

May 1996

# DAVIS-BACON ACT

## Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data







United States  
General Accounting Office  
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**Health, Education, and  
Human Services Division**

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The Honorable Pete Hoekstra  
Chairman, Subcommittee on Oversight  
and Investigations  
Committee on Economic and Educational  
Opportunities  
House of Representatives

The Honorable Cass Ballenger  
Chairman, Subcommittee on Workforce  
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Committee on Economic and Educational  
Opportunities  
House of Representatives

The Davis-Bacon Act requires employers on federal construction projects to pay workers wages at or above the level determined by the Department of Labor to be prevailing in a geographic area.<sup>1</sup> In recent years, the act has drawn controversy, with critics charging that it artificially inflates federal construction costs. The Congressional Budget Office estimates that for fiscal year 1996, the federal government will contract about \$42 billion in construction projects throughout the nation. Given the magnitude of these expenditures, inaccurate wage determinations could lead either to excessive government construction costs or to large numbers of workers receiving wages and fringe benefits that are lower than required by the law.

In early 1995, allegations of the use of inaccurate and fraudulent wage data to determine the prevailing wages paid on federally funded construction projects in one geographic area precipitated a criminal investigation by the Department of Justice that is still ongoing. On the basis of its own review, Labor concluded that data weaknesses warranted a redetermination of the area's prevailing wage rates, which it issued in April 1996.

Because of your concern about whether Labor's procedures under the Davis-Bacon Act allow the use of data that could result in inaccurate wage determinations throughout the nation, you asked us to

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<sup>1</sup>Labor's regulations define a prevailing wage as the wage paid to the majority (more than 50 percent) of the workers in the job classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage will be the average of the wages paid, weighted by the total employed in the classification. (See app. II.)

- identify the steps used by Labor to collect data and determine and report the prevailing wages to be paid on federally funded construction projects,
- determine whether specific weaknesses exist in the wage determination process that could have resulted in the use of inaccurate or fraudulent data, and
- assess the extent to which Labor is addressing any identified process weaknesses.

To respond to your request, we collected information from Labor's Wage and Hour Division (WHD); interviewed Labor officials and staff in Washington, D.C., Atlanta, and Philadelphia; surveyed staff in Labor's six regions; and obtained the views of representatives of individual employers, construction unions, and industry associations. We focused on the policies and procedures that Labor had in place to prevent the use of inaccurate or fraudulent wage data. We did not verify the accuracy of the wage determination data Labor used or explore the adequacy of Labor's survey response rates or its calculation of prevailing wages. We conducted our review from October 1995 to April 1996 in accordance with generally accepted government auditing standards. Appendix I provides more information on our study objectives, scope, and methodology.

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## Results in Brief

Labor sets prevailing wage rates for construction job classifications in some 3,000 individual counties or groups of counties and for four different types of construction. Labor's decisions are based on voluntarily submitted wage and benefit data from employers and third parties,<sup>2</sup> such as unions or trade groups, on construction projects. Any interested party can appeal Labor's final wage determination. Although Labor has a process in place to determine prevailing wage rates, we found that it contains internal control weaknesses that contribute to the lack of confidence in the resulting wage determinations. These weaknesses include limitations in Labor's verification of wage and fringe benefit data, limited computer capabilities, and an appeals process that may be difficult for interested parties to access. Such weaknesses can lead to increased government construction costs or result in lower wages and fringe benefits being paid to construction workers than required by the law.

In August 1995, Labor began requiring all regional staff to conduct additional verification of some third-party wage survey data. While this change may improve the accuracy of the wage survey data received from

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<sup>2</sup>Labor defines third-party data as project wage and fringe benefits data for a specified construction project that are submitted for use in a wage survey by any party other than an employer or other payroll holder.

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third parties, it does not address the problem of erroneous data being submitted by employers. For the long term, Labor has requested about \$4 million in its fiscal year 1997 budget to develop, evaluate, and implement alternative reliable methodologies that would provide accurate and timely wage determinations at reasonable cost. Although Labor's long-term initiative is a positive step, in the interim, verification weaknesses in Labor's process and limited public awareness of its appeals process remain.

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## Background

The Davis-Bacon Act (40 U.S.C. 276a) requires workers on federal construction projects valued in excess of \$2,000 to be paid, at a minimum, wages and fringe benefits<sup>3</sup> that the Secretary of Labor determines to be prevailing for corresponding classes of workers in the locality where the contract is to be performed. The act covers every contract to which the United States or the District of Columbia is a party, for construction, alteration, or repair of public buildings or public works. The \$2,000 threshold for projects covered by the Davis-Bacon Act has not changed since 1935.

WHD, within Labor's Employment Standards Administration (ESA), has responsibility for administering the Davis-Bacon Act through approximately 50 staff in the Washington, D.C., headquarters and in its six regional offices. Its duties include the collection of wage and fringe benefits data on construction projects for the calculation of local prevailing wage rates. For fiscal year 1996, the Congressional Budget Office estimates that \$42 billion will be spent on the construction of federal projects.

Labor's Administrative Review Board hears appeals of prevailing wage determinations issued under the Davis-Bacon Act and upheld by the WHD Administrator. The Office of the Solicitor provides legal advice and assistance to Labor personnel relative to the administration and enforcement of the Davis-Bacon Act and represents WHD in Davis-Bacon wage determination cases before the Administrative Review Board.

Labor collects wage and fringe benefit data through voluntary participation in a wage survey. Although the survey form does not explicitly so inform participants, failure to supply truthful answers can have serious consequences. It is a crime under federal law (18 U.S.C.

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<sup>3</sup>Fringe benefits considered in computing the prevailing wage rate include holiday and vacation pay, health insurance, and pension benefits. (See fig. II.3.)

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1001) to knowingly submit false data to the government, and it is a crime under federal law (18 U.S.C. 1341) to use the U.S. mail for fraudulent purposes.

In previous reviews of the Davis-Bacon Act,<sup>4</sup> we raised concerns about the accuracy of Labor's wage determinations. In 1979, we pointed out that the act appeared to be impractical to administer due to the magnitude of the task of producing an estimated 12,400 accurate and timely prevailing wage determinations. Since then, Labor has implemented regulatory changes that have addressed some of our specific concerns about the process used to determine prevailing wages. For example, rules were changed to generally prohibit (1) including federal contracts in the area wage surveys and (2) mixing prevailing wage data from surveys of urban and rural areas. An additional change has likely resulted in more wage determinations being based on the average wage of an area rather than on the wage specified in area collective bargaining agreements. Technological improvements have also improved Labor's ability to administer the Davis-Bacon wage determination process.<sup>5</sup> Despite these changes, in 1994, we found continuing verification problems with the data that Labor uses to make prevailing wage determinations.

The Congress is currently considering separate bills that would either repeal or reform the Davis-Bacon Act. Two bills (S. 141 and H.R. 500) would repeal the Davis-Bacon Act. Two other bills (H.R. 2472 and S. 1183) would reform the act. The two latter bills would change the way that Labor determines and enforces wage decisions in the construction industry. These reform bills include provisions that would (1) increase the \$2,000 threshold for construction projects covered by Labor's wage surveys and (2) expand Labor's enforcement authority.<sup>6</sup>

Thirty-two states have "little Davis-Bacon" laws requiring the payment of prevailing wages on certain state-funded construction projects. Of these, 15 states conduct their own wage surveys as part of their prevailing wage

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<sup>4</sup>The Davis-Bacon Act Should Be Repealed (GAO/HRD-79-18, Apr. 27, 1979) and Davis-Bacon Act (GAO/HEHS-94-95R, Feb. 7, 1994).

<sup>5</sup>In a 1994 report, both employers and employee representatives we interviewed also noted that additional staffing and training could improve the accuracy of Davis-Bacon prevailing wage determinations. See Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, Vol. I, June 30, 1994).

<sup>6</sup>We also discussed changes to the Davis-Bacon Act in our report, Addressing the Deficit: Budgetary Implications of Selected GAO Work for Fiscal Year 1996 (GAO/OCG-95-2, Mar. 15, 1995). In this report, we identified reforming or repealing the Davis-Bacon Act as an option that the Congress might wish to consider.

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rate determination process. Three of the remaining 17 states—Connecticut, Kentucky, and Oklahoma—have recently used the federal wage determinations as the basis for the prevailing rates on state construction projects, while the others generally base their wage rates on the union rate.<sup>7</sup>

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## Recent Events Resurface Concerns With Labor's Process

In January 1995, federal Labor and Oklahoma state labor officials received reports about possible inaccuracies in the results of a recent survey conducted by Labor that set prevailing wages for work on certain types of construction projects in the Oklahoma City and Tulsa areas. Based on this information, Labor directed an audit of the wage data used in the Oklahoma City survey. Labor's review found that inaccuracies did exist in the wage determinations issued for some heavy construction and building construction job classifications in the Oklahoma City area. In March 1995, Labor issued a revised determination for certain heavy construction job classifications for the Oklahoma City area. Labor also reviewed the wage survey data of the remaining heavy construction job classifications for the Oklahoma City and Tulsa areas and issued revised wage rates in May 1995.

During this period, believing the initial survey rates to be incorrect, Oklahoma state labor officials independently directed a review of the third-party data used in the contested survey.<sup>8</sup> This investigation detected several occurrences of potentially inaccurate and fraudulent wage and fringe benefit information reported by third parties, which served to increase the federal prevailing wage rate for certain construction job classifications. In July 1995, Labor received the Oklahoma state Labor Commissioner's report alleging that fraudulent data were submitted and used in the original wage determinations.<sup>9</sup> This report however, did not challenge the revised wage determinations for heavy construction that Labor had issued in March and May 1995.

In July 1995, Labor then initiated a review of the building construction wage surveys for Oklahoma that had been collected at the same time as the initial heavy construction wage survey data. Based on a determination that potential data verification problems existed in the building

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<sup>7</sup>A 1995 state Supreme Court decision ruled the Oklahoma prevailing wage law to be unconstitutional because the law's piggyback provision for setting prevailing wages delegated too much authority to the federal government.

<sup>8</sup>At the time, the Oklahoma state little Davis-Bacon law based prevailing wages for state projects, such as schools or prisons, on federal wage determinations.

<sup>9</sup>The Department of Justice is currently investigating charges of fraudulent and inaccurate reporting of wage data on Labor's initial Oklahoma City wage survey.

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construction survey, Labor withdrew its wage determinations for all Oklahoma City building construction job classifications in August 1995.

In April 1996, Labor issued new wage determinations for heavy construction based on completely new survey data and for building construction based on complete verification and analysis of previously conducted building construction survey data. The new determinations established prevailing rates that were higher in some instances and lower in others than the wage determinations in place in January 1995. As of mid-May 1996, these new determinations had not been contested.

Labor's Office of the Inspector General is currently surveying the extent to which fraudulent or inaccurate wage data were used by Labor in 1995 to determine prevailing wages under the Davis-Bacon Act in several of Labor's regions. The study is expected to be completed in the fall of 1996.

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## Labor's Wage Determination Process Based on Voluntary Survey Participation

Labor's procedures for determining prevailing wages for individual counties or groups of counties are based on a survey of the wages and fringe benefits paid to workers in similar job classifications on comparable construction projects in the particular area. This information is collected through the voluntary submission of data from employers and third parties on construction projects surveyed for each wage determination. Labor's wage determination process consists of four basic stages: planning and scheduling surveys, conducting the surveys, clarifying and analyzing respondents' wage data, and issuing the wage determinations. In addition, any employer or interested party<sup>10</sup> who wishes to contest or appeal Labor's final wage determination can do so.

Labor encourages the submission of wage information from all employers and third parties, including employee unions and industry associations that are not directly involved with the surveyed projects. In fiscal year 1995, Labor completed about 100 prevailing wage surveys, gathering wage and fringe benefit data from over 37,000 employers and third parties.

Labor surveys wages and fringe benefits paid to workers in different job classifications for four basic types of construction (building, residential, heavy, and highway) covering more than 3,000 counties or groups of counties within the United States. Given the large number of prevailing wage determinations and Labor's limited resources, Labor develops an

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<sup>10</sup>Interested parties may include the employers or contractors; contractor associations; construction workers; labor unions; and federal, state, and local agencies.



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annual plan to identify those geographic areas or counties for which wage determinations are most in need of revision. (See app. II for a detailed description of Labor's prevailing wage determination and appeal procedures.) For each area designated for survey, Labor identifies the counties for which the wage determination should be conducted and determines what construction projects will be surveyed.

Labor places primary responsibility for the collection and compilation of the relevant wage data on about 30 staff distributed among six Labor regional offices. The survey is distributed to the participant population, which includes the general contractor for each construction project identified as comparable and within the survey's geographic area. In surveying the general contractors, Labor requests information on subcontractors to solicit their participation. Labor also surveys interested third parties, such as local unions and construction industry associations that are located or active in the survey area.

Once the data submissions are returned, the analysts review and analyze the returned wage survey forms—WD-10 wage reporting forms.<sup>11</sup> They follow up with the employer or third parties to clarify any information that seems discrepant, inaccurate, or confusing.<sup>12</sup> The analysts then use this information to create computer-generated recommended prevailing wages for key construction job classifications.<sup>13</sup>

These recommended prevailing wages are reviewed and approved by Labor's National Office in Washington, D.C. Labor publishes the Davis-Bacon final wage determinations in printed reports and on its electronic bulletin board, allowing updates to be rapidly communicated to contracting and assisting agencies. Modifications to wage determinations are published in the Federal Register. Any interested party has the opportunity to review or contest, through a written or telephone request, a final wage determination issued by Labor in Washington, D.C. (See app. II for details on Labor's appeals process.)

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<sup>11</sup>See app. II for a sample WD-10 wage reporting form and other forms used in the Davis-Bacon prevailing wage determination process.

<sup>12</sup>Before August 1995, when Labor received information on the same project from both the employer and a third party, wage analysts were not required to contact the employer to resolve any discrepancies between them.

<sup>13</sup>In accordance with its regulations, Labor determines an area's prevailing wage rate based on a 50-percent rule, which states that if the same wage is not paid to a majority of workers employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.

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## Weaknesses in Labor's Procedures Could Lead to Inaccurate Prevailing Wage Rates

Labor's wage determination procedures contain weaknesses that could permit the use of fraudulent or inaccurate data for setting prevailing wage rates. These weaknesses include limitations in the degree to which Labor verifies the accuracy of the survey wage and fringe benefit data it receives, limited computer capabilities and safeguards to review wage data before calculating prevailing wage rates, and an appeals process that may not be well publicized. Labor's failure to prevent the use of fraudulent or inaccurate data may result in wages and fringe benefits being paid to construction workers that are lower than those prevailing. Erroneous prevailing wage rates could also lead to excessive government construction costs and undermine confidence in the system among survey respondents, reducing their future participation.

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## Verification of Wage Data Largely Limited to Telephone Contacts

Labor's regional staff rely primarily on telephone responses from employers or third parties to verify the information received on the WD-10 wage reporting forms. Staff in Labor's regional offices that have Davis-Bacon operations reported that most of their verifications of data submissions—clarifications concerning accuracy, appropriateness, or inclusion—were conducted by telephone. Labor's procedures also do not require and Labor staff rarely request supporting documentation—for example, payroll records—that supplement the WD-10 wage reporting forms submitted by employers.<sup>14</sup> Labor officials and staff told us that if an employer insists that the wages reported are accurate, Labor's wage analysts generally accepted what was communicated verbally by telephone.

Analysts conduct telephone verification with the employer on all third-party data that appear to be inaccurate. For example, when employers and third parties submit wage information on the same project, verification is conducted by contacting the employer in the event of a discrepancy between data received from the employer and a third party.<sup>15</sup> However, Labor officials and staff told us that, before August 1995, there was no requirement to contact the employer regarding the verification of third-party data. Typically, if there was some question regarding third-party data, staff generally resolved the matter by contacting the third party only, rather than verifying the information with the employer.

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<sup>14</sup>The only additional documentation typically requested is a list from a project's employers—general contractors—of the subcontractors who also work on a project.

<sup>15</sup>Third-party data submissions generally account for about one-third of all wage survey submissions. However, in some metropolitan areas, third parties may account for over one-half of all data submissions received.

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Labor headquarters officials also said that because of resource constraints, regional staff do not conduct on-site inspections or reviews of employer payroll records to verify wage survey data.<sup>16</sup> In recent years, Labor has reduced the number of staff allocated to Davis-Bacon wage-setting activities. For example, the number of staff in Labor's regional offices assigned to the Davis-Bacon wage determination process—who have primary responsibility for the wage survey process—decreased from a total of 36 staff in fiscal year 1992 to 27 staff in fiscal year 1995, and Labor officials in one region also told us that staff had only received two training courses in the last 6 years. Labor's regional staff told us that this staff decline has challenged their ability to collect and review wage survey data for accuracy and consistency.

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### Limited Computer Capabilities Hinder Ability to Detect Erroneous Data

Labor officials reported a lack of both computer software and hardware that could assist wage analysts in their reviews. They said that Labor staff depend on past experience and eyeballing the wage data for accuracy and consistency. For example, Labor offices do not have computer software that could detect grossly inaccurate data reported in Labor's surveys. Regional staff reported only one computer edit feature in the current system that could eliminate duplicate entry of data received in the wage surveys. As a result, several review functions that could be performed by computers are conducted by visual reviews by one or more wage analysts or supervisory wage analysts in Labor's regional offices.

Labor's ability to review wage survey data is also hindered by a lack of up-to-date computer hardware. For example, in the Atlanta and Philadelphia regional offices, most of the computer hardware is old and outdated. In these offices, because of the computers' limited memory capabilities, Labor staff told us that they are unable to store historical data on prior wage determinations that would allow wage analysts to compare current with prior recommendations for wage determinations in a given locality.

These limitations could be significant given the large number of survey forms received and the frequency of errors on the WD-10 reporting forms. In 1995, Labor received wage data from over 37,000 employers and third parties, and Labor staff reported that submissions with some form of data error were quite common. The frequency of errors could be caused in part by employer confusion in completing the wage reporting forms.

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<sup>16</sup>Labor officials also noted that the agency does not have the authority under the Davis-Bacon Act to inspect wage records for private projects without an employer's permission; however, at least one of the reform bills would provide such authority.

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Depending on the employer's size and level of automation, completing the WD-10 reporting forms could be somewhat difficult and time consuming. For example, the employer must not only compute the hourly wages paid to each worker who was employed on the particular project in a certain job classification but must also determine the time period when the most workers were employed in each particular job classification.<sup>17</sup> Representatives of an employer association, a union, and state labor officials also told us that many smaller, nonunion employers do not have the capability to easily report information on the WD-10 wage reporting forms.<sup>18</sup>

Although Labor staff reported that wage surveys with data errors are fairly common, agency officials believe that it is very unlikely that erroneous wage data went undetected and were used in the prevailing wage determination. They said that a key responsibility of Labor's wage analysts is to closely scrutinize the WD-10 wage reporting forms and contact employers as necessary for clarification. Labor officials contended that, over time, this interaction with employers and third parties permitted Labor staff to develop considerable knowledge of and expertise in the construction industry in their geographic areas and to easily detect wage survey data that are inaccurate, incomplete, or inconsistent.

Although Labor officials also acknowledged that additional staff, enhanced computer capabilities, and the provision of more training and outreach to employers and third parties on how to participate in the surveys could improve their review of wage survey data and reduce errors, they said that all these options require additional resources that are currently unavailable.

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### Lack of Awareness of the Appeals Process May Limit Its Effectiveness

Labor's regulations provide any interested party, such as an employee, employer or contractor, or representatives of associations or unions, the opportunity to request a reconsideration of Labor's prevailing wage determinations. A formal request for reconsideration must be in writing and accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information. Instead of formally requesting a reconsideration, an interested party may make informal inquiries by telephone or in writing for quick resolution of

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<sup>17</sup>This is the so-called peak week calculation required for completion by the WD-10 wage reporting form. The employer must identify the names, addresses, and telephone numbers of all subcontractors that worked on the particular project included in the survey. (See app. II.)

<sup>18</sup>They also believed that more education and training programs offered by Labor could improve survey participants' understanding of information required on the survey forms.

questions about wage determinations. Labor's regional officials handle informal inquiries about wage determinations, with WHD's National Office staff getting involved only in the formal reconsiderations. Labor reported that most inquiries on its wage determinations are informal and are generally resolved quickly over the telephone at the regional offices.

If an informal inquiry is not resolved to the satisfaction of the interested party, he or she may submit a formal request for reconsideration to either the regional or National Office. On formal requests for reconsideration, regional offices may or may not make recommendations before referring them to the National Office for a decision. A successful request for reconsideration typically results in Labor modifying an existing determination or conducting a new wage survey. An interested party may appeal an unsuccessful request to Labor's Administrative Review Board for adjudication. Labor officials said it is extremely rare for anyone to make formal requests for reconsideration of a determination, reporting that there had been only one such case in the last 5 years. Labor officials interpreted this record as a vindication of complaints about the accuracy and fairness of the prevailing wage determinations issued.

The small number of formal appeals could also be evidence of interested parties' lack of awareness of their rights and the difficulty they faced in collecting the evidence necessary to sustain a case. Representatives of construction unions and industry trade associations told us that employers were generally unaware of their rights to appeal Labor's final wage determinations. In addition, officials with the Oklahoma Department of Labor told us that even if an interested party wanted to appeal a wage determination to the National Office and the Administrative Review Board, the length of time it takes to independently verify wage data submissions could discourage such an action. For example, for their 1995 study of wage rates in Oklahoma City, an intra-agency team took 1 month to fully investigate and verify the information for only three construction projects. A private employer or organization wishing to appeal a determination on the basis that the wage information used was inaccurate might experience similar difficulties.

Labor officials reported that for an interested party to contest a new wage determination successfully, it must present evidence demonstrating that the survey wage rates do not reflect the pattern of wages paid in a particular area. The amount of evidence to warrant a new survey will vary according to a variety of factors, including the quality of the evidence and the amount of construction activity in an area. Labor officials contended

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that collecting information to contest a wage survey is not difficult for most interested parties who inquire. They said that most inquiries originate either from contractors who have access to wage rates on their own projects; unions who have access to collective bargaining rates; or project grantees, such as local governments, who have access to the wage rates paid on their other projects. However, Labor officials acknowledged that it could be difficult for an interested party to challenge a wage determination on the basis that the wage data submitted by employers were inaccurate.

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### Consequences of Wage Determinations Based on Erroneous Data

Wage determinations based on erroneous data could result in wages and fringe benefits paid to workers that are higher or lower than would otherwise be prevailing on federal construction projects. For example, although they considered it unlikely, Labor officials acknowledged that there could be an incentive for third parties, particularly union contractors, to report higher wages than those being paid on a particular construction project. The reporting of higher wages could influence the prevailing wages in a local area toward the typically higher union rate or at least minimize any wage differential between the unionized wage rate and the prevailing wage to be paid on Davis-Bacon construction projects.

The use of inaccurate data could also lead to lower wages for construction workers on federal projects than would otherwise be prevailing. Industry association members and officials told us that in several parts of the country, employers, especially nonunion contractors, paid wages on their private projects below the prevailing wage levels specified by the Davis-Bacon Act in their areas.<sup>19</sup> These officials told us that this differential sometimes proved problematic for contractors in retaining their skilled labor force. For example, an official of an employer association told us that an employer who successfully bid on a Davis-Bacon contract but who typically paid wages below the prevailing rate would be required to pay the workers employed on the new project at the higher Davis-Bacon wage rates. Depending on the local labor market conditions, when the project was completed, these workers typically received their pre-Davis-Bacon, lower wages and fringe benefits on any future work. In such cases, some employees became disgruntled, believing that they were being cheated, or suffered lower morale that sometimes led

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<sup>19</sup>In at least some parts of the country, nonunion wages determine the vast majority of prevailing wage determinations. For example, in Labor's Atlanta region, nonunion wage rates dominated 72 percent of all existing wage determinations. In these determinations, prevailing wages were determined by a weighted average of the submitted wage data.

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to increased staff turnover.<sup>20</sup> Given these conditions, Labor officials acknowledged that an employer in a largely nonunion area who had been paying lower than average wages would have an incentive to “chisel” or report wages and fringe benefits levels somewhat lower than what he or she was actually paying, in an attempt to lower the Davis-Bacon rate.<sup>21</sup>

To the extent that the submission of fraudulent or inaccurate data is perceived by the construction industry to be a widespread problem, it could also erode survey participation support among the interested parties. Officials from one industry association reported that despite training classes and other assistance it provides, it was difficult for the association to foster employer survey participation, especially among the nonunion contractors. To the extent that participants’ beliefs about erroneous data being used as the basis for Labor’s wage determinations became widespread, the number of survey respondents would likely decrease.

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## Labor’s Short- and Long-Term Initiatives to Improve Wage Determination Process

At least partially in response to the problems detected in the Oklahoma wage surveys, Labor has proposed both short- and long-term initiatives to improve the accuracy of the data used in prevailing wage determinations. In August 1995, Labor implemented a procedural change requiring its regional wage analysts to conduct telephone verifications with the employer on all third-party data that appear to be inaccurate or discrepant. In addition, the new policy requires analysts to verify with the employers at least a 10-percent sample of third-party data that appear to be accurate.

Under this requirement, Labor staff first attempt to verify this information by telephone with the employer. If Labor staff are unable to contact the employer, they will then contact the third party to request supporting documentation verifying the submitted wage information on the specific construction project. This new requirement was linked with training for all regional office staff that reemphasized agency procedures for analyzing and verifying employer and third-party data received in its wage surveys. Although the new procedures may improve the accuracy of data received from third parties, Labor’s change does not include enhanced verification of the majority of the data used in most wage determinations; that is, data

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<sup>20</sup>Depending on local labor market conditions, if the employer did not bid on the Davis-Bacon project, he or she could still be affected if skilled workers quit to search for work on the new, higher wage federally funded project.

<sup>21</sup>Labor officials said that it is much more likely for some employers to report data selectively in an effort to lower the prevailing wage rate. For example, a contractor may only submit data on those projects where the wages paid were relatively low, ignoring projects where they have paid a somewhat higher wage.

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directly received from employers. In addition, the new procedures do not move toward encouraging the use of Labor's appeals process.

Labor has proposed placing a statement on the WD-10 survey reporting form that would inform respondents that they could be prosecuted if they willfully falsify data in the Davis-Bacon wage surveys. Labor officials solicited comments on this proposal in the Federal Register in February 1996, with the comment period ending in May 1996.

Labor has also proposed a long-term strategy to review the entire Davis-Bacon wage determination process. In late 1995, Labor established an ongoing task group to identify various strategies for improving the process it uses to determine prevailing wages. Labor officials held meetings with contractors knowledgeable about the Davis-Bacon prevailing wage determination process. These continuing discussions have led to the identification of various weaknesses in the wage determination process and steps Labor might take to address them.

Labor has acknowledged the weaknesses identified by the task group; for example, the system's vulnerability to manipulation through the submission of false data that can erode the accuracy of some of its wage determinations. In response, in its fiscal year 1997 budget request, Labor asked for about \$4 million to develop, evaluate, and implement alternative reliable methodologies or procedures that will yield accurate and timely wage determinations at reasonable cost. These alternatives would include

- exploring the feasibility of replacing the current labor-intensive wage survey process with the development of econometric models from which occupational wage rates could be extrapolated from existing sources of wage data and
- privatizing the wage survey process using alternative technologies that would derive prevailing wage rates from a sample design rather than from a universe survey as is currently used.

If such alternatives are not feasible for all localities and occupational job classifications, Labor would focus on enhancing the existing survey process, including the improvement of data verification procedures, the fostering of employer participation, and the expansion of the geographic scope of the Davis-Bacon surveys. Labor anticipates completing its evaluation of the wage determination process in late 1996 and it expects to consider any recommendations that may result from the Office of the Inspector General study, which should be completed about the same time.



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In the interim, absent any additional action, Labor's procedures will still contain many of the weaknesses that we have identified. These could result in the use of erroneous data in its determination of prevailing wages.

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## Conclusions

Labor's responsibilities to establish prevailing wage rates have a significant impact on the \$42 billion to be spent in fiscal year 1996 in federal construction contract business and the wages paid to construction workers. Although Labor has worked to improve the accuracy of its wage determinations, a lack of confidence still exists with Labor's process.

Labor has begun to address process weaknesses, including the exploration of alternative reliable methodologies for collecting the information it needs to make the wage determinations. In addition, if it discovers that such alternatives are not feasible for all localities, Labor plans to take other action to improve its existing survey process. Labor's actions are clearly positive steps; however, what is missing from Labor's plans is a short-term solution to the existing system's vulnerability to the use of fraudulent or inaccurate data.

Even if Labor obtains the additional funds that it requested to improve its process, it would take some time to identify and implement improvements. In the meanwhile, Labor would continue to issue new wage determinations and enforce compliance with existing ones that may be based on fraudulent or inaccurate data. Such data can lead to the payment of wages that are either lower than what workers should receive by law or else higher than the actual prevailing wages, which would inflate federal construction costs at the taxpayer's expense. Although we have not established the extent to which such data have been used, the system's long-standing vulnerabilities and a lack of confidence by some critics in the accuracy of the wage determinations suggest that immediate changes are in order.

We believe that Labor needs to improve its verification of wage data submitted by employers—similar to the change it made in verification of third-party submissions. More specifically, Labor should apply to employer submissions a comparable approach of selecting a sample for more intensive review. When a submission is selected for review, Labor should ask the employer to provide additional documentation supporting the wage data. Although Labor has indicated that it is unable to do more intensive verification because of limited staff resources, Labor does not

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appear to have explored proposals to target its scarce resources more effectively toward verification efforts.

Labor also needs to revisit its procedures to appeal wage determinations to improve their accessibility. At a minimum, it needs to publicize the availability of the appeals process to all interested parties and the rights of those parties to obtain information on the data used to develop the wage determinations believed to be questionable. For example, Labor could place a statement either with its issuance of each wage determination, on its wage survey forms, or in some other manner, informing interested parties of their rights to request summary information on a wage determination (that is, the WD-22a construction project wage summary report) and of the procedures for initiating an appeal.

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## Recommendations

While Labor continues in the long term to evaluate the Davis-Bacon wage determination process, we recommend that the Secretary of Labor require the Assistant Secretary for Employment Standards to request a sample of participating employers to submit appropriate documentation on their data submissions or to conduct a limited number of on-site inspection reviews of employer wage data.

Because Labor's appeals process can serve as an additional internal control to guard against the use of fraudulent or inaccurate data in the wage determination process, we recommend that the Secretary of Labor require the Assistant Secretary for Employment Standards to inform employers, unions, and other interested parties of their rights to request summary information on a wage determination and of the agency's procedures for initiating an appeal of a wage determination.

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## Agency Comments

The Department of Labor concurs with our recommendations and stated that it is developing an action plan, consistent with available resources, to implement the recommendations while it continues to evaluate longer-term revisions to the Davis-Bacon wage determination process. However, Labor disagreed with our characterization of a "pervasive" lack of confidence in the wage determinations on the part of employers and other affected parties. We agree with Labor's comment and deleted that characterization from our conclusions. Labor also provided information to clarify the report's chronology regarding action to correct wage determinations in Oklahoma, and we have revised our description as necessary. Finally, Labor provided some technical corrections, which we

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incorporated as appropriate in the report. Labor's comments are included in appendix III.

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As agreed with your office, we are sending copies of this report to the appropriate congressional committees, the Secretary of Labor, the Assistant Secretary of the Employment Standards Administration, WHD officials in Atlanta and Philadelphia, and the respective regional offices that participated in our telephone survey. We will also make copies available to others on request. Major contributors to this report are listed in appendix IV.



Carlotta C. Joyner  
Director, Education and  
Employment Issues

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**Contents**

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**Abbreviations**

CBA	collective bargaining agreement
CRA	Construction Resource Analysis
ESA	Employment Standards Administration
RSPR	Regional Survey Planning Report
WHD	Wage and Hour Division

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# Objectives, Scope, and Methodology

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We were asked by the Chairmen of the Subcommittee on Oversight and Investigations and the Subcommittee on Workforce Protections of the House Committee on Economic and Educational Opportunities to study potential weaknesses in the process that the Department of Labor uses to make prevailing wage determinations under the Davis-Bacon Act of 1931. More specifically, the objectives of our review were to (1) identify the steps used by Labor to collect data and determine and report the prevailing wages to be paid on federally funded construction projects, (2) determine whether specific weaknesses in the process could have resulted in the use of inaccurate or fraudulent data in its prevailing wage determinations, and (3) assess the extent to which Labor is addressing any identified process weaknesses.

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## Methodology

To respond to this request, we collected information from Labor's WHD on the Davis-Bacon prevailing wage determination process, including Labor's survey procedures and its implementing regulations. To understand the procedures for collecting, determining, and reporting survey wage data, we interviewed Labor officials and staff in Washington, D.C.; Atlanta; and Philadelphia. We also surveyed staff in Labor's six regions with Davis-Bacon operations to ascertain the procedures used to review and verify wage and fringe benefits survey data. We also collected information from these regions on the procedures available to appeal Labor's wage determinations and the frequency of those appeals.

We also obtained the views of representatives of individual employers, construction unions, and industry associations regarding potential weaknesses in Labor's wage determination process and on possible options to address those weaknesses. For example, we spoke with representatives from the Associated Builders and Contractors, Incorporated; the International Union of Operating Engineers; and the National Alliance for Fair Contracting to obtain the views of groups most directly affected by the administration of the Davis-Bacon Act. In addition, we spoke with representatives from the State of Oklahoma Department of Labor and the F.W. Dodge Division of McGraw-Hill Information Systems. We also reviewed the social science literature on the Davis-Bacon Act, focusing on those articles that addressed issues on the wage determination process.

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## Analysis of the Wage Determination Process

To identify the steps in the survey and wage determination process, we reviewed Labor's documents, including the Davis-Bacon Construction Wage Determinations Manual of Operations, and Davis-Bacon training materials for wage analysts. We interviewed Labor officials at the National Office in Washington, D.C., to clarify our understanding of the policies and procedures used in the wage determination process and to obtain information on changes to the process implemented in 1995.

We visited Labor's regional offices in Atlanta and Philadelphia, where we interviewed the regional administrators and wage specialists and analysts about how the process works and obtained their perspectives on weaknesses in the process. We chose to conduct on-site visits in the Atlanta and Philadelphia regional offices on the basis of regional personnel experiences in the prevailing wage process, the dollar value of federal construction, and the degree of unionization. The remaining four regional offices were contacted by telephone and questioned about specific aspects of the survey process dealing with data integrity and the appeals process.

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## Analysis of Recent Changes to the Process

We reviewed Labor's recent procedural changes to improve the Davis-Bacon wage determination process. We also spoke with federal Labor officials in the Washington, D.C., office about efforts recently instituted as well as actions being considered. We also reviewed Labor's 1996 draft report of proposals to evaluate ways to improve the full Davis-Bacon prevailing wage determinations process, including Labor's fiscal year 1997 budget request for additional funds to contract for the development, evaluation, and implementation of alternative reliable methodologies.

Labor's recent changes to the wage determination process were assessed on the basis of their potential to strengthen those areas we found potentially vulnerable to the inclusion of inaccurate or fraudulent data. We did not evaluate the actual impact of these changes.

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## Limitations of Our Review

Because we limited our analysis of the wage survey and determination process to issues directly related to the detection of inaccurate or fraudulent data, we did not attempt to determine the extent to which any identified weaknesses in Labor's process were actually contributing to inaccurate prevailing wage determinations. We also did not verify the accuracy of the wage determination data Labor used or explore the

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**Appendix I**  
**Objectives, Scope, and Methodology**

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adequacy of Labor's survey response rates or its calculation of prevailing wages.



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# Labor's Wage Determination and Appeals Process Under the Davis-Bacon Act

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The Davis-Bacon Act requires that workers employed on federal construction contracts valued in excess of \$2,000 be paid, at a minimum, wages and fringe benefits that the Secretary of Labor determines to be prevailing<sup>22</sup> for corresponding classes of workers employed on projects that are similar in character to the contract work in the area where the construction takes place.

To determine the prevailing wages and fringe benefits in various areas throughout the United States, Labor's WHD periodically surveys wages and fringe benefits paid to workers in four basic types of construction (building, residential, highway, and heavy).<sup>23</sup> Labor has designated the county as the basic geographic unit for data collection, although Labor also conducts some surveys setting prevailing wage rates for groups of counties. Wage rates are issued for a series of job classifications in the four basic types of construction, so each wage determination requires the calculation of prevailing wages for many different trades, such as electrician, plumber, carpenter, and drywall installer. For example, the prevailing wage rates for the Washington, D.C., metropolitan area include wage rates for 143 different construction trade occupations. Because there are over 3,000 counties, more than 12,000 surveys could be conducted each year if every county in the United States was surveyed. In fiscal year 1995, Labor completed about 100 prevailing wage surveys, gathering wage and fringe benefit data from over 37,000 employers and interested parties. As shown in figure II.1, Labor's wage determination process consists of four basic stages:

- planning and scheduling surveys of employers' wages and fringe benefits in similar job classifications on comparable construction projects;
- conducting surveys of employers and third parties,<sup>24</sup> such as representatives of unions or industry associations, on construction projects;
- clarifying and analyzing respondents' data; and

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<sup>22</sup>Labor regulations define the prevailing wage as the wage paid to the majority (more than 50 percent) of the workers in the job classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage will be the average of the wages paid, weighted by the total employed in the classification.

<sup>23</sup>Heavy construction is a catch-all grouping that includes projects not properly classified under the other three types of construction; for example, dredging and sewer projects.

<sup>24</sup>Labor defines third-party data as project wage and fringe benefit data that are submitted for use in a wage survey by any party other than an employer or other payroll holder.

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**Appendix II**  
**Labor's Wage Determination and Appeals**  
**Process Under the Davis-Bacon Act**

- 
- issuing the wage determinations.<sup>25</sup>

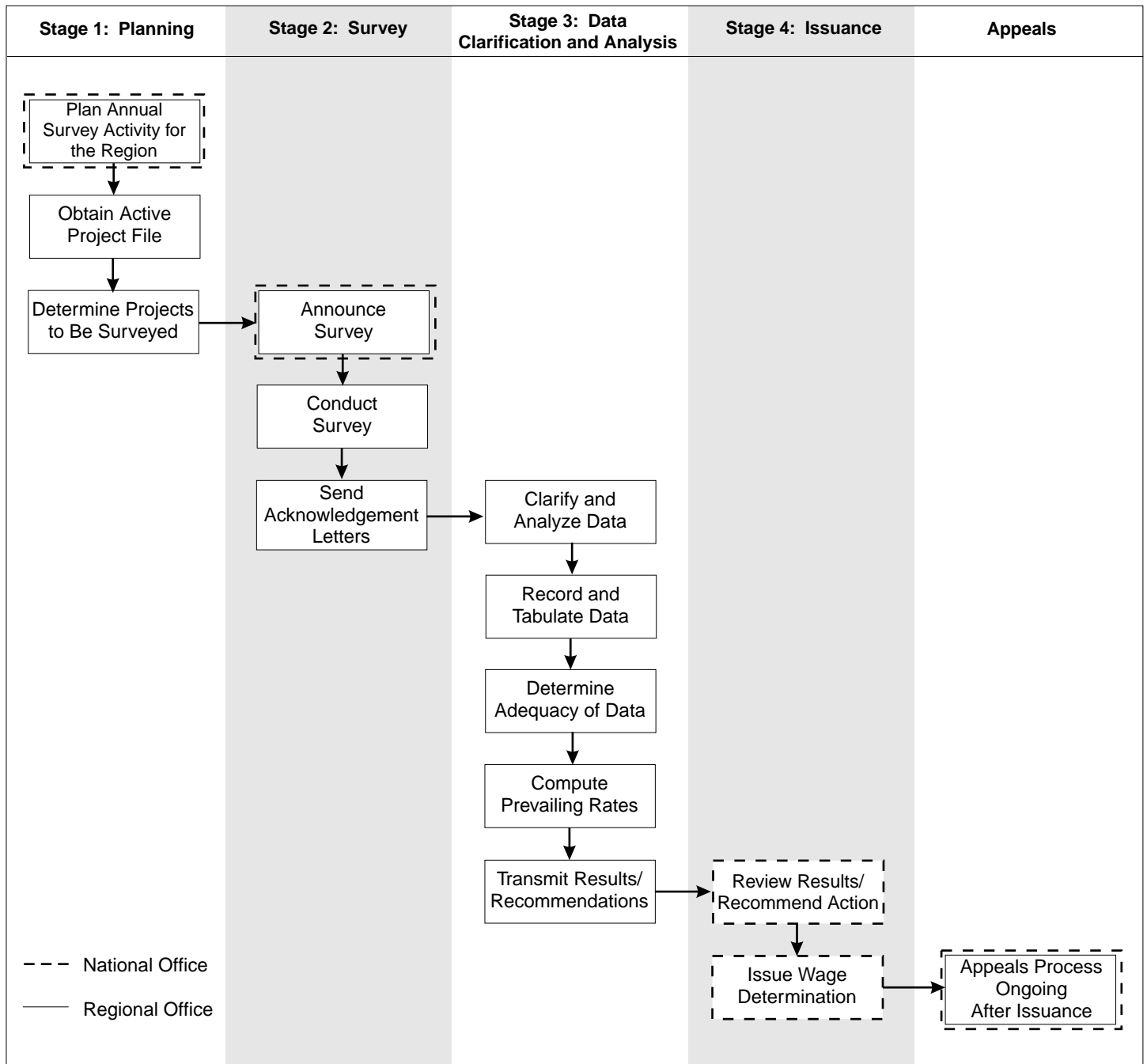
In addition, an interested party, such as a contractor; labor union; or federal, state, or local agency, may seek review and reconsideration of Labor's final wage determinations through an appeals process.

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<sup>25</sup>A wage determination is the listing of wage and fringe benefits rates for each classification of workers that the WHD Administrator has determined to be prevailing in a given area for a type of construction. Each wage determination involves establishing prevailing wage rates for many occupations.

**Appendix II  
Labor's Wage Determination and Appeals  
Process Under the Davis-Bacon Act**

**Figure II.1: Labor's Davis-Bacon Wage Determination Process**



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## Stage 1: Planning and Scheduling Survey Activity

Labor annually identifies the geographic areas that it plans to survey. Because it has limited resources, a key task of Labor's staff is to identify those counties and types of construction most in need of a new survey.<sup>26</sup> In selecting areas for inclusion in planned surveys, the regional offices establish priorities based on criteria that include

- the need for a new survey based on the volume of federal construction in the area;
- the age of the most recent survey; and
- requests or complaints from interested parties, such as state and county agencies, unions, and contractors' associations.

If a type of construction in a particular county is covered by a wage determination based on collective bargaining agreements (CBA) and Labor has no indication that the situation has changed such that a wage determination should now reflect nonunion rates, an updated wage determination may be based on updated CBAs. The unions submit their updated CBAs directly to the National Office.

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## The Regional Survey Planning Report Shows Where Federally Financed Construction Is Concentrated

Planning begins in the third quarter of each fiscal year when the National Office provides regional offices with the Regional Survey Planning Report (RSPR). The RSPR provides data obtained under contract with the F.W. Dodge Division of McGraw-Hill Information Systems. The data show the number and value of active construction projects by region, state, county, and type of construction and give the percentage of total construction that is federally financed.<sup>27</sup> Labor uses the F.W. Dodge data because they comprise the only continuous nationwide database on construction projects. Labor supplements the F.W. Dodge data with additional information provided to the National Office by federal agencies regarding their planned construction projects. The RSPR also includes the date of the most recent survey for each county and whether the existing wage determinations for each county are union, nonunion, or a combination of both.

Using this information, the regional offices, in consultation with the National Office, designate the counties and type of construction to be included in the upcoming regional surveys. Although Labor usually

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<sup>26</sup>In 1996, the average age of a wage survey is more than 7 years.

<sup>27</sup>The F.W. Dodge data consider a project to be active from the time on-site work begins (ground breaking) until it is released to and accepted by the owner.

designates the county as the geographic unit for data collection, in some cases more than one county is included in a specific data gathering effort.

The regional offices determine the resources required to conduct each of the priority surveys. When all available resources have been allocated, the regional offices transmit to the National Office for review their schedules of the surveys they plan to do: the types of construction, geographic areas, and time periods that define each survey.

When Labor's National Office approves all regional offices' preliminary survey schedules, it assembles them in a national survey schedule that it transmits to interested parties, such as major national contractor and labor organizations, for their review and comment. The National Office transmits any comments or suggestions received from interested parties to its affected regional offices. Organizations proposing modifications of the schedule are requested to support their perceived need for alternative survey locations by providing sufficient evidence of the wages paid to workers in the type of construction in question in the area where they want a survey conducted.

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### Each Regional Office Obtains a File of Active Projects That Match Its Survey Objectives

The target date for establishing the final fiscal year survey schedule is September 15. Once the National Office has established the final schedule, each regional office starts to obtain information it can use to generate lists of survey participants for each of the surveys it plans to conduct. Each regional office contacts Construction Resources Analysis (CRA) at the University of Tennessee. CRA applies a model to the F.W. Dodge data that identifies all construction projects in the start-up phase<sup>28</sup> within the parameters specified in the regional office's request and produces a file of projects that were active during a given time period. The time period may be 3 months or longer, depending on whether the number of projects active during the period is adequate for a particular survey. F.W. Dodge provides information on each project directly to the regional offices. The F.W. Dodge reports for each project include the location, type of construction, and cost of the project; the name and address of the contractor or other key firm<sup>29</sup> associated with each project; and if available, the subcontractors.<sup>30</sup>

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<sup>28</sup>F.W. Dodge defines the start stage as one in which the construction will commence within 60 days.

<sup>29</sup>Other examples of key firms would be the owner or architect of the project.

<sup>30</sup>A subcontractor is an employer that has a contractual agreement with the project's prime employer. On a typical construction project, most employees working on the job will be employees of subcontractors.

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## Analysts Screen Projects to Determine Those to Be Surveyed

When the F.W. Dodge reports are received by the regional offices, Labor analysts screen them to make sure the projects meet four basic criteria for each survey. The project must

- be of the correct construction type,
- be in the correct geographic area,
- fall within the survey time frame, and
- have a value of at least \$2,000.

In addition to obtaining files of active projects, Labor analysts are encouraged to research files of unsolicited information that may contain payment evidence submitted in the past that is within the scope of a current survey.

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## Stage 2: Conducting Surveys of Participants

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### Regional Offices Conduct the Surveys

When the regional offices are ready to conduct the new surveys, they send the WD-10 wage reporting form to each contractor (or employer) identified by the F.W. Dodge reports as being in charge of one of the projects to be surveyed, together with a transmittal letter that requests information on any additional applicable projects the contractor may have. (See figs. II.2, II.4, and II.5.) Every WD-10 that goes out for a particular project has on it a unique project code, the location of the project, and a description of it. Data requested on the WD-10 include a description of the project and its location, in order to assure the regional office that each project for which it receives data is the same as the one it intended to have in the survey. The WD-10 also requests the contractor's name and address; the value of the project; the starting and completion dates; the wage rate, including fringe benefits, paid to each worker; and the number of workers employed in each classification during the week of peak activity for that classification. The week of peak or highest activity for each job classification is the week when the most workers were employed in that particular classification. The survey respondent is also asked to indicate which of four categories of construction the project belongs in. Detailed instructions appear on the back of the WD-10. (See fig. II.5.)

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## Survey Is Announced to Third Parties

In addition, about 2 weeks before a survey is scheduled to begin, regional offices send WD-10s and transmittal letters to a list of third parties, such as national and local unions and industry associations, to encourage participation. (See fig. II.3.) Labor encourages the submission of wage information from third parties, including unions and contractors' associations that are not the direct employers of the workers in question, in an effort to collect as much data as possible.<sup>31</sup> Third parties that obtain wage data for their own purposes may share it with Labor without identifying specific workers. For example, union officials need wage information to correctly assess workers' contributions toward fringe benefits. Third-party data generally serve as a check on data submitted by contractors if both submit data on the same project. Regional offices also organize local meetings with members of interested organizations to explain the purpose of the surveys and how to fill out the WD-10.<sup>32</sup>

Because the F.W. Dodge reports do not identify all the subcontractors, both the WD-10 and the transmittal letter ask for a list of subcontractors on each project. Subcontractors generally employ the largest portion of on-site workers, so their identification is considered critical to the success of the wage survey. Analysts send WD-10s and transmittal letters to subcontractors as subcontractor lists are received.

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## Participants Who Submit Data Receive a Written Acknowledgment

Transmittal letters also state that survey respondents will receive an acknowledgment of data submitted, and that they should contact the regional office if one is not received. Providing an acknowledgment is intended to reduce the number of complaints that data furnished were not considered in the survey. Labor analysts send contractors who do not respond to the survey a second WD-10 and a follow-up letter. If they still do not respond, analysts attempt to contact them by telephone to encourage them to participate.

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<sup>31</sup>Labor officials said that third-party data submissions generally account for about one-third of all wage survey submissions. The percentage of survey respondents who are third parties can be substantial for surveys of metropolitan areas. Staff estimated that third-party participation may have been as high as one-half for a recent survey of metropolitan building construction. There is little or no third-party participation in surveys of rural areas, staff said.

<sup>32</sup>Regional staff in Atlanta and Philadelphia said that they generally have not held this type of meeting because of limited resources.

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## Stage 3: Clarifying and Analyzing Respondents' Data

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### Analysts Review the Data Submitted as They Receive Them

As the Labor wage analysts receive the completed WD-10s in the regional offices, they review and analyze the data. Labor's training manual guides the analyst through each block of the WD-10, pointing out problems to look for in data received for each one. Analysts are instructed to write the information they receive by telephone directly on the WD-10 in a contrasting color of ink, indicating the source and the date received. They are instructed to draw one line through the old information so it is still legible.

Labor's wage analysts review the WD-10s to identify missing information, ambiguities, and inconsistencies that they then attempt to clarify or verify by telephone. For example, an analyst may call a contractor for a description of the work done on a project in order to verify that a particular project has been classified according to the correct construction type. An analyst may also call a contractor to ask about the specific type of work that was performed by an employee in a classification that is reported in generic terms, such as a mechanic. In that situation, the analyst would specify on the WD-10 whether it is a plumber mechanic or some other type of mechanic to make sure that the wages that are reported are appropriately matched to the occupations that are paid those rates.

Similarly, due to variations in area practice, analysts may routinely call to find out what type of work the employees in certain classifications are doing. This is because in some areas of the country some contractors have established particular duties of traditional general crafts, for example carpenters, as specialty crafts that are usually paid at lower rates than the general craft.

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### New Policy Implemented for Verifying Third-Party Data

In August 1995, Labor implemented a new policy for verifying third-party data. Where data submitted by third parties present problems, Labor now requires wage analysts to conduct a verification review by telephone of all data from the third party with the employer. In cases where the employer cannot be reached, Labor will accept third-party data only with supporting payroll documentation. Furthermore, the new policy requires analysts to



verify with employers a sample of at least 10 percent of the third-party data that appear to present no problems.

---

### Data Are Recorded and Tabulated

When an analyst is satisfied that any remaining issues with respect to the data on the WD-10s for a particular project have been resolved, the data are recorded and tabulated. The analyst enters them into a computer, which uses the data to generate a Project Wage Summary, Form WD-22a, for reporting survey information on a project-by-project basis. The WD-22a has a section for reporting the name, location, and value of each project; the number of employees who were in each classification; and their hourly wage and fringe benefits. It also has a section for reporting the date of completion or percentage of the project completed, whichever is applicable. (See fig. II.6.)

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### Analysts Determine If Data Are Adequate

At least 2 weeks before the survey cut-off date, the response rate for the survey is calculated to allow time to take follow-up action if the response rate is determined to be inadequate. For example, WHD operational procedures specify that if data gathered for building or residential surveys provide less than a 25-percent usable response rate or less than one-half of the required key classes of workers,<sup>33</sup> the analyst will need to obtain data from comparable federally financed projects in the same locality.<sup>34</sup>

If an analyst has no data on occupations identified by Labor as key classifications of workers for the type of construction being surveyed, he or she is required by Labor's procedures to call all the subcontractors included in the survey who do that type of work and from whom data are missing, to try to get data. If the analyst still cannot get sufficient data on at least one-half of the required key classes, consideration must be given to expanding the scope of the survey geographically to get more crafts represented. If the overall survey usable response rate is 25 percent or more, data on three workers from two contractors are sufficient to establish a wage rate for a key occupation.

After the survey cut-off date, when all valid data have been recorded and tabulated, a final survey response rate is computer-generated. Typically, it takes a WHD analyst 4 months to conduct a survey.

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<sup>33</sup>Labor defines key classes of workers as those determined necessary for each of the four types of construction surveys.

<sup>34</sup>Since 1985, regulation has prohibited, to the extent practicable, the use of wages for federal construction in determining prevailing wages.

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## Prevailing Wage Rates Are Computer-Generated

Once all the valid project data have been entered, the prevailing wage rate for each classification of worker can be computer-generated. If there is a majority of workers paid at a single rate in a job classification, that rate prevails for the classification. The wage rate needs to be the same to the penny to constitute a single rate. If there is no majority paid at the same rate for a particular classification, a weighted average wage rate for that occupation is calculated.

The prevailing wage rate for each occupation is compiled in a computer-generated comprehensive report for each survey, the Wage Compilation Report, Form WD-22. The WD-22 lists each occupation and the wage rate recommended for that occupation by the regional office. A rule column indicates whether the rate is based on a majority (M) or a weighted average (A), and a column to the left of the rule column provides the number of workers for which data were used to compute each wage rate. (See fig. II.7.) The regional offices transmit survey results to the National Office, which reviews the results and recommends further action if needed.

---

## Stage 4: Issuing the Wage Determinations

When all its recommendations have been acted upon, the National Office issues the wage determination. These determinations are final. There is no review or comment period provided to interested parties before they go into effect. Access to wage determinations is provided both in printed reports available from the U.S. Superintendent of Documents and on an electronic bulletin board. Modifications to general wage determinations are published in the Federal Register.

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## Labor's Appeals Process

An interested party may seek review and reconsideration of Labor's final wage determinations. The National Office and the regional offices accept protests and inquiries relating to wage determinations at any time after a wage determination has been issued. The National Office refers all the complaints it receives to the relevant regional offices for resolution. Most inquiries are received informally by telephone, although some are written complaints. Regional office staff said that a majority of those with concerns appear to have their problems resolved after examining the information (collected on a Form WD-22a) for the survey at issue, because they do not pursue the matter further. If an examination of the forms does not satisfy them, they are required to provide information to support their claim that a wage determination needs to be revised. The National Office modifies published wage determinations in cases where regional offices,

based on evidence provided, recommend that it do so; for example, when it has been shown that a wage determination was the result of an error by the regional office. However, some of those who seek to have wage rates revised are told that a new survey will be necessary to resolve the particular issue that they are concerned about. For example, if the wage rates of one segment of the construction industry are not adequately reflected in survey results due to a low rate of participation in the survey by that segment of the industry, a new survey would be necessary to resolve this issue.

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**An Interested Party May  
Appeal a Decision of  
Labor's WHD  
Administrator**

Those who are not satisfied with the decision of the regional office may write to the National Office to request a ruling by Labor's WHD Administrator. If the revision of a wage rate has been sought and denied by a ruling of Labor's WHD Administrator, an interested party has 30 days to appeal to the Administrative Review Board for review of the wage determination. The board consists of three members appointed by the Secretary of Labor. The Solicitor of Labor represents WHD in cases involving wage determinations before the Administrative Review Board. A petition to the board for review of a wage determination must be in writing and accompanied by supporting data, views, or arguments. Labor reports that it has had only one appeal with respect to wage determinations in the past 5 years. The result of the appeal was that a contested rate was changed.

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**Transmittal Letters  
and Forms Used in  
Labor's Davis-Bacon  
Prevailing Wage  
Determination  
Process**

Presented below are examples of transmittal letters and forms used in Labor's Davis-Bacon prevailing wage determination process. Included are examples of (1) the transmittal letter to accompany the Form WD-10 sent to contractors; (2) the transmittal letter to accompany the Form WD-10 sent to interested parties; (3) the front of the Form WD-10 used to collect data on which wage determinations are based and (4) the back of the Form WD-10 with instructions for filling out the front of the form; (5) the Form WD-22a, which provides a summary of data received on a particular project; and (6) the Form WD-22, which is a comprehensive report of the prevailing wage rate for each occupation in a survey.

Appendix II  
Labor's Wage Determination and Appeals  
Process Under the Davis-Bacon Act

Figure II.2: Labor's Transmittal Letter to Accompany the Form WD-10 Sent to Contractors

U.S. Department of Labor



1.2.14 - CONTRACTOR LETTER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Sir or Madam:

The U.S. Department of Labor is conducting a wage survey of \_\_\_\_\_ (type) construction projects for the determination of prevailing wage rates in \_\_\_\_\_ (list) County(ies), \_\_\_\_\_ (State) as required under the Davis-Bacon and Related Acts.

We believe that your firm is or has been engaged in construction of the project(s) described on the enclosed form(s). We would like information on this or any other projects your company was employed on under construction or completed any time during the period of \_\_\_\_\_ (date) through \_\_\_\_\_ (date) in this area.

The wages being paid by your firm on this project (regardless of whether or not it is federally funded) affect the prevailing wage scale for future federally or assisted construction projects in this area. Please complete the report and return it in the enclosed self-addressed envelope. **DATA MUST BE POSTMARKED BY \_\_\_\_\_ (date) TO BE INCLUDED IN THE SURVEY.**

Examples of common job classifications are listed on the reverse side of this letter to aid in completion of the enclosed form; other classifications may be written in if necessary. If you have employed any subcontractors, please complete and return the enclosed form which has been provided for you.

**ALL INFORMATION PROVIDED WILL BE KEPT CONFIDENTIAL TO THE EXTENT ALLOWED BY LAW.** When you submit information you will receive an acknowledgement that the material was received. If you do not receive an acknowledgement, or you have any questions concerning this survey or relevant information on construction wage rates please direct them to \_\_\_\_\_ (name), Wage Analyst, at \_\_\_\_\_ (telephone number). Data may also be transmitted by facsimile to \_\_\_\_\_ (fax number).

Sincerely,

Enclosures

Appendix II  
Labor's Wage Determination and Appeals  
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Figure II.3: Labor's Transmittal Letter to Accompany the Form WD-10 Sent to Interested Parties

U.S. Department of Labor



1.2.15 - INTERESTED PARTY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Sir or Madam:

This is to advise you of a Davis-Bacon wage survey to be conducted within your jurisdiction. The Davis-Bacon and related Acts require payment of locally prevailing wage rates and fringe benefits to employees of contractors and subcontractors performing work on federally financed or assisted construction projects. The Wage and Hour Division of the U.S. Department of Labor is responsible for conducting prevailing wage surveys to establish the wage rates to be included in wage determinations applicable to such construction projects.

On \_\_\_\_\_ (date), this office will begin collecting wage payment information on \_\_\_\_\_ (type) construction projects for employees (regardless of whether or not they work on federally financed or assisted projects) in the county(ies) of \_\_\_\_\_ (list) in \_\_\_\_\_ (State). We will be soliciting information on wages and fringe benefits paid to employees on \_\_\_\_\_ (type) construction projects that were under construction or completed during the period from \_\_\_\_\_ (date) through \_\_\_\_\_ (date). **Data must be postmarked by \_\_\_\_\_ (date) to be included in the survey.** Please promptly notify interested parties in your organization and request their participation regarding this survey.


The wages being paid construction workers may affect the prevailing wage determinations issued as a result of this survey. **THE IDENTITY OF THE RESPONDENTS WILL BE KEPT CONFIDENTIAL TO THE EXTENT ALLOWED BY LAW.** It is important that both union and nonunion contractors supply information as it is used in determining wage rates to be issued on the resulting wage schedule applicable to covered construction projects.

When information is submitted, the supplier will receive an acknowledgement that the material was received. If they do not receive an acknowledgement, or they have any questions concerning this survey or relevant information on construction wage rates they should contact \_\_\_\_\_ (name) at \_\_\_\_\_ (telephone number). They may also transmit data by facsimile to \_\_\_\_\_ (fax number).

Sincerely,

**Appendix II  
Labor's Wage Determination and Appeals  
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**Figure II.4: Front of Labor's Form WD-10**

Report of Construction Contractor's Wage Rates			U.S. Department of Labor Employment Standards Administration Wage and Hour Division						
<p><b>Note:</b> This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be kept confidential to the maximum extent possible under existing law.</p> <p><b>Please see instructions on reverse side.</b></p>						<p>OMB No. 1215-0046 Expires: 07/31/96</p>			
1. Contractor Name, Address, Telephone				2. Project Name, Description, and Location (Include County)					
3. Contract Type		4. Approximate Value of		5. Starting Date		6. Completion Date			
<input type="checkbox"/> General/Prime <input type="checkbox"/> Sub If General, Attach Subcontractor List		Project \$ _____ Subcontract \$ _____				<input type="checkbox"/> Estimated <input type="checkbox"/> Actual			
7. Type of Construction			8. Project is Subject to:						
<input type="checkbox"/> Residential <input type="checkbox"/> Building <input type="checkbox"/> Highway <input type="checkbox"/> Heavy Stories _____ Units _____			<input type="checkbox"/> Federal (Davis-Bacon) Wage Determination <input type="checkbox"/> State Wage Determination <input type="checkbox"/> Neither						
9. Classification of Employees (i.e., Carpenters, Electricians, Laborers, Carpenters' Helpers, Apprentice Electricians, Etc.)		10. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid?		11. Workweek Ending Date For Peak Number Employed	12. Peak Number Employees	13. Basic Hourly Rate	14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rates or Other Amounts)		
							Health and Welfare	Pension	Holiday and Vacation
		Yes    No							
15. Remarks									
<p><b>Wage rates paid cannot be considered in the determination of Davis-Bacon prevailing wage rates unless such information is provided as requested above.</b></p>									
16. Submitted By							17. Date Report Submitted		
Name and Title (Please Print)			Signature			Telephone Number			

**Appendix II**  
**Labor's Wage Determination and Appeals**  
**Process Under the Davis-Bacon Act**

**Figure II.5: Back of Labor's Form WD-10**

**Instructions - Form WD-10**

(Correct any of the preprinted information in Items 1-8. If not preprinted, please complete.)

1. Self-explanatory.
2. Provide the name of the project, a short description, the street address, city, county and state.
3. If a general or prime contract, on a separate sheet identify by name, address and telephone number all of your subcontractors engaged on this project. Do not include those firms which supply materials only.
4. **General or Prime Contractors Only.** State the total project value.  
**Subcontractors Only.** State the approximate value of your subcontract (not of the entire general contract).
5. **General or Prime Contractors Only.** State the date that any work started on the project.  
**Subcontractors Only.** Indicate the date you started actual work on the project.
6. **General or Prime Contractors Only.** Give the project completion date and indicate if the date is the actual (that is, already completed) or estimated.
7. For residential building projects, state the number of stories and units.
8. For all projects, indicate whether the project is subject to a Federal (Davis-Bacon) wage determination, a State wage determination, or neither. If project is subject to both a Federal and State wage determination check both boxes.
9. List all classifications employed on the project, including helpers <sup>a/</sup>. If any. Helpers, as defined below (regardless of job title), who are employed on the project should be listed with a notation indicating the journeyman craft they assist. Helpers who assist more than one journeyman craft should be listed with a notation indicating each journeyman craft classification they have assisted. Separately list employees in an apprenticeship program or in a formal training program approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training (BAT) or a State Apprenticeship Agency recognized by BAT. However, information regarding apprentice and trainee wages and fringe benefits (Items 13. and 14.) need not be provided.
10. Indicate by a check mark whether the contractor is signatory to a collective bargaining agreement under which the workers in each classification listed are paid.
11. Indicate the ending date (mo., day, yr.) of the workweek in which the wage rates were paid to each classification.
12. For each classification used on this project please fill in number employed during the week of peak employment of each craft. Indicate the number of employees paid at each given rate.
13. Indicate the basic hourly rate of pay for each classification. Do not give a pay range. If pay is for piece work, break it down to an hourly rate of pay for each piece rate worker. Do not group piece rate workers with one average hourly rate.
14. Indicate any bona fide fringe benefits <sup>b/</sup> paid each classification under the following categories:
  - a. Health and Welfare
  - b. Pension
  - c. Holiday and Vacation
  - d. Apprentice Training (App. Training)Give the hourly rate, or the percentage of the basic hourly rate paid, or other amounts (e.g., \$15 per week, \$30 per month) under the heading that most clearly describes the fringe benefit. If necessary, clarify or list any bona fide fringe benefit which does fit into the above categories in "Remarks" box.
- 15 - 17. Self-explanatory.

<sup>a/</sup> A "helper" as defined under the Davis-Bacon regulations (29 CFR 5.2(n) (4)) is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying, and furnishing materials, tools, equipment and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning and holding materials or tools; and other related semi-skilled tasks as directed by the journeyman. A helper may use the tools of the trade at and under the direction of a journeyman. The particular duties performed by a helper vary according to area practice.

<sup>b/</sup> Typically, bona fide fringe benefits include:

- o Health and Welfare - medical or hospital care, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability or sickness or accident insurance.
- o Pensions - Retirement or Annuity cost or cost of insurance to provide such a benefit.
- o Holiday and Vacation.
- o Apprentice Training - defrayment of cost of apprenticeship or similar training programs.

Report only the contributions made or costs incurred by the contractor or subcontractor (not the contributions or amounts paid by employees) for any of the types of fringe benefits noted above. Do not report any fringe benefit payments required by either Federal, State, or local law, such as worker's compensation or unemployment insurance.

We estimate that it will take an average of 20 minutes to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Office of IRM Policy, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0046), Washington, DC 20503.

**DO NOT SEND THE COMPLETED SURVEY TO EITHER OF THESE OFFICES**

U.S. Government Printing Office: 1995 — 367-185/22966

**Appendix II  
Labor's Wage Determination and Appeals  
Process Under the Davis-Bacon Act**

**Figure II.6: Labor's Form WD-22a**

WD-22a		PROJECT WAGE SUMMARY SURVEY 94-SD-200			DATE: 04/03/96
2 PROJECT ID: SHA-1					
NAME:					
LOCATION:					
DATE OR % COMPL.: 12/14/93					
PROJECT VALUE: \$5,000,000					
	HOURLY	FRINGE			NO. EMPL.
10 CARPENTER	\$10.500	\$0.000	0.000		1
	\$10.000	\$0.000	0.000		9
	\$11.000	\$0.000	0.000		1
	\$13.000	\$0.000	0.000		2
	\$12.000	\$0.000	0.000		2
20 LABORER	\$7.000	\$0.000	0.000		8
	\$6.500	\$0.000	0.000		11
	\$8.000	\$0.000	0.000		1
	\$6.750	\$0.000	0.000		2
	\$6.000	\$0.000	0.000		1
	\$6.500	\$0.580	0.000		3
50 FORK LIFT	\$7.500	\$0.000	0.000		1
70 SCRAPER	\$10.000	\$0.000	0.000		2
100 PAINTER, BRUSH	\$17.000	\$0.000	0.000		2
	\$15.000	\$0.000	0.000		1
110 CEMENT MASON	\$10.000	\$0.000	0.000		2
	\$9.500	\$0.000	0.000		1
130 LOADER	\$8.500	\$0.580	0.000		2
	\$8.000	\$0.000	0.000		1
140 DOZER D-9	\$10.000	\$0.000	0.000		1
150 PLUMBER	\$16.000	\$0.000	0.000		1
	\$12.360	\$0.000	0.000		1
	\$14.000	\$0.000	0.000		1
160 ROOFER	\$8.500	\$0.000	0.000		2
	\$9.500	\$0.000	0.000		1
	\$11.000	\$0.000	0.000		1
170 SHEETMETAL-DUCT	\$11.500	\$0.000	0.000		3
	\$10.000	\$0.000	0.000		1
172 SHEETMETAL (DUCT) HELPER	\$9.000	\$0.000	0.000		2
180 DRYWALL HANGER	\$10.000	\$0.000	0.000		9
200 ELECTRICIAN	\$14.000	\$0.000	0.000		1
	\$12.000	\$0.000	0.000		2
210 SOFT FLOOR LAYER	\$8.000	\$0.000	0.000		2
	\$12.500	\$0.000	0.000		1
220 INSULATOR BATT & BLOWN	\$10.000	\$0.000	0.000		4
230 TRUCK-TANDEM/PUP	\$9.700	\$0.580	0.000		1
240 PIPELAYER	\$7.500	\$0.580	0.000		1
250 BACKHOE	\$9.500	\$0.000	0.000		1
	\$10.350	\$0.580	0.000		1
260 TAPER	\$9.500	\$0.000	0.000		3
	\$10.000	\$0.000	0.000		4
280 DRYWALL FINISHER	\$15.000	\$0.000	0.000		1
	\$9.500	\$0.000	0.000		1



**Appendix II  
Labor's Wage Determination and Appeals  
Process Under the Davis-Bacon Act**

**Figure II.7: Labor's Form WD-22**

CRAFTS		RECOMMENDED RATES	TOTAL NO. REPORTED / EMPLOYED AT CONTROLLING	RULE
10	CARPENTER	\$8.798	52	A
* 12	CARPENTER HELPER	\$7.509	27	A
20	LABORER	\$6.016	61	A
* 30	CLEAN UP LABORERS	\$5.500	9/9	M
* 40	FORM SETTER	\$8.375	2	A
50	FORK LIFT	\$7.500	5/3	M
* 60	TRACTOR	\$7.500	1/1	M
70	SCRAPER	\$10.000	3/2	M
* 80	CARPENTER LABORER	\$6.750	25/25	M
* 90	TRUCK DRIVER	\$8.500	1/1	M
100	PAINTER, BRUSH	\$12.700	5	A
110	CEMENT MASON	\$9.750	6	A
* 120	PAINTER LABORER	\$6.740	1/1	M
130	LOADER	\$10.250	7	A
* 140	DOZER D-9	\$10.000	1/1	M
150	PLUMBER	\$12.830	6	A
* 160	ROOFER	\$9.375	4	A
170	SHEETMETAL-DUCT	\$11.500	5/3	M
* 172	SHEETMETAL (DUCT) HELPER	\$9.000	2/2	M
180	DRYWALL HANGER	\$10.000	9/9	M
200	ELECTRICIAN	\$12.100	4	A
* 210	SOFT FLOOR LAYER	\$8.000	3/2	M
* 220	INSULATOR BATT & BLOWN	\$10.000	4/4	M
* 230	TRUCK-TANDEM/PUP	\$9.700	1/1	M
* 240	PIPELAYER	\$7.500	1/1	M
* 250	BACKHOE	\$9.925	2	A
* 260	TAPER	\$10.000	7/4	M
* 280	DRYWALL FINISHER	\$10.000	7/5	M
* 300	APPLICATOR	\$10.000	4/3	M
* 320	SIDER	\$10.000	2/2	M
* 400	BOBCAT	\$9.000	2/2	M
*3000	CARP-METAL SIDING INSTALL	\$10.000	3/2	M

04/03/96

\* OMITTED - INSUFFICIENT DATA

WD-22

FEDERAL DATA INCLUDED

# Comments From the Department of Labor

U.S. Department of Labor

Assistant Secretary for  
Employment Standards  
Washington, D.C. 20210



May 15, 1996

The Honorable Carlotta C. Joyner  
Director, Education and  
Employment Issues  
Health, Education, and  
Human Services Division  
General Accounting Office  
Washington, D.C. 20548

Dear Ms. Joyner:

Thank you for the opportunity to comment on the General Accounting Office's (GAO) draft report entitled Davis-Bacon Act: Process Weaknesses Contribute to Lack of Confidence In Labor's Prevailing Wage Rates.

In accordance with our commitment to improve overall administration of the Davis-Bacon program, we agree with the recommendations made in the report and are developing an action plan, consistent with available resources, to implement the recommendations while we continue to evaluate possible longer term changes in the Davis-Bacon wage determination process. We will keep you advised of our progress in implementing these recommendations.

The Department of Labor is committed to effective administration and enforcement of the Davis-Bacon Act, and as noted in your report, we have taken several actions, both short term and long term, to address potential concerns about the Davis-Bacon wage survey program. While your report does not address the accuracy of prevailing wage rates issued under the Davis-Bacon Act, you note that potential weaknesses in the process contribute to a lack of confidence in the accuracy of the rates. While we recognize that some opponents of Davis-Bacon have expressed a lack of confidence in the wage determination process, it is not clear how or why GAO has determined this to be a "pervasive lack of confidence." GAO's findings do not appear to support this conclusion.

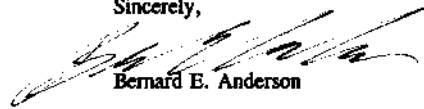
In addition, I wish to point out that the report's description of the events and actions taken by the Wage and Hour Division relative to Oklahoma are somewhat misleading. The report suggests that Wage and Hour took action to correct wage determinations only after the Oklahoma State investigative report was received. This report was provided to the Wage and Hour Division more than a month after the Oklahoma and Tulsa heavy construction wage determinations were revised. A detailed chronology is contained in the enclosure.

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**Appendix III**  
**Comments From the Department of Labor**

In reviewing your report, we also noted several technical corrections that are summarized in the enclosure to this letter. Again, thank you for the opportunity to comment on this draft report.

Sincerely,



**Bernard E. Anderson**

Enclosure

# Major Contributors to This Report

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**Appendix IV**  
**Major Contributors to This Report**

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# Related GAO Products

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Addressing the Deficit: Budgetary Implications of Selected GAO Work for Fiscal Year 1996 (GAO/OCG-95-2, Mar. 15, 1995).

Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, Vol. I, June 30, 1994).

Davis-Bacon Act (GAO/HEHS-94-95R, Feb. 7, 1994).

The Davis-Bacon Act Should Be Repealed (GAO/HRD-79-18, Apr. 27, 1979).

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