164.96 per week, for a total of \$290.96. Modified Rule 3 would reduce the weekly stipend for au pairs by 3.4 percent, but the hourly stipend would increase by 8.6 percent due to the decreased work hours.

Table 3
 Compensation and Lodging/Meal Deduction for Fairfax County, Virginia Under the Current Rule, DoS Proposed Rule, and Modified Rule 3

	Current Rule	Proposed Rule	Modified Rule 3
Hourly Wage	\$7.25	\$12.00	\$12.00
Hours	45	40	40
Weekly Wage Before Deduction	\$326.25	\$480.00	\$480.00
Lodging/Meal Deduction	\$130.50	\$130.50	\$290.96
Total Weekly Wage After Deduction	\$195.75	\$349.50	\$189.04
Per Hour Wage Paid by Host	\$4.35	\$8.74	\$4.73

Sources: American Community Survey and Author's Calculations.

Evaluating the Modified Rule Proposals

Modified Rules 1, 2, and 3 would be improvements over the current DoS proposal that does not compensate host families for the increased cost of supplying meals and lodging to au pairs. Modified Rule 1 and Modified Rule 2 are most consistent with the spirit, intent, and rules of the



current au pair program and DoL guidance. Modified Rule 3 is also consistent with the spirit and intent of the rules, but with a lodging deduction formula that is more speculative.

The DoS should amend its proposed rule to increase the deduction for lodging and meals to be consistent with Modified Rule 1 or Modified Rule 2 as presented above. The DoS should also consider Modified Rule 3 as presented above.

The Multitiered System for Determining Au Pair Wages

The DoS proposes setting au pair wages by first identifying the highest of local, state, or federal minimum wages in the location where the au pair is residing. Then the au pair would receive a higher amount in a four-tiered structure based on their minimum wage. In some cases, the wage paid to the au pair would be identical to the minimum wage on the state or local level, but in most cases the wage would be higher.¹⁵ The tiered system adds a level of complexity that is unnecessary and burdensome to host families and au pair agencies. The DoS could accomplish its same goal of increasing au pair compensation in virtually all cases by merely mandating that the minimum wage paid before deductions is the highest of the local, state, or federal minimum wages. In 2022, only 21.46 percent of new au pairs went to states where the federal minimum wage was the highest. Defaulting to a simpler rule that only mandates that the highest of local, state, or federal minimum wages would apply would be simpler and more consistent with wages that geographically diverse governments in localities and states think is an appropriate minimum wage.

The DoS should remove the multitiered compensation system. Ideally, the DoS should keep the current compensation system in place. If DoS decides that it must update the compensation system, it should require that au pairs be paid the maximum of local, state, or federal minimum wages in their jurisdiction of residence without reference to the multitiered compensation system by DoS.

Survey Actual Au Pair Compensation

Many host families compensate au pairs above their minimum mandated wages. Anecdotally, au pairs have significant bargaining power to demand higher wages and many host families compensate them accordingly. However, the DoS does not have data on actual au pair compensation. As a result, minimum au pair stipends give the most negative possible impression of au pair compensation. The DoS should conduct a survey or use IRS data to estimate actual au pair compensation to see whether its proposed rule is even necessary. If au pair wages are already rising, this proposed rule is superfluous.

The DoS should analyze IRS data or conduct a survey of au pair compensation to gather a more accurate picture of au pair compensation to either calibrate wage changes in its proposed rule and to see whether it is even necessary to accomplish its goal.

Geographic Burden of Higher Compensation Under Proposed Rule



The geographic dispersion of new au pairs in 2022 shows that 78.54 percent of them reside in states with a minimum wage higher than the federal minimum wage. Table 4 shows the estimated cost of weekly compensation under DoS’s proposed rule using 2022 minimum wage data by state under different assumptions of hours worked that included the DoS’s proposed \$130.50 deduction. Assuming 45 hours per week of work, the DoS’s proposed rule would increase the minimum weekly cost of an au pair most in the District of Columbia by 270.09 percent and 197.3 percent in Arizona, California, Colorado, Connecticut, Maine, Maryland, New Jersey, New York, Oregon, Rhode Island, South Dakota, Vermont, and Washington. Other states will be similarly affected but to different degrees (Table 4). About over 55 percent of all new au pairs who came to the United States in 2022 went to those fourteen states or jurisdictions. Massachusetts is excluded by a version of the proposed DoS rule is already largely in effect there due to a court ruling.¹⁶

Table 4
Estimated New Au Pair Compensation by State, Based on 2022 Minimum Wages

State	Proposed Weekly Compensation, 40 Hours	Proposed Per Hour Compensation, 40 Hours	Proposed Weekly Compensation, 45 Hours	Proposed Per Hour Compensation, 45 Hours
Alabama	\$189.46	\$4.74	\$249.46	\$5.54
Alaska	\$349.46	\$8.74	\$439.46	\$9.77
Arizona	\$469.46	\$11.74	\$581.96	\$12.93
Arkansas	\$349.46	\$8.74	\$439.46	\$9.77
California	\$469.46	\$11.74	\$581.96	\$12.93
Colorado	\$469.46	\$11.74	\$581.96	\$12.93
Connecticut	\$469.46	\$11.74	\$581.96	\$12.93
Delaware	\$349.46	\$8.74	\$439.46	\$9.77
District Of Columbia	\$589.46	\$14.74	\$724.46	\$16.10
Florida	\$349.46	\$8.74	\$439.46	\$9.77
Georgia	\$189.46	\$4.74	\$249.46	\$5.54
Hawaii	\$349.46	\$8.74	\$439.46	\$9.77
Idaho	\$189.46	\$4.74	\$249.46	\$5.54
Illinois	\$349.46	\$8.74	\$439.46	\$9.77
Indiana	\$189.46	\$4.74	\$249.46	\$5.54
Iowa	\$189.46	\$4.74	\$249.46	\$5.54
Kansas	\$189.46	\$4.74	\$249.46	\$5.54
Kentucky	\$189.46	\$4.74	\$249.46	\$5.54
Louisiana	\$189.46	\$4.74	\$249.46	\$5.54
Maine	\$469.46	\$11.74	\$581.96	\$12.93
Maryland	\$469.46	\$11.74	\$581.96	\$12.93
Massachusetts	\$469.46	\$11.74	\$581.96	\$12.93
Michigan	\$349.46	\$8.74	\$439.46	\$9.77
Minnesota	\$349.46	\$8.74	\$439.46	\$9.77



Mississippi	\$189.46	\$4.74	\$249.46	\$5.54
Missouri	\$349.46	\$8.74	\$439.46	\$9.77
Montana	\$349.46	\$8.74	\$439.46	\$9.77
Nebraska	\$349.46	\$8.74	\$439.46	\$9.77
Nevada	\$349.46	\$8.74	\$439.46	\$9.77
New Hampshire	\$189.46	\$4.74	\$249.46	\$5.54
New Jersey	\$469.46	\$11.74	\$581.96	\$12.93
New Mexico	\$349.46	\$8.74	\$439.46	\$9.77
New York	\$469.46	\$11.74	\$581.96	\$12.93
North Carolina	\$189.46	\$4.74	\$249.46	\$5.54
North Dakota	\$189.46	\$4.74	\$249.46	\$5.54
Ohio	\$349.46	\$8.74	\$439.46	\$9.77
Oklahoma	\$189.46	\$4.74	\$249.46	\$5.54
Oregon	\$469.46	\$11.74	\$581.96	\$12.93
Pennsylvania	\$189.46	\$4.74	\$249.46	\$5.54
Rhode Island	\$469.46	\$11.74	\$581.96	\$12.93
South Carolina	\$189.46	\$4.74	\$249.46	\$5.54
South Dakota	\$469.46	\$11.74	\$581.96	\$12.93
Tennessee	\$189.46	\$4.74	\$249.46	\$5.54
Texas	\$189.46	\$4.74	\$249.46	\$5.54
Utah	\$189.46	\$4.74	\$249.46	\$5.54
Vermont	\$469.46	\$11.74	\$581.96	\$12.93
Virginia	\$349.46	\$8.74	\$439.46	\$9.77
Washington	\$469.46	\$11.74	\$581.96	\$12.93
West Virginia	\$349.46	\$8.74	\$439.46	\$9.77
Wisconsin	\$189.46	\$4.74	\$249.46	\$5.54
Wyoming	\$189.46	\$4.74	\$249.46	\$5.54

Source: Author's Calculations.

*The rule is already in effect in Massachusetts.

The DoS's Proposed Rule Will Greatly Reduce the Number of Au Pairs

The DoS stated that Congress' intent was that cultural exchange visitors on the au pair program would "increase mutual understanding between the people of the United States and the people of other countries."¹⁷ DoS also wrote that "While the au pair program provides many families with high-quality childcare, the program specializes in providing an enriching cultural experience for the children and for a young person from another country."¹⁸ DoS proposed rule would undermine that goal by significantly reducing the number of au pairs in the United States, thus decreasing the opportunities to "increase mutual understanding between the people of the United States and the people of other countries" and the quantity of "enriching cultural experience" by



reducing American demand for au pairs and reducing the supply of au pairs. Cultural understanding and experiences would decrease with the number of au pairs.

We know that a higher au pair stipend would reduce the number of au pairs based on experience with Massachusetts. On December 2, 2019, the U.S. Court of Appeals for the First Circuit ruled that au pairs in Massachusetts must be paid the state's considerably higher minimum wage effective January 1, 2020.¹⁹ The result of the higher wage was a significant absolute decline in the number of new au pairs coming to Massachusetts and a relative decline compared to other states. A working paper on this topic by the author of this comment used the synthetic control method to causally identify how the increase in au pair minimum wages in Massachusetts affected the flow of new au pairs to that state. The following is text adapted from that working paper:

We exploit a U.S. federal court ruling that extended the minimum wage to a previously excluded class of workers to test how a large exogenous increase in wage floors affected new hires of the specifically affected class in Massachusetts. The court's mandated 170 percent increase in the minimum wage is the largest one-time increase in the minimum wage in the United States that we are aware of. Consistent with the standard model of a competitive labor market, the court's mandate reduced the number of new au pairs hired in Massachusetts by nearly 18 percent each year compared to states unaffected by the court's ruling. Our results suggest an elasticity of au pair employment of -0.103 in response to the minimum wage increase.

We assess the causal effect of the exogenously imposed minimum wage mandate on au pairs using the SCM. Figure 1 shows that the number of new au pair hires in Massachusetts and Synthetic Massachusetts track each other closely in the pre-treatment period with a root mean square prediction error (RMSPE)¹ of 98. The posttreatment RMSPE is 700. The posttreatment gap between Massachusetts and Synthetic Massachusetts is 189 in 2020, 554 in 2021, and 821 in 2022. Table 5 compares the values of the key predictors for Massachusetts and Synthetic Massachusetts before 2020. For all predictors, Massachusetts and its synthetic counterpart have values that are almost identical. The *V* matrix predictor weights are: logged state population (0.029); logged state minimum wages (0.16); logged private weekly earnings (0.378); employment to population ratio (0.011); the child dependency ratio comparing the number of children ages 14 and under relative to adults ages 15 to 64 (0.423); the share of childcare workers relative to the total employment (0.000); and the share of a state's population residing in urban areas (0.000). Table 6 reports that the donor states of New York, District of Columbia, and Vermont produce the best Synthetic Massachusetts, in that order. All other donor states have a weight of zero and so are excluded from Table 6.

Figure 1
Path Plot of New Au Pairs Hired During 2016-2022: Massachusetts versus Synthetic Massachusetts

¹ RMSPE is the recommended measure for the "goodness of fit" between Real Massachusetts and Synthetic Massachusetts in the pre-treatment period. With some caveats, a lower RMSPE means a better fit.

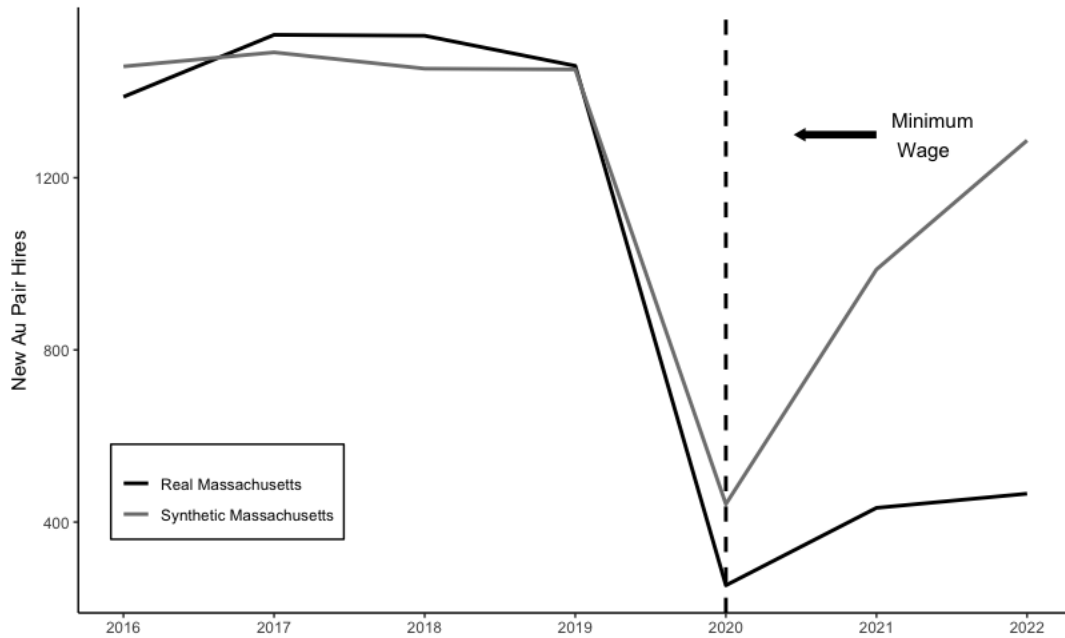


Table 5
Au Pair Hires Before Massachusetts Minimum Wage Mandate

Variables	Real Massachusetts	Synthetic Massachusetts
Child Care % of Workforce	0.004	0.004
% College Plus	44.454	43.746
Child Dependency Ratio	0.250	0.252
Emp. to Population Ratio	62.769	60.557
Log Priv. Weekly Wages	7.054	7.055
Log State Minimum Wage	2.620	2.606
Log State Population	15.750	15.201
% Living in Urban Areas	91.970	81.487

Table 6
State Weights in Synthetic Massachusetts

State	Weight
District Of Columbia	0.272
New York	0.529
Vermont	0.198



The posttreatment gap between Massachusetts and Synthetic Massachusetts in Figure 1 measures the reduction in the number of new au pairs hired after the court mandated the minimum wage. The court’s mandate to apply the Massachusetts minimum wages to au pairs created larger and larger reductions in the number of new au pairs hired in the posttreatment period relative to Synthetic Massachusetts. Over the entire posttreatment period, there were an average of 521 new au pairs not hired in Massachusetts compared to its synthetic counterpart per year. This averages around 18 percent fewer new au pairs per year.

Following Dube and Zipperer (2015), we compute an implied elasticity of new au pairs to the minimum wage increase.²⁰ This involves calculating the average percent difference in new au pairs between Real and Synthetic Massachusetts for the post treatment period $t = t', \dots, T$ as follows

$$\hat{\beta} = \frac{\frac{1}{T} \sum_{t=t'}^T Y_{1,t} - \sum_m w_m Y_{m,t}}{\frac{1}{T} \sum_{t=t'}^T \sum_m w_m Y_{m,t}}.$$

The elasticity is therefore the ratio of the average difference to the percent change in the minimum wage

$$\varepsilon = \frac{\hat{\beta}}{\Delta MW}.$$

We therefore arrive at an implied elasticity of -0.103 for new au pairs to the minimum wage increase, computed as

$$\hat{\varepsilon} = \frac{-0.176}{\frac{528.23}{195.75} - 1} \approx -0.103.$$

A. Placebo Tests

We performed three placebo tests to further validate our results: “in-space”, “in-time,” and “leave-one-out.” The in-space placebo test creates synthetic versions of every state in our donor pool.²¹ This test means checks whether the result for Massachusetts is unusually large compared to the in-space placebo test results for every other state in the donor pool. Additionally, this also allows for the calculation of *p-values* to measure the share of countries with results as large as the result for the treated unit.²²²

Figure 2 shows the results of the in-space placebo test where the gap for Massachusetts is the largest in the posttreatment period. The *p-value* of estimating a gap of Massachusetts’ magnitude is thus $1/51 = 0.0196$, which is the smallest possible *p-value* with this sample size. The *p-value* of Massachusetts’ divergence in Figure 2 is 0.0196 over the entire posttreatment period, which is significant at the 5 percent level and the lowest possible *p-value* for this sample size. Figure 3 shows the ratio of the posttreatment RMSPE to the pretreatment RMSPE for each state in the donor pool from the in-space placebo test. Examining this ratio is a better inferential method

² The *p-value* is the probability of obtaining results at least as extreme as the observed results, assuming that the null hypothesis is correct. A smaller *p-value* means that there is stronger evidence in favor of the alternative hypothesis.

with the assumption that a large ratio is indicative of a true causal effect from treatment.²³ Massachusetts has the highest post-RMSPE/pre-RMSPE ratio with Colorado just behind. However, Colorado's high ratio is from a posttreatment divergence in the opposite direction as Massachusetts's divergence. The number of new au pairs hired in Colorado recovered to 95 percent of its pre-pandemic high in 2021 and then rose 43 percent above its previous pre-pandemic high in 2022.

Figure 2
In-Space Placebo Test: Au Pair New Hires per 1000 New Hires Gap in Massachusetts and Placebo Gaps for All Control States

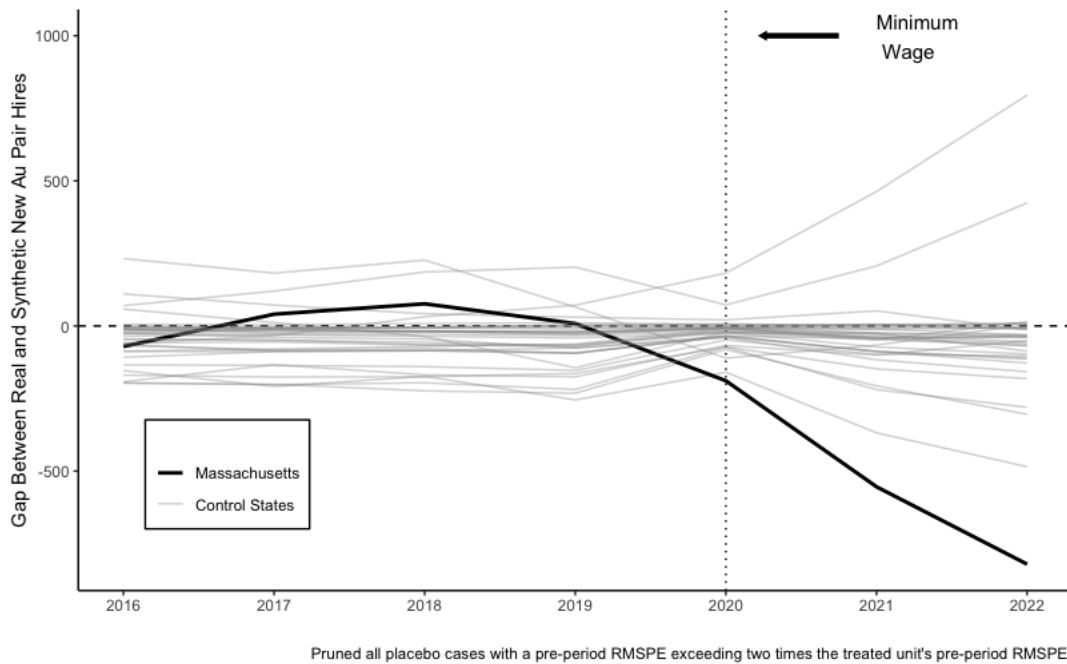
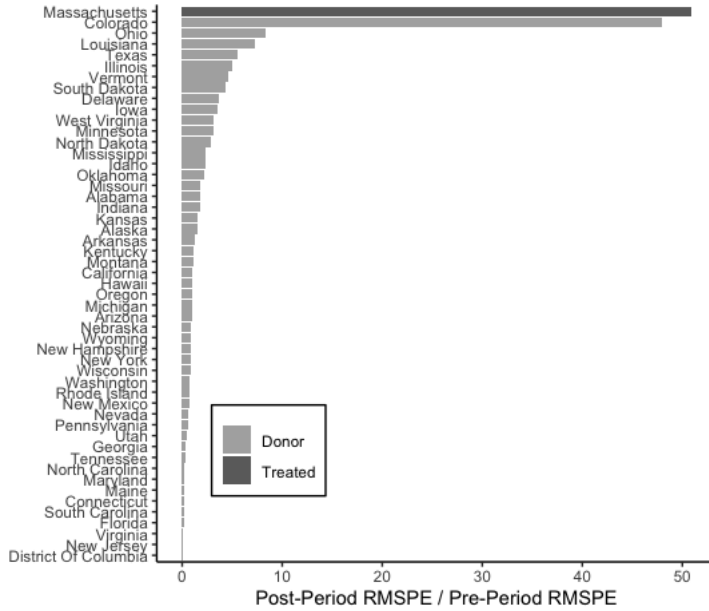


Figure 3
Ratio Test: Ratios of Posttreatment RMSPE to Pretreatment RMSPE: Massachusetts and Donor Pool



Next, we implemented the in-time placebo test where we changed the intervention period to 2019 and 2021. We are unfortunately limited in the periods we can choose for an in-time placebo due to having only six full years of data and we need enough pretreatment years to construct a proper Synthetic Massachusetts. However, the new intervention periods did not change our results and the line plots for the 2019 and 2021 intervention periods look identical to Figure 1 with a strong divergence beginning in 2020 and expanding in 2021 and 2022 regardless of the intervention period chosen. Lastly, we conducted the leave-one-out test by iteratively eliminating one of the three control states that got a W weight larger than 0 to check whether the results are driven one or a few of the states in the donor pool.²⁴ The results were identical for the in-time and leave-one-out placebo tests and so we did not display them here in a figure.

Figure 3 shows that the number of new au pairs hired in Massachusetts and Synthetic Massachusetts track each other closely in the pretreatment period with an RMSPE of 98. The in-time placebo test showed that our results are not driven by the period we chose for the intervention. The leave-one-out placebo test also showed that are results are not driven by one state alone. Indeed, our results are so clear that a line plot of the number of au pairs hired in Massachusetts and in the entire donor pool of states combined shows a clear divergence beginning in 2020 and then getting wider in subsequent years.

The Office of Information and Regulatory Affairs should reevaluate the costs of DoS's proposed rule to include the deadweight loss of a reduced quantity of au pairs assuming an elasticity of au pair employment of -0.103. The additional costs should include the loss in host family surplus and au pair surplus from the enactment of DoS's proposed rule.

Conclusion

There would be a tremendous legal and logical incongruity if the DoS's proposed rule mandated compensation from adopting higher local and state minimum wages in one part of the stipend



calculation and didn't update the calculation for the meals and lodging deductions in the other part of the stipend calculation. DoS's justifications for adopting the highest of local, state, or federal minimum wages also argue for updating the deduction calculation by, at a minimum, using the new higher minimum wages to calculate the meal and lodging deductions rather than relying on the old federal minimum wage that will be replaced in most cases.

¹ Exchange Visitor Program-Au Pairs, 88 FR 74071 Proposed Rule (Oct. 30, 2023), 62.3(n), https://www.federalregister.gov/documents/2023/10/30/2023-23650/exchange-visitor-program-au-pairs?fbclid=IwAR1-CGHp1W59IEcUGEcmePnGTmCOLHasHLkTqtZ1UGn46zynOo9T6NyB8TM_aem_AfkDF92msVaKyUGRoFp1tDdbUz3OzgYBiAzJClnhC_CJUT-T0VXt_IwXF18SCs9zR6s&mibextid=Zxz2cZ.

² Exchange Visitor Program-Au Pairs, 88 FR 74071 Proposed Rule (Oct. 30, 2023), 74071-74097, https://www.federalregister.gov/documents/2023/10/30/2023-23650/exchange-visitor-program-au-pairs?fbclid=IwAR1-CGHp1W59IEcUGEcmePnGTmCOLHasHLkTqtZ1UGn46zynOo9T6NyB8TM_aem_AfkDF92msVaKyUGRoFp1tDdbUz3OzgYBiAzJClnhC_CJUT-T0VXt_IwXF18SCs9zR6s&mibextid=Zxz2cZ.

³ Exchange Visitor Program-Au Pairs, 88 FR 74071 Proposed Rule (Oct. 30, 2023), 74077, https://www.federalregister.gov/documents/2023/10/30/2023-23650/exchange-visitor-program-au-pairs?fbclid=IwAR1-CGHp1W59IEcUGEcmePnGTmCOLHasHLkTqtZ1UGn46zynOo9T6NyB8TM_aem_AfkDF92msVaKyUGRoFp1tDdbUz3OzgYBiAzJClnhC_CJUT-T0VXt_IwXF18SCs9zR6s&mibextid=Zxz2cZ.

⁴ 29 U.S.C. 203(m); 29 C.F.R. § 531.3(a).

⁵ U.S. Department of Labor, FIELD ASSISTANCE BULLETIN NO. 2015-1 (Dec. 17, 2015), <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2015-1>; 29 C.F.R. § 531.3(a).

⁶ U.S. Department of Labor, FIELD ASSISTANCE BULLETIN NO. 2015-1 (Dec. 17, 2015), <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2015-1>.

⁷ Disney Cultural Program, Universidad Rey Juan Carlos <https://www.urjc.es/disney-cultural>; Cape Cod Chamber of Commerce, J-1 HOUSING PROGRAM, <https://www.capecodchamber.org/members/public-policy-and-advocacy/j-1-housing-program/>.

⁸ U.S. Department of Labor, FIELD ASSISTANCE BULLETIN NO. 2015-1 (Dec. 17, 2015), <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2015-1>.

⁹ 29 CFR 552.100

¹⁰ U.S. Department of Labor, FIELD ASSISTANCE BULLETIN NO. 2015-1 (Dec. 17, 2015), <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2015-1>; 29 U.S.C. 203(m); 29 C.F.R. § 531.3(a).

¹¹ U.S. Department of Labor, FIELD ASSISTANCE BULLETIN NO. 2015-1 (Dec. 17, 2015), <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2015-1>; 29 U.S.C. 203(m); 29 C.F.R. § 531.3(a).

¹² Exchange Visitor Program-Au Pairs, 88 FR 74071 Proposed Rule (Oct. 30, 2023), 74078, https://www.federalregister.gov/documents/2023/10/30/2023-23650/exchange-visitor-program-au-pairs?fbclid=IwAR1-CGHp1W59IEcUGEcmePnGTmCOLHasHLkTqtZ1UGn46zynOo9T6NyB8TM_aem_AfkDF92msVaKyUGRoFp1tDdbUz3OzgYBiAzJClnhC_CJUT-T0VXt_IwXF18SCs9zR6s&mibextid=Zxz2cZ.

- ¹³ U.S. Department of Labor, FIELD ASSISTANCE BULLETIN NO. 2015-1 (Dec. 17, 2015), <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2015-1>; 29 U.S.C. 203(m); 29 C.F.R. § 531.3(a).
- ¹⁴ American Community Survey, 2022 1-Year Estimates, Tables B25066 and B25024.
- ¹⁵ Exchange Visitor Program-Au Pairs, 88 FR 74071 Proposed Rule (Oct. 30, 2023), 62.3(n), https://www.federalregister.gov/documents/2023/10/30/2023-23650/exchange-visitor-program-au-pairs?fbclid=IwAR1-CGHp1W59IEcUGEcmePnGTmCOLHasHLkTqtZ1UGn46zynOo9T6NyB8TM_aem_AfkDF92msVaKyUGRoFp1tdDbUz3OzgYBiAzJClnhC_CJUT-T0VXt_IwXFI8SCs9zR6s&mibextid=Zxz2cZ.
- ¹⁶ *Capron v. Massachusetts Attorney General, No. 17-2140 (1st Cir. 2019)*.
- ¹⁷ Exchange Visitor Program-Au Pairs, 88 FR 74071 Proposed Rule (Oct. 30, 2023), 74072, https://www.federalregister.gov/documents/2023/10/30/2023-23650/exchange-visitor-program-au-pairs?fbclid=IwAR1-CGHp1W59IEcUGEcmePnGTmCOLHasHLkTqtZ1UGn46zynOo9T6NyB8TM_aem_AfkDF92msVaKyUGRoFp1tdDbUz3OzgYBiAzJClnhC_CJUT-T0VXt_IwXFI8SCs9zR6s&mibextid=Zxz2cZ.
- ¹⁸ Exchange Visitor Program-Au Pairs, 88 FR 74071 Proposed Rule (Oct. 30, 2023), 74072, https://www.federalregister.gov/documents/2023/10/30/2023-23650/exchange-visitor-program-au-pairs?fbclid=IwAR1-CGHp1W59IEcUGEcmePnGTmCOLHasHLkTqtZ1UGn46zynOo9T6NyB8TM_aem_AfkDF92msVaKyUGRoFp1tdDbUz3OzgYBiAzJClnhC_CJUT-T0VXt_IwXFI8SCs9zR6s&mibextid=Zxz2cZ.
- ¹⁹ *Capron v. Massachusetts Attorney General, No. 17-2140 (1st Cir. 2019)*.
- ²⁰ Dube, Arindrajit and Zipperer, Ben. 2015. “Pooling Multiple Case Studies Using Synthetic Controls: An Application to Minimum Wage Policies.” IZA Discussion Paper 8944. <https://www.iza.org/publications/dp/8944/pooling-multiple-case-studies-using-synthetic-controls-an-application-to-minimum-wage-policies>.
- ²¹ Abadie, Alberto, Alexis Diamond, and Jens Hainmueller. (2015). “Comparative Politics and the Synthetic Control Method.” *American Journal of Political Science* 59(2): 495-510.
- ²² Andersson, Julius J. 2019. “Carbon Taxes and CO2 Emissions: Sweden as a Cast Study.” *American Economic Journal: Economic Policy* 11(4): 1-30; Galiani, Sebastian and Brian Quistorff. 2017. “The Synth Runner Package: Utilities to Automate Synthetic Control Estimation Using Synth.” *The State Journal* 17(4): 834-849.
- ²³ Abadie, Alberto, Alexis Diamond, and Jens Hainmueller. 2010. “Synthetic Control Methods for Comparative Case Studies: Estimating the Effect of California’s Tobacco Control Program.” *Journal of the American Statistical Association* 105(490): 493-505; Andersson, Julius J. 2019. “Carbon Taxes and CO2 Emissions: Sweden as a Cast Study.” *American Economic Journal: Economic Policy* 11(4): 1-30.
- ²⁴ Abadie, Alberto, Alexis Diamond, and Jens Hainmueller. 2010. “Synthetic Control Methods for Comparative Case Studies: Estimating the Effect of California’s Tobacco Control Program.” *Journal of the American Statistical Association* 105(490): 493-505.