

EXAMINING THE DEPARTMENT OF LABOR'S IMPLEMENTATION OF THE DAVIS-BACON ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION

AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

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EXAMINING THE DEPARTMENT OF LABOR'S IMPLEMENTATION OF THE DAVIS-BACON ACT

Thursday, April 14, 2011

U.S. House of Representatives

Subcommittee on Workforce Protections

Committee on Education and the Workforce

Washington, DC

The subcommittee met, pursuant to call, at 10:04 a.m., in room 2175, Rayburn House Office Building, Hon. Tim Walberg [chairman of the subcommittee] presiding.

Present: Representatives Walberg, Kline, Bucshon, Woolsey, Payne, Kucinich, Bishop, Hirono, and Miller.

Staff present: Katherine Bathgate, Press Assistant; Kirk Boyle, General Counsel; Casey Buboltz, Coalitions and Member Services Coordinator; Ed Gilroy, Director of Workforce Policy; Benjamin Hoog, Legislative Assistant; Barrett Karr, Staff Director; Ryan Kearney, Legislative Assistant; Brian Newell, Deputy Communications Director; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Ken Serafin, Workforce Policy Counsel; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Alissa Strawcutter, Deputy Clerk; Loren Sweatt, Professional Staff Member; Aaron Albright, Minority Communications Director for Labor; Tylease Alli, Minority Hearing Clerk; Daniel Brown, Minority Staff Assistant; Jody Calemine, Minority Staff Director; Brian Levin, Minority New Media Press Assistant; Jerrica Mathis, Minority Legislative Fellow, Labor; Celine McNicholas, Minority Labor Counsel; Richard Miller, Minority Senior Labor Policy Advisor; Megan O'Reilly, Minority General Counsel; Julie Peller, Minority Deputy Staff Director; Meredith Regine, Minority Labor Policy Associate; Melissa Salmanowitz, Minority Communications Director for Education; Michele Varnhagen, Minority Chief Policy Advisor and Labor Policy Director; and Michael Zola, Minority Chief Investigative Counsel.

Chairman WALBERG [presiding]. A quorum being present, the subcommittee will come to order. Good morning and welcome to today's hearing. I would like to thank our witnesses for joining us. Our panel has a wide range of knowledge and experience with the Davis-Bacon Act and your testimony will provide important insight as we work to ensure the law is serving the interest of job creators, workers and taxpayers.

We are in the middle of an important debate over the country's fiscal future. Years of reckless borrowing and spending by the fed-

eral government have brought our nation to the brink of a crisis and something must be done.

We can no longer accept waste and inefficiencies as the price of doing business with the federal government, which is why we are here today. Established by the Hoover Administration in 1931, the Davis-Bacon Act requires workers to be paid the prevailing wage rates on federal construction projects costing taxpayers more than \$2000.

Prevailing wages are determined through a complex system of wage surveys administered by the Department of Labor. The surveys collect salary and fringe benefit information on various job classifications based on similar projects for a given location, typically at the county level.

Businesses and labor organizations voluntarily report wage information and the Department can also rely upon local collective bargaining agreements when determining the wage rate.

Federal contractors must submit weekly payroll reports to the Department, certifying appropriate wages have been paid. While intended as a temporary effort 80 years ago, the Davis-Bacon Act remains a significant feature of federal spending to this day.

That is why a recent report by the Government Accountability Office is deeply troubling. Despite years of review and oversight, the GAO found considerable challenges still plague the Department's implementation of the Davis-Bacon Act.

GAO revealed problems with accuracy, quality, bias and timeliness of the wage data. Of the surveys reviewed, one in four of the final wage rates were based on the wages of just six or fewer workers.

Forty-six percent of the prevailing wages for non-union workers were based on wages reported ten or more years ago. The report also identified a lack of transparency about how wage rates are determined, raising concerns for businesses trying to bid for work and taxpayers who want to ensure their dollars aren't being wasted.

According to the GAO, the Department of Labor also fails to follow guidance issued by the Office of Management and Budget and even disregards its own policy manual by ignoring the impact of non-responses in the accuracy of the survey.

Despite recent changes adopted by the Department, the GAO still found issues with timeliness and believes any improvements the Department hopes to achieve, quote—"may not be fully realized."

Perhaps the GAO outlined best what is at stake and I quote—"If the resulting prevailing wage rates are too high, it potentially costs the federal government and taxpayers more for publicly funded construction projects or if too low, they cost workers in compensation."

These are stunning conclusions for a law that governs how hundreds of billions of taxpayer dollars are spent. In fact the failed stimulus committed an estimated \$300 billion to federal construction projects that could potentially be covered by Davis-Bacon wage rates.

In 2009 alone federal construction and rehabilitation projects totaled roughly \$220 billion. Are these taxpayer dollars being well spent? And if not then what should be done about it? Those are the

questions we hope to answer today, simply accepting the status quo that has been in place since the great depression is unacceptable.

We have a responsibility to determine whether the law is meeting the needs of today's taxpayers and workers. Again I would like to thank our witnesses. And we will now recognize the senior democratic member of the sub-committee, Ms. Woolsey, for opening remarks.

[The statement of Chairman Walberg follows:]

**Prepared Statement of Hon. Tim Walberg, Chairman,
Subcommittee on Workforce Protections**

Good morning and welcome to today's hearing. I would like to thank our witnesses for joining us. Our panel has a wide range of knowledge and experience with the Davis-Bacon Act, and your testimony will provide important insight as we work to ensure the law is serving the interests of job-creators, workers, and taxpayers.

We are in the middle of an important debate over the country's fiscal future. Years of reckless borrowing and spending by the federal government have brought our nation to the brink of a crisis and something must be done. We can no longer accept waste and inefficiencies as the price of doing business with the federal government, which is why we are here today.

Established by the Hoover administration in 1931, the Davis-Bacon Act requires workers be paid the "prevailing wage rates" on federal construction projects costing taxpayers more than \$2,000. Prevailing wages are determined through a complex system of wage surveys administered by the Department of Labor.

The surveys collect salary and fringe benefit information on various job classifications based on similar projects for a given location, typically at the county level. Businesses and labor organizations voluntarily report wage information, and the department can also rely upon local collective bargaining agreements when determining the wage rate. Federal contractors must submit weekly payroll reports to the department certifying appropriate wages have been paid.

While intended as a temporary effort 80 years ago, the Davis-Bacon Act remains a significant feature of federal spending to this day. That is why a recent report by the Government Accountability Office is deeply troubling. Despite years of review and oversight, the GAO found considerable challenges still plague the department's implementation of the Davis-Bacon Act.

The GAO revealed problems with accuracy, quality, bias, and timeliness of the wage data. Of the surveys reviewed, one in four of the final wage rates were based on the wages of just six or fewer workers. Forty-six percent of the prevailing wages for non-union workers were based on wages reported 10 or more years ago.

The report also identified a lack of transparency about how wage rates are determined, raising concerns for businesses trying to bid for work and taxpayers who want to ensure their dollars aren't being wasted. According to the GAO, the Department of Labor also fails to follow guidance issued by the Office of Management and Budget, and even disregards its own policy manual by ignoring the impact of non-responses in the accuracy of the survey.

Despite recent changes adopted by the department, the GAO still found issues with timeliness and believes any improvements the department hopes to achieve "may not be fully realized." Perhaps the GAO outlined best what's at stake: "If the resultant prevailing wage rates are too high, they potentially cost the federal government and taxpayers more for publicly funded construction projects or, if too low, they cost workers in compensation."

These are stunning conclusions for a law that governs how hundreds of billions of taxpayer-dollars are spent. In fact, the failed stimulus committed an estimated \$300 billion to federal construction projects that could potentially be covered by Davis-Bacon wage rates. In 2009 alone, federal construction and rehabilitation projects totaled roughly \$220 billion.

Are these taxpayer dollars being well spent, and if not, then what should be done about it? Those are the questions we hope to answer today. Simply accepting the status-quo that has been in place since the Great Depression is unacceptable. We have a responsibility to determine whether the law is meeting the needs of today's taxpayers and workers.

Again, I would like to thank our witnesses, and will now recognize the senior Democrat of the subcommittee, Ms. Woolsey, for her opening remarks.

Ms. WOOLSEY. Thank you, Mr. Chairman. And thank you for holding this hearing to examine the Department of Labor's implementation of the Davis-Bacon Act because it provides us a forum today to highlight how it has helped maintain decent wages for workers in support of local communities that are vulnerable to changes to the economy.

Of course we are also here because the Government Accountability Office, GAO, has determined that there are issues with the survey process used by the Department of Labor to determine local prevailing wages.

GAO—from that time surveys used outdated wage data and had low response rates. And it is my understanding that—and the other questions that you brought up—that the department has instituted policies to address these issues, most of them, to be sure.

So let us be clear. We all agree that the department must work to see that its survey process is effective and the wage rates it publishes for federal projects are accurate. Making certain that federal policies work as intended is not a partisan issue.

We should be careful however not to read into the GAO report and draw conclusions that it absolutely doesn't make. The report does not conclude that Davis-Bacon drives up the cost of construction projects or inhibits job growth. These are discredited theories that don't hold up to scrutiny.

The Davis-Bacon Act requires contracts and contractors on federal construction projects to pay their employees no less than the locally prevailing wage. This is important because it ensures that the federal government does not use its bargaining power to drive down wages which would actually hurt local economies.

Instead the act makes certain that federally financed projects encourage competition, contribute to the development of a skilled workforce for the future and pay decent wages. This is sound and proven public policy.

Without prevailing wage laws like Davis-Bacon contractors would be encouraged to assemble the cheapest and most exploitable workforce rather than the best trained, equipped, and managed workers. It would be a race to the bottom subsidized by the federal government.

Much of the opposition to prevailing wage protections is grounded in decades of false rhetoric and misinformation. Studies consistently show that Davis-Bacon prevailing wage requirements do not increase the cost of federal construction.

In addition, several reports on prevailing wage requirements have found that prevailing wages provide numerous benefits including higher wages, better workplace safety, increased government revenues and they elevate workers skills and standards in the construction industry.

My point is the 2006 study determined that states with prevailing wage laws had higher rates of construction training programs. And the trainees were more likely to complete their programs compared to the states without prevailing wage laws.

We have seen the effects when prevailing wage laws have been repealed at the state level. Competitive pressures in the industry led to lower wages for workers. There is also an increase in work

related injuries and illnesses. The last thing construction workers need in this economy is to have their wages cut.

At the end of the day that is just what any argument against Davis-Bacon prevailing wage protection would amount to, a reduction in wages and the elimination of a standard of living for workers where they can raise and educate their families while ultimately ensuring their own retirement.

Mr. Chairman, I have confidence that we can use this hearing constructively to discuss the legitimate issues raised by the GAO and not as a policy to debate whether or not Davis-Bacon has some merit that we know they have. I yield back.

[The statement of Ms. Woolsey follows:]

**Prepared Statement of Hon. Lynn C. Woolsey, Ranking Minority Member,
Subcommittee on Workforce Protections**

Thank you Mr. Chairman and thank you for holding this hearing to examine the Department of Labor's implementation of the Davis-Bacon Act because it provides us a forum today to highlight how it has helped maintain decent wages for workers and supported local communities that are vulnerable to changes in the economy.

Of course, we're also here because the Government Accountability Office (GAO) has determined that there are issues with the survey process used by the Department of Labor to determine local prevailing wages. GAO found that at times surveys use outdated wage data and had low response rates. It is my understanding and the other questions that you brought up that the Department has instituted policies to address some of these issues.

Let's be clear: we all agree that the Department must work to see that its survey process is effective and the wage rates it publishes for federal projects are accurate. Making sure federal policies work as intended is not a partisan issue.

We should be careful, however, not to read into the GAO report and draw conclusions that it absolutely doesn't make. The GAO's report does not conclude that Davis-Bacon drives up the costs of construction projects or inhibits job growth. These are discredited theories that don't hold up to scrutiny.

The Davis-Bacon Act requires contractors on federal construction projects to pay their employees no less than the locally prevailing wage. This is important because it ensures that the federal government does not use its bargaining power to drive down wages which would actually hurt local economies. Instead, the Act makes certain that federally financed projects encourage competition, contribute to the development of a skilled workforce for the future, and pay decent wages. This is sound and proven public policy.

Without prevailing wage laws, like Davis-Bacon, contractors would be encouraged to assemble the cheapest and most exploitable workforce rather than best trained, equipped, and managed workers. It would be a race to the bottom, subsidized by the federal government.

Much of the opposition to prevailing wage protections is grounded in decades of false rhetoric and misinformation. Studies consistently show that Davis-Bacon prevailing wage requirements DO NOT increase the cost of federal construction. In addition, several reports on prevailing wage requirements have found that prevailing wages provide numerous benefits including: higher wages, better workplace safety, increased government revenues, and they elevate worker skills and standards in the construction industry.

Likewise, a 2006 study determined that states with prevailing wage laws had higher rates of construction training programs, and trainees were more likely to complete their programs compared to the states without prevailing wage laws.

We have seen the effects when prevailing wage laws have been repealed at the state level—competitive pressures in the industry lead to lower wages for workers. There is also an increase in work-related injuries and illnesses.

The last thing construction workers need in this economy is to have their wages cut. At the end of the day, that is just what any argument against Davis-Bacon prevailing wage protections would amount to—a reduction in wages and the elimination of a standard of living for workers where they can raise and educate their families, while ultimately ensuring their own retirement. Mr. Chairman, I have confidence that we can use this hearing constructively to discuss the legitimate issues raised by the GAO and not as a policy to debate whether or not Davis-Bacon has the merits that we know they have.

Chairman WALBERG. I thank you, Ranking Member. Pursuant to committee rules all members will be permitted to submit written statements to be included in the permanent hearing record. And without objection the hearing record will remain open for 14 days to allow questions for the record. Statements and extraneous material reference during the hearing to be submitted for the official hearing record.

It is now my pleasure to introduce our distinguished panel of witnesses. Dr. Andrew Sherrill is Director of Education, Workforce and Income Security with the U. S. Government Accountability Office in Washington, D. C. He was appointed to GAO's senior executive service in 2009.

In his 20 years at GAO he has led teams in producing reports for the Congress on a broad range of topics including workforce development, unemployment insurance, workers' compensation programs, women in the labor force, welfare reform, foreign labor programs, and mass care after hurricane Katrina.

Mr. Sherrill received his PhD and M. A. from the University of Texas at Austin and his B. A. from Trinity University at San Antonio, Texas. In addition he completed course work in the masters program at the Lyndon Baines Johnson School of Public Affairs at the University of Texas at Austin. He is a member of the National Academy of Social Insurance. And we welcome you.

Mr. Thomas M. Markey is the deputy administrator of program operations at the U. S. Department of Labor. Mr. Markey has served at the Department of Labor in a variety of positions since 1972 including his role as the Director for the Federal Employees Compensation Program from 1985 through 1998. Mr. Markey is a graduate of Rutgers University and is a veteran of the United States Army. And we thank you for your service.

Mr. Ross Eisenbrey is vice president of the Economic Policy Institute and a former staffer with this committee, welcome back. Mr. Eisenbrey is a lawyer and former commissioner of the U. S. Occupational Safety and Health Review Commission. Prior to joining the Economic Policy Institute he worked for many years as a staff attorney and legislative director in the U. S. House of Representatives and as a committee counsel in the U. S. Senate.

Additionally he served as policy director of the Occupational Safety and Health Administration from 1999 to 2001. Mr. Eisenbrey holds a J. D. from University of Michigan Law School—go Blue—and a B.A. from Middlebury College as well as was raised in Michigan itself, so welcome.

Mr. James Sherk is senior policy and analyst of labor economics at the Heritage Foundation. In his position Mr. Sherk works on minimum wage, card check, rising standards of living and other tax, labor and economic issues in Heritage Center for Data Analysis.

Mr. Sherk received an M. A. in Economics with a concentration in Econometrics in Labor Economics from the University of Rochester and a Bachelor's Degree in Economics and Mathematics from my district, Hillsdale College. Welcome, glad to have you here.

Mr. Thomas Mistick is principal of the Church Restoration Group. Mr. Mistick's Church Restoration Group offers restoration

and construction services for historic and sacred sites across the country.

Mr. Mistick has completed more than \$1 billion in construction and restoration during his 30-plus years running the Mistick family of companies. Mr. Mistick has a great deal of experience trying to navigate the Davis-Bacon regulations, otherwise known as real-world experience.

Mr. Mistick received his undergraduate degree from Harvard College where he graduated cum laude. He holds a graduate degree in Systems Analysis and Finance from Stanford University's Graduate School of Business and a J. D. from the University of Pittsburgh School of Law. Mr. Mistick is testifying on behalf of the Associated Builders and Contractors. Thank you, each of you, for being here.

Before I recognize each of you to provide your testimony let me briefly explain our lighting system. You will each have 5 minutes to present your testimony. When you begin—and I guess I would say 5 minutes unless the Chairman here enjoys your testimony so much and is known to let it go on and on.

I know that the ranking member and the full committee—the gentleman from California—will make it very clear to me when I have gone past that red light.

And I appreciate that, Mr. Miller.

When you begin the light in front of you will turn green. When 1 minute is left the light will turn yellow and when your time has expired the light will turn red at which point I will ask that you wrap it up quickly. Your remarks are important but the time is of necessity as well.

After everyone has testified members will each have 5 minutes to ask questions of the panel.

And so having said that let me start with Mr. Sherrill, your testimony we appreciate.

STATEMENT OF DR. ANDREW SHERRILL, DIRECTOR OF EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. SHERRILL. Mr. Chairman, ranking member Woolsey, and members of the sub-committee, I am pleased to be here today to discuss the Department of Labor's procedures for determining prevailing wages under the Davis-Bacon Act.

Our prior reports—in those of Labor's Inspector General have made various recommendations to improve these procedures. Today I will present the results of our report that was publicly issued last week.

This report covers two topics, first the extent to which labor has addressed concerns regarding the quality of the Davis-Bacon wage determination process and second additional issues identified by stakeholders regarding the wage determination process.

In recent years Labor has taken several steps to improve its wage determinations. However, Labor has not addressed some key issues with survey quality such as the representativeness and sufficiency of survey data collected.

Among the steps Labor had taken is to shift away from a one-size-fits-all approach for the four construction types. For highway

surveys Labor began using certified payrolls as the primary data source. For building and heavy surveys Labor adjusted timeframes to better manage the quality of data received.

Labor expects these and other changes to reduce the time needed to process highway surveys by more than 50 percent—by more than 80 percent and building and heavy surveys by more than 50 percent.

While it is too early to fully assess the effects of Labor's changes a review found that they may not achieve expected results. Of the 12 surveys conducted under Labor's review process that we assessed against Labor's new timelines we found that ten were behind schedule, some by several steps in the process.

Many published wage rates are several years old. Labor's 2010 performance goal was for 90 percent of published wage rates for building, heavy and highway construction to be no more than three years old. Labor achieved 61 percent. When we drilled down we found almost 75 percent of the union prevailing rates were three years old or less. In contrast 36 percent of the non-union prevailing rates were three years old or less, almost half were ten or more years old.

We also found critical problems with Labor's wage survey methodology—continued or survey-hindered survey quality. Labor cannot determine whether its wage determinations accurately represent prevailing wages because it does not calculate survey response rates or analyze those who do not respond.

A low response rate may mean the results are misleading or inaccurate if those who differ—if those who respond differ substantively and systematically from those who do not respond. While Labor is required by law to issue wage rates by the civil sub-division of the state, its goal to issue them at the county level is often not met because of insufficient survey response.

We reviewed four surveys that were issued in 2009 or 2010 and found that Labor issued 11 percent of wage rates for key job classifications using data from a single county. Forty percent of the wage rates were based on statewide data. That means that the rate was based either on data from all of the rural—or all of the metropolitan counties in the entire state.

In the four surveys over one-quarter of the wage rates for key job classifications were based on data reported for six or fewer workers. The statutory requirement to issue rates by civil sub-division limits Labor's ability to address inadequate data. Labor's not able to augment its survey data with sources that draw on other geographical areas such as metropolitan statistical areas that may better reflect regional markets.

We interviewed a wide variety of stakeholders including academics, contractors, contractor associations, unions to obtain their perspectives. They voiced two key concerns, first little incentives to participate in the wage surveys, second a lack of transparency in the survey process.

Stakeholders cited various factors. They said were disincentives to participate, for example, kit contractors may lack the necessary resources, do not understand the purpose of the survey, may not see the point in responding.

Stakeholders also said there was a lack of transparency about the number of workers and wage rates used to calculate prevailing wages for each job classification and for providing such information could enhance understanding of the process and result in greater participation.

So in sum, to improve the quality and timeliness of the wage surveys we recommended that Labor enlist the National Academies or another independent statistical organization to evaluate and try to provide objective advice on the survey, its methods and design, potential for conducting a sample survey instead of a census survey and other aspects of doing the process.

We also recommended that Labor take steps to improve the transparency of its wage determinations which could encourage greater participation in the survey. Finally we suggested that Congress consider amending the requirement that Labor issue wage rates by civil subdivision to provide the agency with more flexibility.

Mr. Chairman, ranking member Woolsey, members of the subcommittee, that concludes my remarks. I would be happy to answer any questions you may have.

[The statement of Mr. Sherrill may be accessed at the following Internet address:]

<http://www.gao.gov/new.items/d11486t.pdf>

Chairman WALBERG. Thank you, Dr. Sherrill.
Mr. Markey?

**STATEMENT OF TOM M. MARKEY, DEPUTY ADMINISTRATOR
FOR PROGRAM OPERATIONS, WAGE AND HOUR DIVISION,
U.S. DEPARTMENT OF LABOR**

Mr. MARKEY. Chairman Walberg, ranking member Woolsey and members of the subcommittee, thank you for the opportunity to talk to you today about the role of the Department Wage and Hour Division in Davis-Bacon wage determination.

The Davis-Bacon Survey Program was evaluated extensively in the 1990s and early 2000s. The two evaluations that are most relevant of what we will be discussing today are the 1999 GAO report and the 2004 OIG report. Both reviews concluded that despite Wage and Hour's efforts there were still numerous problems with timeliness and accuracy of wage determinations.

To address these concerns Wage and Hour enlisted the help of McGraw-Hill Construction Analytics to assess our process and operations. They recommended improving and stabilizing the IT system, developing policies and training for survey staff, establishing metrics to measure time limits and productivity and improving communication with internal staff and external stakeholders.

Wage and Hour has implemented improving this based on these recommendations which are starting to bear fruit. From 2005 through January 2011 Wage and Hour issued several major releases to both its automated systems. These changes were designed to complete and publish wage determinations in a more timely fashion. In 2007 a bridge connecting both of these IT systems be-

came operational, thereby allowing improvements to survey performance measurements.

In addition Wage and Hour increased the number of survey staff, established a new yearly training program for all survey staff, drafted a new manual of operations—and using a manual and a training guide that is updated with each IT system release—instituted performance measures for the age of wage rates, the period of time from completion of the survey to publication and the time required to conduct surveys.

It also incorporated analyst tracking reports enabling supervisors to monitor the time spent by analysts and survey processing and in specific task. Finally it developed new performance standards in the fiscal year 2010 rating cycle for Wage and Hour staff. Wage and Hour's recent re-engineering efforts are as follows.

For highway construction many state departments of transportation conduct surveys of highway construction using the same payment data as Wage and Hour. We now work with these states to issue and maintain current prevailing highway wage rates.

For residential surveys to combat traditionally low response rates we are now conducting these surveys separately so we can also call and visit to supplement the mailing that contractors receive.

For building and heavy construction we initiate a pilot program of completing these in a shorter period of time—on average Wage and Hours' completing these surveys under this pilot within 24 months as opposed to many years in the past. At the same time Wage and Hour was conducting all these improvements the agency published wage determinations for 22 statewide backlog surveys.

The 2011 GAO report contains two recommendations. With regard to the first one on the National Academies or other statistical organizations we feel that given that we are currently making changes to contract to a different organization and evaluate the efforts of Wage and Hour may be premature, especially in light of cost considerations. Wage and Hour nevertheless will explore the options for seeking independent evaluation of survey methodology.

With regard to a transparency the wage determinations are housed on WDOL, which is the result of a collaboration of multiple federal agencies. Consequently any changes to the website must be made in collaboration with these other entities and cannot be made unilaterally by the department. We do, however, agree that the public should have more information to clearly understand the process here and have opened a dialogue with these other agencies.

Eight years after its enactment, the Davis-Bacon and related Acts continued to protect the wages of hard-working Americans as they build the nation's infrastructure. Wage and Hour is doing its part in this endeavor by re-engineering the Davis-Bacon Survey Program to ensure that the injection of federal construction funds to communities does not depress the wages of the local workforce. Again thank you for the opportunity to testify today. I am happy to answer any questions that the sub-committee may have.

[The statement of Mr. Markey follows:]

**Prepared Statement of Thomas M. Markey, Deputy Administrator for
Program Operations, Wage and Hour Division, U.S. Department of Labor**

Chairman Walberg, Ranking Member Woolsey, and Members of the Subcommittee, thank you for the opportunity to talk with you today about the role of the U.S. Department of Labor's Wage and Hour Division (WHD) in Davis-Bacon Act wage determinations and enforcement. I appreciate the opportunity to discuss WHD's efforts to reengineer the Davis-Bacon Survey Program and our work to revitalize the enforcement of Davis-Bacon requirements on federally funded construction projects.

The principle underlying the Davis-Bacon Act (DBA) is simple—to ensure that the Federal Government's extensive contracting activity does not have the unintended consequence of depressing workers' wages. Since its enactment in 1931, the DBA has ensured minimum compensation levels for construction workers based on the wages paid in a given locality and has provided a level playing field for all contractors in the construction industry. Construction is a labor-intensive sector of the economy, often with multiple layers of contracting and subcontracting. Without the DBA and the over 60 Davis-Bacon "related Acts" that contain Davis-Bacon prevailing wage requirements, the Federal contracting agencies, state and local governments, and recipients of Federal grants who are responsible for federally funded or assisted construction projects might never assume direct responsibility for the wages of the laborers and mechanics who build our nation's buildings, pave our roads, dig our trenches, and maintain our infrastructure.

The DBA and the standards that it imposes on the Federal government and recipients of Federal funds ensure that hard-working middle class Americans will not see their wages and benefits undercut by Federal spending practices. As important, these standards enable local contractors and subcontractors to compete for local projects by protecting them from underbidding by contractors who import workforces from outside the local community. As Secretary Solis' vision for the Department of Labor appropriately articulates, it is about "Good Jobs for Everyone."

Today, the Federal government continues to construct buildings, build dams, and fund housing projects. State highway departments pave roads with Federal funds from the Federal Highway Administration. Local and State governments build water treatment plants, modernize schools, and renovate airports. Many of these projects are funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act), which appropriated substantial funding for construction, alteration and repair of Federal buildings and for infrastructure projects. The DBA therefore is as relevant today as it was when it was first enacted, and it continues to provide stable wage rates and benefits that attract higher-skilled labor. And by attracting higher-skilled workers who are both experienced and productive, construction projects are more often completed on time and at lower cost.

The average annual earnings for construction workers in May 2009 was \$43,350—not significantly higher than the average annual earnings for construction workers reported in 1995, when the Department last testified on the DBA before the House Subcommittee on Workforce Protections. The industry remains particularly susceptible to economic fluctuations that bring on periods of high unemployment and underemployment, as we have seen in the most recent recession that began in December 2007. When Federal construction causes a sudden significant increase in the demand for local labor in a high unemployment labor market, absent a prevailing wage requirement, there is a strong downward pressure on local wages as the unemployed and underemployed are drawn into the area for work. The Davis-Bacon and related Acts provide the safety net for those local workers, their construction companies, and their communities.

DOL and Davis-Bacon Wage Determinations

The longstanding mission of the Department of Labor's Wage and Hour Division (WHD) is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce. To this end, the WHD is responsible for administering and enforcing some of our nation's most comprehensive federal labor laws covering, among other things, requirements and obligations relating to minimum wage and overtime pay, recordkeeping, child labor, family and medical leave, migrant work and worker protections in certain temporary worker programs, and the prevailing wages for government service and construction contracts.

The Davis-Bacon Act requires that all contractors and subcontractors performing work on federal contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works (and contractors or subcontractors performing on federally assisted contracts under the related Acts) pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in

the contract's Davis-Bacon wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area. Davis-Bacon labor standards clauses must be included in covered contracts. Since the 1990s, WHD has focused on improving the accuracy and timeliness of DBA wage determinations by re-engineering the DBA survey program and providing the best opportunities for increasing stakeholder participation. During the last 24 months in particular, WHD has reevaluated and changed various administrative processes, addressed recommendations from various audits, improved outreach, and enhanced enforcement. These changes of the last two years are already producing positive results.

For example, the survey backlog is gone. The only surveys being processed in the system at this time are recent surveys and some of these surveys are nearing publication. Additionally, the time needed for survey analysis (cutoff date to on-site verification) has decreased from 2-5 years to less than 12 months.

The 2011 Government Accountability Office (GAO) audit of the Davis-Bacon Survey Program at issue in today's hearing analyzed WHD's IT system, the timeliness and accuracy of the survey process, the effectiveness of WHD personnel, and the performance measures WHD employed. Prior to the audit, WHD was already engaged in addressing many of these issues, but, as WHD staff acknowledged to the GAO auditor, WHD's improvements to its DBA survey program are ongoing.

IT System

WHD has adopted a systematic approach to effect improvements in the wage determinations IT system. From 2005 through January 2011, twenty-nine (29) major releases and updates were made to WHD's Automated Survey Data System (ASDS) and seventeen (17) major releases and updates were made to the Wage Determination Generation System (WDGS). The changes were designed to increase the speed of processing so that surveys could be completed and published in a more timely fashion. In 2007, a "bridge" connecting both of these IT systems (an enhancement that had been discussed in WHD's May 2006 report to Congress) became operational, thereby allowing improvements to survey performance measurements and other reports.

These IT improvements have enhanced the efficiency and effectiveness of myriad tasks performed both by the WHD's analysts and by the agency's contract staff at the University of Tennessee's Construction Industry Research and Policy Center (CIRPC). For example, the usual time needed to complete basic business processes, such as loading F.W. Dodge reports that identify construction projects within a particular geographic area, has been reduced from three weeks to one hour; the time needed to prepare documents for on-site verification has been reduced from one month to one day; and area practice resolution by WHD staff has been reduced from weeks to one day.

IT development and resulting changes to the survey process to further increase the accuracy and timeliness of DBA wage surveys and wage determinations are still ongoing. Also, improvements to reports used to assess the performance of both WHD analysts as well as the overall program continue to be developed and implemented.

Process (Timeliness and Accuracy)

Prior to the 2011 GAO audit, WHD began reviewing survey processes in the key areas in which there was substantial time expenditure by staff (WHD and contract staff). Many of the large time expenditures were reduced by IT improvements. For example, the time spent by WHD survey analysts on administrative/clerical type functions was greatly reduced when WHD modified the University of Tennessee contract, thereby freeing WHD staff to concentrate on analysis and clarification of data. Regional WHD analysts are now performing analysis and clarification of data within two weeks of the receipt of such data. Despite a large amount of data still being received on the survey cut-off date, processing time is quicker than before because all other data is reviewed and processed by the cut-off date. Currently, contractor, third party, and on-site verification are being performed within an average of six to eight months from survey cut-off date compared to the 12-15 months it took prior to 2010.

Early IT problems had caused a backlog of surveys awaiting on-site verification, analysis, review, and publication. In 2005, there were 22 statewide surveys in WHD's Automated Survey Data System (ASDS) that had been started in the years 2002 through 2004. This backlog of surveys in the data system affected the start of new surveys. To remedy this, changes were made to the IT program allowing cross-regional work and, as a result, new surveys were started in 2007. Additionally, all of the 22 "old" surveys were completed and published either in FY 2009 or in FY 2010.

Beginning in 2002, new statewide surveys were conducted of all four types of construction (residential, highway, building, and heavy) in an effort to maximize responses. Because they covered all four types of construction at one time, the surveys were very large and clarification and analysis became much more difficult. In 2009, WHD determined that it would be more efficient for residential and highway surveys to be conducted separately, while continuing to conduct building and heavy construction statewide surveys concurrently because the same universe of contractors are engaged in both building and heavy construction. Additionally, most building construction is related to heavy construction, i.e., site prep and utility infrastructure.

Concerning highway construction, because many state Department of Transportation (DOT) offices conduct state surveys of highway construction using the same payment data used by WHD in their surveys, WHD contacted all state DOTs regarding state conducted highway construction surveys to obtain their data and survey information. For those states in which highway surveys were not conducted by the state, WHD began working with those states to obtain certified payroll data so that WHD could conduct the survey. Based on this effort, 33 states now work with WHD to issue and maintain current prevailing highway wage rates. Three states (Arkansas, Mississippi, and Utah) were surveyed by WHD, and new highway rates were published in 2008. WHD will also publish 11 statewide highway surveys funded under the Recovery Act in 2011 (Oklahoma, New Mexico, North Carolina, South Carolina, Nebraska, Maine, Vermont, New Hampshire, Colorado, Louisiana, and Florida). WHD will work with the state DOTs on the three remaining states (Kentucky, Massachusetts, and Idaho) to obtain state data or conduct a survey in 2012. Also in 2012, WHD will schedule new highway surveys for Arkansas, Mississippi, and Utah. Upon publication of these surveys, WHD will have met its goal of having all surveys of highway construction completed with results (wage rates) published within the last three years. WHD will then develop a survey plan with a schedule of publishing rates for 17 states each year so that highway construction wage rates are based on data no older than three years.

Residential surveys are the most difficult of all surveys to conduct because the construction projects are small and the contractor response rate is the lowest of all survey types. As a result, WHD decided to conduct these surveys separately so that additional calls and/or visits to contractors to solicit participation could be made. WHD began its revised residential construction program in 2010 with a statewide survey of Missouri. Residential surveys of Maine, Vermont, New Hampshire, Maryland, Virginia, North Carolina, South Carolina, Nevada, Washington, and Oregon will follow in 2011 and 2012.

Personnel

WHD has increased the number of both its Federal survey staff in the regional offices as well as contract staff at the University of Tennessee to provide support for the increased number of surveys and the reduced timeframes in which surveys are to be concluded.

In 2006, the WHD national office established a new yearly training program for all of the field offices in each region. Training is also provided to University of Tennessee staff by WHD national office personnel.

Additionally, WHD has drafted a new manual of operations. Once approved, it will be posted on the WHD Intranet for use by staff as well as on the agency's public website. Moreover, with each new update to WHD's IT systems (WDGS and ASDS), a training guide is now also prepared and training on the new release is provided to analysts. WHD prepared a comprehensive user manual for each of the automated systems in 2008. The manuals are updated with each release and are maintained on the WHD Intranet.

Yearly planning meetings are held with the Regional Wage Specialists (RWS), Senior Wage Analysts, and National Office staff. Monthly conference calls are held with all regional and national office staff. In addition, regular calls as well as on-site visits are made to contractors.

Performance Measures

From 2004 through 2009, the only performance measure that WHD reported for the Davis-Bacon Survey Program was related to the processing of wage determinations submission ("WD-10") forms, which measured only how efficiently WHD staff processed the survey forms. However, in 2006, WHD instituted additional performance measures for this program to address the timeliness of the DBA wage survey and wage determinations program. The age of wage rates, the period of time from completion of the survey to publication, and the time required to conduct surveys

are now measured. Reports measuring these items are in ASDS and WDGS and are calculated based on the work processes performed in the system.

The 2011 GAO Report indicates that start dates are being entered into the system differently by regions and, therefore, the ability to accurately measure the survey timeliness is affected accordingly. However, the surveys reviewed and discussed in the 2011 GAO report were entered into ASDS in early January 2009, prior to the date when a new survey time tracking report was implemented in the October 2009 ASDS release. This accounts for the differences in reporting by the regions. In the planned April 2011 release, ASDS will automatically populate the fields when the region enters data so there will be uniformity in reporting. This report, along with the analysts' time reports, will allow WHD to monitor the processes in which large amounts of time are being spent and allocate resources accordingly.

Analyst time tracking reports were incorporated into ASDS in 2009, enabling supervisors to monitor the time spent by analysts in survey processing and in specific tasks. Additionally, all WD-10s reviewed and submitted by analysts are also reviewed by the senior wage analyst in each region and feedback is given immediately to the analysts. All of these initiatives have resulted in more accurate reporting of information, allowing, among other things, WHD national office personnel to monitor the time spent in specific survey activities. Additionally, new performance standards were also developed for the FY 2010 rating cycle for WHD regional and national office survey and wage determinations staff. These standards are closely aligned to the agency's program performance goals and measures.

As documented in the foregoing, WHD has implemented numerous changes over the last five years. As GAO acknowledges with respect to timeliness, it is too early to assess the effects of Labor's 2009 changes. This is also true with respect to other process improvements that WHD has implemented over the last two years. For building and heavy construction, the new processes instituted in 2009 and 2010 broke down the survey process for these types of construction into discrete tasks and estimated how long each task should take, with a goal of completing building and heavy surveys in a shorter period of time (19 months). There were five surveys in the pilot: Montana, Wyoming, North Carolina, South Carolina, and West Virginia. The 2011 GAO Report states that WHD is behind schedule in each of these surveys. The pilot program was developed to test this process, refine it, and eventually meet the estimated goal of 19 months. Of the nine building and heavy statewide surveys started in 2009 with data collection cut-off dates from December 31, 2009, to February 28, 2010, four surveys (Montana, Wyoming, New Hampshire, and Vermont) are being published now; three surveys (North Carolina, South Carolina, and Maine) will be published in next two months; and two surveys (West Virginia and Nebraska) are in on-site verification and will be published in the summer of 2011. This is an average of 24 months from the time the survey was entered in the system to publication and an average of 12 months from the survey cut-off date to publication. This clearly indicates that WHD has substantially reduced the time in every process as compared to five or ten years ago. WHD continues to make improvements to the survey process in order to reach its goal of a 19-month turn around time period.

In addition to conducting and completing all of the above surveys, WHD conducted and completed a building, heavy, highway, and residential survey of Guam in 2010, and a residential weatherization construction survey of 50 states and Washington D.C. in 2009. The weatherization construction survey in particular stands out as a significant accomplishment for WHD as the agency completed it within 3 months. The Department of Energy's weatherization program received \$5 billion as a result of the Recovery Act. The Recovery Act also applied Davis-Bacon Act provisions to the program for the first time because Congress wanted to assure that workers employed on Recovery Act-funded projects were paid the legally mandated wages and benefits. WHD initiated and completed the prevailing wage rate surveys during July and August 2009 and published weatherization rates for more than 3,000 counties by September 3, 2009. After publication, it was discovered that due to the inexperience of some community action agencies with the Davis-Bacon survey requirements, some of the data submitted to WHD had errors. As a result, WHD decided to re-verify all the submitted survey data to ensure the data was accurate and reliable. WHD then published revised prevailing wage rates for weatherization in December 2009.

Guam will continue to be surveyed every year in accordance with the legal requirements concerning Federal construction projects on Guam. The further reduction of survey time should continue as more and more of the survey and wage determination processes are being automated and improved.

As WHD conducts surveys more frequently in accordance with the new processes outlined above, the age of the surveys addressed in the 2011 GAO Report with contractors and unions should be reduced. New wage surveys of states surveyed in 2002

are already being conducted. Surveys of Georgia, New Hampshire, Maine, and Vermont are currently being conducted. Surveys of Florida, Utah, and Nevada are planned for late 2011.

The 2011 GAO Report also refers to the quality of representation and responsiveness in WHD's survey results. WHD has already taken steps to address this concern. Notably, the December 2010 ASDS release has provided the capability to track responses for every contractor and interested party, and the April 2011 release will give us additional reporting capability. The automatic breakdown by construction type will occur later in 2011. This will only affect building and heavy construction surveys as they are conducted together as one survey. However, as discussed in the 2011 GAO Report, since these efforts are ongoing it is premature to assess their effectiveness at this time.

The 2011 GAO Report discusses the lack of incentive for stakeholders to participate in the survey process. Despite an aggressive outreach program to increase participation in the survey process from all parties, including small contractors and their associations, the Davis-Bacon survey is still a voluntary survey. See 29 CFR 1.3(a). Many of the shortcomings in the surveys arise from the voluntary nature of the survey process.

There is also a discussion in the 2011 GAO Report about reporting errors. The errors mentioned in the report were found in the data verification process of the survey and typically (if not always) resulted from errors in the information provided by survey respondents, not from errors by WHD employees. WHD's survey submission form (WD-10) asks responders to report on the multiple types of work performed by each classification for which they are reporting data. WHD then bases rates on the work performed by the classification. While the 2011 GAO Report states that 19 of 27 interested parties (70%) interviewed by GAO found the forms easy to use, WHD believes any confusion by any stakeholder is undesirable. It is important to note, however, that many of the errors discovered during on-site verification do not impact the accuracy of the wage rates, such as recording the wrong name or address of the contractor, or not reporting the correct contract amount. These all get counted as errors but have no impact on the wage rates themselves.

The 2011 GAO Report at page 27 indicates that errors may have occurred because WHD did not pretest a redesigned form. However, this form is not a new form. It is the old WD-10 data placed on a scannable format. Over time there has been a substantial increase in electronic wage determinations submissions; and therefore, a decision was made to make changes to this format to allow respondents to save data, etc. so as to ease the information collection process on the part of the participant. As noted in the 2011 GAO Report, WHD has indicated that another update is planned to address portions of the form that respondents find confusing. These changes may only be implemented with the approval of the Office of Management and Budget (OMB) in coordination with the U.S. Census Bureau, and in conjunction with changes to ASDS. The effectiveness of these changes cannot be assessed until after implementation.

The 2011 GAO Report indicated that stakeholders found problems with the transparency of the process. WHD agrees that greater transparency would enhance the process and the agency has already identified a number of improvements that could be implemented. These improvements range from improvement to the WHD website, including additional information on the surveys and survey data, to more descriptive language on the wage determinations.

In every WHD wage survey, contact is made with unions and contractor associations. For the Florida and New York surveys mentioned in the 2011 GAO Report, the contractor associations did not respond to WHD's offers of pre-survey briefings. WHD will continue to work with the contractor associations, unions, and other interested parties to increase participation and to solicit the necessary wage information. As surveys are conducted more regularly, WHD anticipates that participation in the pre-survey briefings and in the surveys themselves will become routine for the stakeholders, thus decreasing confusion and increasing overall response rates.

2011 GAO Recommendations

The 2011 GAO Report contains two recommendations for WHD. The first recommendation suggests that the Secretary of Labor direct WHD to enlist the National Academies or other independent statistical organization to evaluate and provide objective advice on the wage survey. WHD has previously enlisted McGraw Hill Construction Analytics, a firm of leading industry economists with expertise in construction analysis, trends, and forecasts, to assess WHD's process and operations. The recommendations from McGraw Hill, which WHD provided to the GAO auditor, have been implemented and are beginning to bear fruit. Given that further changes

to the process are currently being implemented or will be implemented in the near future, contracting to a different organization to evaluate the efforts of WHD may be premature, especially in light of cost considerations. WHD will, nevertheless, explore options for seeking independent evaluation of the survey methodology and identify organizations or academics that may have expertise in this area.

The second recommendation states that the transparency of wage determinations needs to be improved. The wage determinations are housed on the website "WDOL." The WDOL website is the result of a collaboration of the Department of Labor, OMB, National Technical Information Service, General Services Administration, and Department of Defense. Consequently, any changes to the Website must be made in collaboration with these other entities and cannot be made unilaterally by the Department of Labor. WHD, however, agrees with the recommendation that the public should have more information to clearly understand the information being requested and the calculations and codes that are used on the wage determinations. As indicated above, WHD is already undertaking steps to address these concerns.

DBA Enforcement and Compliance Assistance

In Fiscal Year (FY) 2010, in addition to focusing on reengineering the Davis-Bacon Survey Program, WHD also increased and enhanced its DBA enforcement and outreach activities, pursuing opportunities made possible with funds from the Recovery Act to implement new enforcement and outreach strategies with the objective of realizing Secretary Solis' vision of Good Jobs for Everyone.

DOL's commitment to improving compliance for workers on DBA covered construction projects is particularly important because the DBA does not provide for a private right of action to collect prevailing wages that are legally owed to them. Additionally, enforcement of the DBA provisions, as stated earlier, ensures that wage rates in local communities are not adversely impacted by an influx of workers who are willing to work at wages below those paid in the local area. Construction workers who work in high wage areas should not lose out on opportunities to work on Federal projects in their communities because workers from other areas are willing to take the jobs for less pay. The infusion of Federal dollars into communities should never be the trigger that depresses wages.

In FY 2010, WHD pursued an aggressive enforcement and outreach program, targeting for DBA compliance 660 contractors and 51 projects funded under the Recovery Act. In addition, WHD reinforced its policy to accept third party complaints regarding DBA noncompliance. As a result, in FY2010, WHD found over \$7.4 million in back wage compensation owed to 3,716 employees on DBA-covered projects. Additionally, in FY 2010, WHD completed 1,087 DBA and Recovery Act investigations. As a comparison, in FY 2008, WHD completed 406 DBA investigations.

In part, WHD was able to achieve this measurable improvement after creating a new Senior Investigator Advisor (SIA) position, deploying 33 existing investigators to serve as SIAs in various locations across the country. These advisors were responsible for overseeing all Recovery Act investigations, training, and coaching other WHD investigators in DBA enforcement principles, and providing training and outreach to various stakeholders in the Federal contracting community. Because basic skills in DBA enforcement had diminished throughout the agency over the last ten years, training was undertaken at various levels of the organization on a nationwide basis.

WHD also expanded its efforts to educate contractors and workers about their rights and responsibilities on DBA-covered work. To reach as large an audience as possible, WHD conducted a series of free Prevailing Wage Conferences on the laws and regulations applicable to Recovery Act projects. Specifically, these conferences included program seminars on the Davis-Bacon Act, the McNamara-O'Hara Service Contract Act and the Fair Labor Standards Act; the process of obtaining wage determinations and adding classifications; WHD's compliance and enforcement processes; and the process for appealing wage rates, coverage and compliance determinations.

The initial conferences in Washington, D.C.; Chicago; Orlando; Long Beach; San Antonio and Boston were intended to reach all geographic areas of the country. In FY 2010, WHD conducted three more Prevailing Wage Conferences in Guam, New Orleans, and Cleveland. Altogether, total registrations at these conferences exceeded 2,170. Due to the success and positive response WHD received from these conferences, the agency announced that it will host five more conferences in FY2011 in Melbourne, FL; New York City; Phoenix; Denver; and Las Vegas.

In addition to the Prevailing Wage Conferences, WHD also increased its specific outreach to employers and employer associations to provide compliance assistance and education. The agency made presentations to the National Association of Women in Construction, the Independent Electrical Contractors, the Power and Communication Contractors Association, the Professional Services Council, and the

Associated General Contractors of America, and met with 370 minority/women-owned construction companies. WHD also developed a webpage dedicated to providing all of our government contract stakeholders with up-to-date compliance assistance materials regarding the DBA, SCA, and the prevailing wage requirements under the Recovery Act.

In addition, WHD provided compliance assistance to various contracting agencies and hundreds of contracting officers, and responded to technical assistance requests from many prime contractors and recipients of federal financial assistance awards, including grant recipients of the U.S. Department of Agriculture and the U.S. Department of Commerce for construction of fiber optic lines under the Broadband USA program, as well as recipients and contractors performing work under various Department of Energy programs, including the Weatherization Assistance Program. WHD participated in outreach events hosted by the President's Recovery Accountability and Transparency Board including the production of a You Tube video that highlights DBA requirements on Recovery Act funded projects. WHD also found opportunities to conduct Recovery Act workshops and staff information booths at broader events such as the 2010 DOL Informational and Outreach forum at Rice University in Houston, TX.

On March 31, 2011, the DOL Office of the Inspector General (OIG) published an audit of WHD's DBA wage determinations and enforcement processes, particularly the agency's utilization of Recovery Act funding. The objectives of the audit were to determine whether WHD: (1) provided adequate compliance assistance/outreach to ensure Recovery Act contractors and subcontractors complied with the DBA; (2) conducted timely prevailing wage complaint and directed investigations, in accordance with applicable policies and regulations; and (3) issued timely and reliable prevailing wage determinations in response to the Recovery Act, in accordance with applicable policies and regulations.

The OIG's published report validates WHD's efforts to improve outreach, enhance enforcement of the DBA provisions, and reengineer the Davis-Bacon Survey Program. Specifically, the OIG determined that: (1) WHD outreach efforts were extensive and effective; (2) WHD used Recovery Act funds to shift the overall focus of DBA investigations using initiatives that have resulted in lasting improvements to the investigation program; and (3) WHD conducted timely surveys and established reliable prevailing wage determinations required by the Recovery Act as illustrated by WHD's use of Recovery Act funds to update 10 DBA highway surveys, and quickly issue rates for DOE's weatherization program. The OIG did not make any recommendations for improvement.

WHD has implemented program goals and objectives for FY 2011 that will continue targeting Recovery Act project investigations for DBA compliance, providing outreach opportunities for educating stakeholders on the DBA requirements, and aggressively pursuing complaints of DBA violations with an emphasis on targeting and debarring contractors who commit repeat or serious DBA violations.

Conclusion

Secretary Solis has consistently stated that all of the work of the Department of Labor is focused on achieving Good Jobs for Everyone. The Labor Department's vision of a "good job" includes jobs that:

- increase workers' incomes and narrow wage and income inequality;
- assure workers are paid their wages and overtime;
- are in safe and healthy workplaces, and fair and diverse workplaces;
- provide workplace flexibility for family and personal care-giving;
- improve health benefits and retirement security for all workers; and
- assure workers have a voice in the workplace.

To achieve this goal, the Department is using every tool in its toolbox, including increased enforcement actions, increased education and outreach, and targeted regulatory actions. These unifying themes seek to foster a new calculus that strengthens protections for workers and results in significantly increased compliance.

Eighty years after its enactment, the Davis-Bacon and related Acts continue to protect the wages of hard-working Americans as they build our nation's infrastructure. In addition to providing a stable and fair contracting environment for businesses that perform construction covered by Davis-Bacon labor standards, the Acts ensure that construction workers receive appropriate prevailing wages that contribute to the quality of their lives and to the communities in which they live.

WHD is doing its part in this endeavor by reengineering the Davis-Bacon Survey Program and enhancing enforcement of the DBA requirements to ensure workers are paid the wages they are legally owed and that the injection of Federal construction funds into communities does not depress the wages of the local workforce. These efforts help to increase workers' incomes and narrow wage and income in-

equality, and they ensure the sustainability of American's hard-working middle class.

Again, thank you for the opportunity to testify today. I am happy to answer any questions the Subcommittee may have on the Department of Labor's work to improve the accuracy and timeliness of DBA wage determinations and to enhance DBA enforcement.

Chairman WALBERG. Thank you, Mr. Markey.
Mr. Eisenbrey?

**STATEMENT OF ROSS EISENBREY, ESQ., VICE PRESIDENT,
ECONOMIC POLICY INSTITUTE**

Mr. EISENBREY. Thank you, Mr. Chairman. Congress enacted Davis-Bacon to assure workers on federal—

Chairman WALBERG. Make sure your mic is on.

Mr. EISENBREY. Congress enacted Davis-Bacon to assure workers on construction projects a fair wage and to provide local contractors a fair opportunity to compete. The requirement to pay no less than locally prevailing wages is absolutely essential to protect local standards and to prevent competition based on low wages rather than on productivity, efficiency and quality.

The act has achieved those goals for 80 years so it is easy to forget its importance. Like many things in life it is only when it is gone that we realize just how valuable its protections really are. Hurricane Katrina is a case in point. After the hurricane struck the Gulf coast President Bush suspended the act by executive order. What happened?

Well, workers didn't get a fair wage because contractors could bid the work at the minimum wage instead of the prevailing wage. They brought in itinerant crews from outside the Gulf Coast, even from outside the U. S., and paid rock-bottom wages.

Workers, for example, were reportedly hired at \$60.00 per day, no benefits and a long workday. Local contractors were underbid and got passed over at their hour of greatest need and opportunity. They watched multi-nationals sweep in and take millions of dollars of federal clean-up contracts. Finally President Bush reinstated the act.

When local workers are hired there is a benefit to local businesses beyond construction firms. Local workers spend locally. Out of state crews take their wages with them. There are huge regional and state variations in construction industry pay just as there were in 1931. State hourly wages range from about \$18.00 in Alabama to about \$36.00 in Alaska. Construction wages in adjacent counties can also differ remarkably which is why Davis-Bacon's preference for county-based wage determination makes some sense.

Using OES data from the Bureau of Labor Statistics in the Chairman's home state we see enormous differences between Washtenaw County where electricians average about \$34 an hour and next door in Livingston County where they average about \$27. Tile and marble setters in Livingston County earn about \$32.00 an hour on average but next door in Genesee they earn far less, about \$22.00 an hour.

The Davis-Bacon Act serves another extremely important purpose. It supports high quality training by encouraging the oper-

ation of union apprenticeship programs and compelling the non-union sector to try to compete.

The typical contractor has little incentive to invest in skills training since the worker can carry that investment to another employer. Unions overcome contractors' natural reluctance to make the investment by compelling employers to contribute to joint apprenticeship funds.

Every signatory contractor pays his fair share and benefits equally from the training provided. The Davis-Bacon Act incentivises (sic) these apprenticeships by permitting payment of lower wage rates to employers enrolled in bone fide a apprenticeship programs. Contractors can submit lower bids when they employ bone fide a apprentices as part of their work force.

Critics claim that the act raises the cost of construction benefiting the workers at the expense of taxpayers. But a great deal of empirical research refutes that. There have been natural experiments—elegant natural experiments where states have repealed their laws or passed laws and then you see what happens following that change in state law. And it shows without question that these laws do not raise construction costs.

Higher wages lead employers to invest in labor saving tools and equipment which increases productivity. Better paid, more skilled workers are safer, work more efficiently and deliver a better product.

Construction workers in states that have little Davis-Bacon Act prevailing wage laws are 13 percent to 15 percent more productive on average than construction workers in non-prevailing wage states. Given that construction wages and benefits are only about 30 percent of construction cost it is easy to see how higher productivity offsets the increased cost of prevailing wages.

The GAO does identify some problems. The surveys are not—the response rates are not very good. And I have a couple of ideas in addition to what GAO suggests which I think makes a lot of sense. They should do more outreach. The Labor Department should do more outreach.

They should use Webinars, they should get on the phone and call contractors. They should really make an effort to get a higher response rate. But there are other things that could be done and two in particular I think make a lot of sense.

One would be to pay small employers—contractors—especially ones who aren't bidders on contracts. Pay them \$100 for their time to fill out the surveys. That would give them the incentive—if he says there is no incentive or little incentive now. That would give them an incentive.

The other thing that could be done—and I think this is very important—is to amend the Federal Acquisition Regulations to require that anyone who does work on a federal construction contract has to respond. Mandate a response to any relevant appropriate survey. That would, by itself, greatly increase the response rate. Mr. Sherk will suggest using an alternative—

Chairman WALBERG. Mr. Eisenbrey, your time is up.

Mr. EISENBREY. I—just to sum up I would just say that there are problems using the OES. It doesn't have benefits. I think he recog-

nizes that and the sample sizes are too small to cover all of the classifications at the metropolitan survey area.

[The statement of Mr. Eisenbrey follows:]

**Prepared Statement of Ross Eisenbrey, Vice President,
Economic Policy Institute**

Good morning, Mr. Chairman and members of the subcommittee. I am Ross Eisenbrey, Vice President of the Economic Policy Institute, a non-partisan think tank whose mission is to document the impact of the economy on working and middle class families and to develop policies to ensure shared prosperity.

The subject of today's hearing, the Davis Bacon Act and its implementation by the Department of Labor, is important to middle class Americans. The Act helps stabilize a sector of the economy which is fundamental to our overall economic performance and which provides good jobs to millions of non-college educated men and women.

Congress enacted the Davis Bacon Act to assure workers on federal construction projects a fair wage and to provide local contractors a fair opportunity to compete for construction contracts. The requirement to pay no less than locally prevailing wages is essential to protect local standards and to prevent competition based on low wages rather than on productivity, efficiency and quality.

The Act has succeeded in those goals for 80 years, so it's easy to forget its importance. Like many things in life, it's only when it's gone that we realize just how valuable its protections really are. Hurricane Katrina is a case in point. After the hurricane struck the Gulf Coast, President Bush suspended the Act by executive order. What happened?

Workers didn't get a fair wage because contractors could bid the work at the minimum wage instead of the prevailing wage. They brought in itinerant crews from outside the Gulf Coast—even from outside the U.S.—and paid rock bottom wages. Roofers, for example were reportedly hired at \$60 per day.

Local contractors couldn't compete and got passed over at their hour of greatest need and opportunity. Stories in the Baltimore Sun, Atlanta Journal Constitution and New Orleans Times Picayune reported on the unhappiness of local businesses that watched multinationals sweep in and take millions of dollars of federal clean-up contracts. An editorial in the Times Picayune under the headline "Rebuilding effort should be localized" hit the nail on the head:

"[W]e are already moving quickly and boldly in the wrong direction * * * [Y]ou can hardly entice [our citizens] back if you're only willing to pay poverty wages. But in the wake of the disaster, President Bush suspended the Davis-Bacon Act. * * * In essence, there's no ceiling preventing sky-high profits for these [out-of-state] contractors and not much of a floor to ensure that wages to workers are not abysmally low. There is an intelligent way to rebuild our city. This, however, isn't it."

When local workers are hired there's a benefit to local businesses beyond the construction firms themselves because local workers spend locally. Out-of-state crews take their wages with them.

The importance of the locally prevailing wage requirement in the Act goes beyond disaster situations, of course. There are huge regional and state variations in construction industry pay, just as there were in 1931. In 2010, we have data available for the hourly wage of all workers in the construction industry by state in 43 states. They averaged \$24.54. However, the range of state hourly wages was quite large: from a low of \$18.33 in Alabama to a high of \$36.15 in Alaska. Five states had hourly wages in construction below \$20 an hour (Alabama, Arkansas, Maine, Mississippi, Texas), and six states' wages were above \$30 an hour (Alaska, Illinois, Massachusetts, New Jersey, New York, Washington). Likewise, within-state differences can be extreme.

Construction wages in adjacent counties can differ remarkably, which is why the Davis-Bacon Act's preference for county-based wage determinations makes sense. In the Chairman's home state, it's perhaps no surprise that carpenters average \$9 an hour more in urban Washtenaw County than in rural Charlevoix County, according to BLS data (which do not account for further differences in fringe benefits). But there are enormous differences even between Washtenaw County, where electricians average \$33.71 an hour, and next door in Livingston County, where they average \$27.41. Tile and marble setters in Livingston County earn \$31.69 on average, whereas next door in Genesee County they earn far less—\$22.27 an hour.

The Davis Bacon Act serves another extremely important purpose that was not foreseen by Congress in 1931. It supports high quality training by encouraging the

operation of union apprenticeship programs and compelling the non-union sector to try to compete. The typical contractor has very little incentive to invest in skills training since the worker can carry that investment with him to another employer. Unions overcome contractors' natural reluctance to make the investment by compelling employers to contribute to joint apprenticeship funds: every signatory contractor pays his fair share and benefits equally from the training provided.

The Davis Bacon Act incentivizes apprenticeships by permitting payment of lower wage rates to employees enrolled in bona fide apprenticeship programs. Contractors can submit lower bids when they employ bona fide apprentices as part of their workforce.

Critics claim these goals are achieved at too high a price, that the Act raises the cost of construction, benefitting the workers at the expense of taxpayers. But a great deal of empirical research refutes the claim that prevailing wage laws inflate construction costs. Work by Professors Peter Philips and Garth Magnus of the University of Utah, by Prof. Dale Belman of Michigan State University, and Prof. Hamid Azari-Rad of the State University of New York, among others, shows that prevailing wage laws lift workers' wages and compensation without significantly increasing construction costs.

Higher wages lead employers to invest in labor-saving tools and equipment, which increases productivity. Better paid, more skilled workers are safer, work more efficiently, and deliver a better product. Prof. Philips has calculated that construction workers in states with "little Davis Bacon" prevailing wage laws are more productive, on average, than construction workers in non-prevailing wage states. Their value added is 13-15% higher per employee. Given that construction wages and benefits are only about 30% of construction costs, it is easy to see how higher productivity offsets the increased cost of prevailing wages.

The GAO report

GAO makes three recommendations, one for Congress and two for the Department of Labor:

1. Congress should consider giving DOL more flexibility in the requirement that wage rates be issued by civil subdivision.
2. DOL should obtain expert advice on its survey design and methodology.
3. DOL should take steps to increase transparency in its wage determinations.

None of these recommendations is earth-shaking, and the report makes clear that DOL is engaged in the process of making improvements. The Department seems to be on the verge of ending a long period of neglect, when many wage determinations were not updated for more than a decade and the survey process itself was allowed to drag on interminably. Highway surveys, for example, which have taken an average of 42 months, will be completed in eight months.

GAO admits that it is too early to fully assess the effects of changes DOL made in 2009, but it goes on to criticize the timeliness of survey data nevertheless. It is important, however, to remember that the use of older data usually means that wage rates are set lower than would otherwise be the case. It is employees, first and foremost, who pay the price for delays.

With respect to the first recommendation, it is clear that DOL already has considerable flexibility in choosing the survey area for wage determinations and uses it. If there aren't sufficient responses in a county, DOL combines nearby counties in groups and super groups, only resorting to statewide data when absolutely necessary. The large use of statewide data in the four states GAO examined is an indication that DOL needs to do more to improve the survey response rate.

As we saw earlier, there are very real differences, county by county, in how construction workers are compensated. To prevent the federal government from altering the market, wage determinations based on surveys that perfectly reflect county wage patterns would be ideal. The Bureau of Economic Affairs and the Bureau of Labor Statistics do not collect and report wage data consistently at the county level for all of the construction industry's occupational classifications. The most direct solution is to improve the DOL surveys and collect more complete information.

The surveys are voluntary, and that is a major source of the response rate problem. Many reasons have been offered for the lack of participation: some people don't understand the survey's importance, others don't trust or want to assist the government, while others feel they can't afford to take the time to respond. The oddest reason GAO proffered was that some people think the surveys lead to inaccurate wage determinations, even though their non-participation is a cause of the inaccuracy they complain about.

GAO's recommendations for greater outreach and transparency seem like obvious pieces of the puzzle. And I have trouble understanding DOL's reluctance to seek expert advice on ways to increase the survey response rate. The quality of the surveys

depends on maximizing the rate and accuracy of the responses. Getting help can never be premature.

But two other solutions seem to be called for and could make a bigger difference.

First, OMB could require as a precondition for bidding on federal contracts that contractors participate in every relevant Davis-Bacon survey. This would be a small price to pay for the privilege of working on a federal construction project. And second, paying the respondents for their time—even \$100 per completed survey—might substantially increase the response rate, especially among small businesses. I am told the surveys actually take even a small contractor very little time to complete—about 55 minutes for first-time filers, and less thereafter.

Suggestions that DOL abandon the Davis Bacon Act survey process and rely on the Bureau of Labor Statistics Occupational Employment Statistics (OES) for wage determinations have been made for many years and rejected after serious consideration. Among the many problems with the OES are the fact that it doesn't collect benefits data—which can make up 20% or more of a worker's compensation, and that its sample size is much too small to report data at the county or even MSA level on all of the construction occupations in each of the separate, key market areas: residential, building, highway and heavy. There would be considerable cost involved in redesigning the OES and increasing its sample size, and even then it could not meet the statutory requirement of determining the prevailing wage in the sense of identifying the single wage paid to a majority of workers in the locality of the construction, because the OES is an estimate constructed from a three-year average of reported wages in various ranges.

Chairman WALBERG. Thank you for your testimony.
Move on to Mr. Sherk.

**STATEMENT OF JAMES SHERK, SENIOR POLICY ANALYST IN
LABOR ECONOMICS, THE HERITAGE FOUNDATION**

Mr. SHERK. Chairman Walberg, ranking member Woolsey and members of the sub-committee, thank you for inviting me to testify. My name is James Sherk and I am a senior policy analyst in Labor Economics at The Heritage Foundation. However, the views I express in this testimony are my own and they should not be construed as representing an official position of the Heritage Foundation.

I want to explain to you this morning that the Wage and Hour Division's prevailing wage estimates in our survey is deeply flawed. And these flaws hurt both workers and taxpayers.

There are three facts about the Davis-Bacon survey that Congress should be aware of. The first fact is that the Wage and Hour division uses an unscientific methodology incapable of accurately estimating prevailing wages. The importance of a representative sample is a fundamental statistical principle. Accurate estimates are impossible without them.

To see this just consider what would happen if Rush Limbaugh polled his audience about whether President Obama deserves reelection. Presumably an overwhelming majority would say he does not. Would this mean the President is headed for a landslide defeat? Not necessarily.

Limbaugh has a more conservative audience than the country as a whole. Drawing conclusions from an unrepresentative sample is unscientific and inaccurate. Nonetheless, that is what the Wage and Hour Division does. Many businesses ignore the Davis-Bacon Surveys and Wage and Hour does little to follow up with them. The survey responders who do respond are disproportionately large, unionized employers. Wage and Hour does not apply the standard

statistical corrections for this problem, such as waiting and imputation.

As a result, 63 percent of Davis-Bacon wages are union rates, while only 13 percent of construction workers belong to a union. The Davis-Bacon survey is not a representative sample and there is no reason to expect that it would reflect clear wages. But even if Wage and Hour properly randomized its survey, it is too few responses to be accurate. Surveys become less accurate as their sample size drops. When the sample size drops below 30, it becomes impossible to even estimate the survey's margin of error.

No professional pollster would conduct a survey of 28 voters. If the GAO finds that three-quarters of Davis-Bacon wage determinations are based on the wages paid to six or fewer workers, only one-quarter of them are based on wages paid to six or fewer workers. These small sample size make the results meaningless. The Davis-Bacon survey methodology is unscientific. Only by chance will it report clear wages. The second fact that Congress should know is that Davis-Bacon surveys are highly inaccurate.

When Labor puts garbage in, they get garbage out. Now in most cities, these errors inflate Davis-Bacon rates—wages above market rates. For example, plumbers in Jackson, Michigan earn \$28 an hour. But the Davis-Bacon rates there are \$33 an hour, a 16 percent premium.

Electricians in Sonoma County, California earn \$20-odd an hour, but Davis-Bacon rates there are \$44 an hour, 54 percent higher. But in other cities, Davis-Bacon rates are well below market wages.

In Spartanburg, South Carolina the Wage and Hours Division contends that carpenters there earn federal minimum wage of \$7.25 an hour. That is less than half of what they actually make.

Nationwide, Davis-Bacon rates are 22 percent above market pay, and this inflates the cost of federal construction by about 10 percent. These inaccuracies have caused the government to hire four construction workers for the price of five, hurting both workers and taxpayers.

Accurate data would reduce the deficit and allow Congress to build more construction without additional appropriations. This would create extra jobs for tens of thousands of unemployed construction workers without diverting resources from productive sectors of the economy.

The third fact that Congress should keep in mind is that the Bureau of Labor Statistics estimates prevailing wages much more accurately than what the Wage and Hour Division does.

Wage and Hour is an enforcement agency, its job is to enforce federal laws like the Family and Medical Leave Act, or the Minimum Wage. It has no expertise in surveying wages and that is why you got such a bad methodology. The Bureau of Labor Statistics has exactly this—this expertise.

That is why it exists. BLS methodology, accuracy and data quality are internationally respected. Now The Bureau of Labor Statistics already conducts two nationwide occupational wage surveys. Unlike the Davis-Bacon survey, these surveys are based on representative samples.

They have large sample sizes and are updated annually. They are scientific. They are accurate. That is why the Department of

Labor already uses these surveys to enforce prevailing wages for the Foreign Labor Certification Program and for the Service Contract Act. The chief obstacle to using BLS data is calculating hourly fringe benefit rates as required by the act. No existing nationwide survey covers employee benefits at the local level.

This problem could be solved either by expanding the geographic scope of the National Compensation Survey or by collecting information on construction benefits through the Occupational Employment Statistics Survey. If Congress wants accurate prevailing wage rates, it should direct the Bureau of Labor Statistics to calculate them.

Thank you. I appreciate the opportunity to talk to you today about the deep flaws with the Davis-Bacon survey and how it hurts both workers and taxpayers.

[The statement of Mr. Sherk follows:]

**Prepared Statement of James Sherk, Senior Policy Analyst in Labor
Economics, the Heritage Foundation**

Chairman Walberg, Ranking Member Woolsey, and members of the Subcommittee on Workforce Protections, thank you for inviting me to testify before you today. My name is James Sherk and I am a senior policy analyst in labor economics at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

The GAO has identified many severe flaws in the process used to calculate Davis-Bacon prevailing wages. However, two aspects of the Department of Labor's methodology are particularly problematic: the use of a non-representative sample and excessively small samples. These errors render Davis-Bacon wage estimates scientifically meaningless.

As a result of these flaws, Davis-Bacon wages vary wildly from market rates. In some states, such as South Dakota, Davis-Bacon rates are below market rates. In other states, such as California, Davis-Bacon rates are well above market wages. On average, the Davis-Bacon rates are 22 percent above market wages.

These errors hurt both workers and taxpayers. My estimates show that paying true prevailing wage rates—instead of inaccurate Davis-Bacon rates—would reduce government construction costs by \$10.9 billion this year. Those savings could be used to either reduce the deficit or build more infrastructure at no additional cost to the public. The latter choice would mean jobs for an additional 155,000 construction workers.

Congress should insist that the Department of Labor produce scientific and accurate estimates of prevailing construction wages. The best way to do this is by transferring the resources and responsibility for conducting Davis-Bacon surveys to the Bureau of Labor Statistics. The Bureau of Labor Statistics has expertise in producing scientific wage estimates and could meet this responsibility by expanding its existing compensation surveys. The Department of Labor has no excuse for relying on unscientific and error-riddled prevailing wage estimates.

The Davis-Bacon Act

The Davis-Bacon Act (DBA) requires contractors on federally funded construction projects to pay their employees at least as much as other construction workers in the area earn—the “prevailing wage.” This prevents construction contractors from winning federal construction projects by bringing in outside workers earning below local wages.

Congress passed the Davis-Bacon Act in 1931 to prevent African-American workers from underbidding white union members on federal construction projects.¹ During the Great Depression many African-Americans moved to the North to search for employment opportunities. In many cases they won federal construction contracts that would have otherwise gone to white union members. The Davis-Bacon Act intentionally made it much more difficult for minorities to compete against white workers for these jobs.²

Despite this origin, the Davis-Bacon Act remains on the books and applies to almost all federally funded construction projects. The Wage and Hour Division (WHD) of the Department of Labor estimates the local prevailing wages that federal contractors must pay.

Unscientific Survey Methodology

The Government Accountability Office (GA) and the Office of Inspector General have frequently criticized the Wage and Hour Division's survey methodology.³ A recent GAO report finds that serious flaws persist with Davis-Bacon surveys.⁴ Some of these problems can be solved by improving existing methods. These include processing delays and confusing surveys that lead to high error rates in returned forms.

However, the most significant problem with Davis-Bacon rates is the WHD methodology itself. The Wage and Hour Division uses unscientific methods to estimate construction wages. The GAO criticized WHD for not consulting with survey experts to design its survey and this lack of expertise shows.⁵

Two fundamental flaws render WHD wage estimates scientifically invalid. First, WHD does not calculate Davis-Bacon wages using a representative sample. The importance of a representative sample is a fundamental statistical principle. A non-representative sample of wages reveals nothing about true prevailing wage rates.

Second, WHD bases the majority of its wage estimates on too few responses to be accurate. GAO reports that only one-quarter of Davis-Bacon wages are based on estimates of 29 or more workers. Fully 26 percent of Davis-Bacon estimates are based on the wages paid to six or fewer workers. Even if WHD properly randomized its surveys, these small sample sizes would make the results meaningless.

The WHD survey methodology is unscientific and incapable of accurately estimating construction wages. It will only approximate market pay by chance.

Representative Samples

Professional statistical agencies estimate statistics by conducting surveys. The Bureau of Labor Statistics (BLS) does not have to interview every business every month to determine how many jobs the economy created. Instead it surveys a representative sample of businesses. Statistical agencies achieve representative samples through random sampling. Using statistical principles they can extrapolate from a randomly sampled survey to the overall economy.

Without a representative sample surveys say nothing about the overall economy. As Nobel Prize-winning economist James Heckman has noted, "Wage or earnings functions estimated on selected samples do not in general, estimate population wage functions."⁶ Any introductory statistics text will make the same point.⁷

Non-representative samples are not scientifically valid. They only provide information about those who respond to the survey. They provide no statistical information about wages or other aspects of the overall economy.

To see this, consider if Rush Limbaugh and Rachel Maddow hosted on-air polls about whether President Obama should be re-elected. Rush Limbaugh has a much more conservative audience than the country as a whole. He would probably find an overwhelming majority of respondents wanting to see Obama defeated. Rachel Maddow has a much more liberal audience than the country as a whole. Her viewers would probably say overwhelmingly that Obama deserves a second term. These straw-polls might provide interesting information about the audience of the Rush Limbaugh and Rachel Maddow shows, but they would provide no useful information about President Obama's actual re-election prospects. Concluding that President Obama was headed for a landslide defeat or landslide victory based on a non-representative survey would be unscientific and inaccurate.

Davis-Bacon Survey Is Self-Selected

A representative sample is unnecessary if the government knows the wages of every worker. Then the government could calculate average wages directly without generalizing from a sample. The Wage and Hour Division purports to have this information for construction workers. WHD sends surveys to every construction firm in a given region.⁸ WHD bases Davis-Bacon wages on the responses to this "census." This will provide scientifically valid wage figures—if every business responds.

However, most businesses do not return Davis-Bacon wage surveys. Davis-Bacon surveys take considerable time and effort to complete and many contractors do not expend staff resources to complete them.⁹ The surveys also ask for information in a form that many construction companies do not track.¹⁰ If contractors do not respond to the survey, WHD sends them a follow-up letter asking them to complete the forms.¹¹ If that letter goes unanswered, they are ignored.

This methodology leads to very high non-response rates. Response rates are so low that WHD reduced its minimum data standards to wages of three workers from two companies. Too few employers responded to meet the old standard of data on six workers from at least three employers.¹² Those employers who do respond tend to be those with large staffs. Unions also devote considerable effort to facilitate unionized employers completing and returning the surveys.¹³

Consequently, Davis-Bacon rates are based on neither a representative sample nor a universal census of construction workers. They are based on a self-selected sample of large, unionized businesses. The GAO report confirms this. Nationwide only 13.7 percent of construction workers are covered by union contracts.¹⁴ Nonetheless 63 percent of Davis-Bacon rates are collectively-bargained union wage rates.¹⁵ Union rates are more than four and a half times more common in the WHD survey than would occur in a representative sample. The Davis-Bacon survey is far from representative.

As a result it is scientifically useless. Accurate estimates of prevailing construction wages cannot be made from a non-representative sample. Davis-Bacon rates will only approximate actual prevailing wages by chance.

Statistical Corrections Ignored

Professional statistical surveys do not suffer from these problems. The Bureau of Labor Statistics, for example, does not estimate job creation by conducting a census of all employers. Instead BLS selects a smaller sample of businesses and takes several steps to make that sample representative.

First the BLS strives to make its surveys as easy as possible to understand and complete. They test their surveys with employers before they put them in the field to ensure ease of use. The Wage and Hour Division does not do this.¹⁶

Second, professional statistical agencies like the BLS follow up with employers who do not initially respond. This includes telephone calls and in some cases on-site visits to collect the required information.¹⁷

As a result of these measures BLS surveys have high response rates. For example, 78.4 percent of employers respond to the Occupational Employment Statistics survey.¹⁸ These high responses help make BLS surveys representative of the overall population.

Third, professional statistical agencies do not ignore employers that do not respond. Instead they make adjustments to correct for their absence. The two principal adjustments statistical agencies make are weighting and imputation.

Weighting involves adjusting the importance given to the respondents of the survey based on how likely they are to respond. Those groups who were more likely to respond count for less and vice versa. Pollsters do this on a regular basis. For example, a pollster might survey a state and get a sample with 60 percent men and 40 percent women. In fact that state has equal numbers of men and women—women simply responded in lower numbers. The pollster would adjust the weight given to men and women's responses so that both groups contributed equally to the final results. Statistical agencies weight responses by variables like firm size so that large businesses are not overrepresented.¹⁹

Imputation involves substituting a missing response with a response from a similar respondent or respondents. For example, if a small construction firm does not return the Occupational Employment Statistics survey the BLS does not assume that there are not any workers. Instead the BLS would randomly select another nearby small construction firm that did respond and treat its response as the response of the missing firm.²⁰ This introduces some error into the sample—but much less error than by completely ignoring non-responders.

The Wage and Hour Division does not weight Davis-Bacon survey responses or impute missing data. The Wage and Hour Division does not conduct any analysis at all of contractors who do not respond.²¹ WHD does not take basic statistical steps to obtain a representative sample. Their methodology has no scientific justification.

Inappropriately Small Samples

The Davis-Bacon methodology suffers from a second fundamental scientific flaw. Even with a proper representative sample the Wage and Hour Division surveys too few workers to make statistically accurate estimates.

Averages in a representative sample are unlikely to exactly match the average in the overall economy. The power of statistical inference is that it allows researchers to estimate their margin of error. The sample may not exactly match the overall population, but researchers can determine how far off they are likely to be.

As sample size decreases, surveys become less accurate and their margin of error increases. For example, a representative poll of 1,000 Americans has a margin of error of +/- 3.1 percent while a poll of 100 Americans has a margin of error +/- 10.0 percent.²²

If sample sizes become too small, however, estimating even the margin of error becomes impossible. Statistical inference is based on the central limit theorem.²³ The central limit theorem only applies to samples of sufficiently large size, in most cases requiring a sample of at least 30 observations.²⁴ Researchers cannot estimate how inaccurate the results of smaller samples are.

The Wage and Hour Division routinely uses samples of less than 30 workers. The GAO found that only 25 percent of Davis-Bacon rates are based on data from 29 or more workers. A greater proportion of wage rates (26 percent) are based on data from 6 or fewer workers.²⁵

Even a properly randomized representative sample of 6 workers would be too small from which to make statistical inferences. No professional pollster would conduct a survey of 6 voters.

The WHD minimum data standards are observations on three workers from two employers. That minimum standard should be data on at least 30 randomly selected workers. The Wage and Hour Division's existing methodology lacks statistical validity.

Inaccurate Wage Determinations

The Wage and Hour Division uses unscientific methods and unrepresentative data to estimate prevailing wages. Unsurprisingly, Davis-Bacon rates typically bear little relation to actual prevailing wages. The table below shows Davis-Bacon and market wages (estimated by the Bureau of Labor Statistics) for several U.S. cities.²⁶ The appendix to this testimony explains the methodology for these comparisons. Davis-Bacon rates vary wildly from actual market pay.

For most cities, Davis-Bacon rates are well above market wages. Plumbers in Jackson, Michigan, earn \$28.23 an hour, but their Davis-Bacon rates are \$32.79 an hour—a 16 percent premium. Carpenters in the Twin City region in Minnesota earn \$23.92 an hour, but the Wage and Hour Division requires federal contractors to pay \$31.77 an hour—a 33 percent premium. Electricians in Sonoma County, California, earn \$28.55 an hour, but Davis-Bacon rates are 54 percent higher at \$44.00 an hour.

In some cities, however, the Wage and Hour Division's flawed methodology reports Davis-Bacon rates below prevailing market wages. Davis-Bacon rates for plumbers in Sioux Falls, South Dakota, are 17 percent below market wages. The Wage and Hour Division contends that prevailing wages for electricians in Spartanburg, South Carolina, are only \$7.85 an hour—55 percent below their actual level of \$17.47 an hour. Davis-Bacon rates for carpenters in Spartanburg are even worse—the federal minimum wage of \$7.25 an hour.

Nationwide the Wage and Hour Division reports Davis-Bacon wages that average 22 percent above actual market pay. These inaccurate rates inflate the cost of federal construction projects by 9.9 percent.²⁷

DAVIS-BACON AND MARKET RATES FOR VARIOUS CITIES

	Market	Davis-Bacon	% Difference
Jackson County, MI:			
Carpenters	\$20.98	\$23.89	13.90%
Electricians	\$27.14	\$38.57	42.10%
Plumbers/Pipe-fitters	\$28.23	\$32.79	16.20%
Minneapolis-St. Paul, MN:			
Carpenters	\$23.92	\$31.77	32.80%
Electricians	\$29.44	\$34.56	17.40%
Plumbers/Pipe-fitters	\$33.06	\$36.62	10.80%
Sioux Falls, SD:			
Carpenters	\$15.57	\$12.17	-21.8%
Electricians	\$19.38	\$23.61	21.80%
Plumbers/Pipe-fitters	\$17.56	\$14.57	-17.0%
Erie County, PA:			
Carpenters	\$16.89	\$26.23	55.30%
Electricians	\$23.72	\$26.40	11.30%
Plumbers/Pipe-fitters	\$22.54	\$33.38	48.10%
Sonoma County, CA:			
Carpenters	\$26.88	\$37.65	40.10%
Electricians	\$28.55	\$44.00	54.10%
Plumbers/Pipe-fitters	\$29.71	\$55.25	86.00%
Lafayette, IN:			
Carpenters	\$18.46	\$25.32	37.20%
Electricians	\$24.84	\$30.83	24.10%
Plumbers/Pipe-fitters	\$21.23	\$33.91	59.70%
Terre Haute, IN:			
Carpenters	\$19.75	\$26.16	32.50%
Electricians	\$27.20	\$32.95	21.10%

DAVIS-BACON AND MARKET RATES FOR VARIOUS CITIES—Continued

	Market	Davis-Bacon	% Difference
Plumbers/Pipe-fitters	\$26.81	\$33.91	26.50%
Spartanburg County, SC:			
Carpenters	\$15.40	\$7.25	- 52.9%
Electricians	\$17.47	\$7.85	- 55.1%
Plumbers/Pipe-fitters	\$20.48	\$7.36	- 64.1%
Polk County, FL:			
Carpenters	\$15.37	\$15.19	- 1.2%
Electricians	\$17.62	\$22.07	25.30%
Plumbers/Pipe-fitters	\$18.31	\$17.00	- 7.2%
Contra Costa and Alameda Counties:			
Carpenters	\$28.96	\$37.65	30.00%
Electricians	\$35.46	\$45.20	27.50%
Plumbers/Pipe-fitters	\$32.85	\$50.81	54.70%
Newark and Union, NJ:			
Carpenters	\$26.57	\$39.07	47.00%
Electricians	\$33.57	\$46.63	38.90%
Plumbers/Pipe-fitters	\$29.54	\$45.04	52.50%
Cleveland-Elyria-Mentor, OH:			
Carpenters	\$20.89	\$28.37	35.80%
Electricians	\$26.01	\$33.91	30.40%
Plumbers/Pipe-fitters	\$27.73	\$31.43	13.30%
Nassau-Suffolk, NY:			
Carpenters	\$28.62	\$37.21	30.00%
Electricians	\$30.76	\$44.75	45.50%
Plumbers/Pipe-fitters	\$31.49	\$49.98	58.70%
Honolulu County, HI:			
Carpenters	\$31.61	\$36.20	14.50%
Electricians	\$32.86	\$39.75	21.00%
Plumbers/Pipe-fitters	\$26.95	\$35.60	32.10%

Source: Heritage Foundation calculations using data from the Department of Labor, Bureau of Labor Statistics and Wage and Hour Division, as explained in the appendix.

Harmful Consequences

These inaccurate Davis-Bacon rates harm both workers and taxpayers. In most cities Davis-Bacon rates unnecessarily raise construction costs. In essence the government hires four construction workers for the price of five. The construction workers fortunate enough to work on a federal project no doubt appreciate this premium. However, these inaccuracies will inflate the cost of federally funded construction projects by \$10.9 billion this year.²⁸

In other cities the Davis-Bacon inaccuracies depress market pay. Davis-Bacon rates are minimum wages, so below-market determinations do not force contractors to pay substandard wages. They do, however, encourage contractors to reduce their bids—putting downward pressure on wages.

If the Department of Labor used accurate wage determinations, Congress could build the same amount of infrastructure at substantially lower cost. The savings from paying market wages would reduce the deficit.

Alternatively, accurate wage determinations would allow Congress to build more infrastructure at no extra cost to taxpayers. This would enable the government to provide more public services and employ an additional 155,000 construction workers in 2011.²⁹ This is not a minor consideration when unemployment in the construction industry is above 20 percent. If Congress is going to keep the Davis-Bacon Act on the books it should require the Department of Labor to estimate prevailing wages scientifically. Taxpayers receive no value from overpaying some workers and underpaying others.

Bureau of Labor Statistics

The Wage and Hour Division estimates prevailing wages so poorly because it is not a professional statistical agency. The Wage and Hour Division is an enforcement agency. WHD enforces federal laws regulating wages and many working conditions, such as minimum wages, prevailing wages, child labor, overtime, and the Family and Medical Leave Act. WHD has no expertise in conducting scientific wage surveys.

The Bureau of Labor Statistics does. The BLS has extensive experience in conducting scientific wage surveys. Bureau of Labor Statistics methodology, accuracy,

and data quality are internationally respected. They have the expertise in scientifically estimating wages that the Wage and Hour Division lacks.

The Bureau of Labor Statistics already conducts two nationwide wage surveys that scientifically estimate occupational wages: the National Compensation Survey (NCS) and the Occupational Employment Statistics. Unlike the WHD survey, these surveys have high response rates and BLS corrects for non-response with weighting and imputation. Both surveys have large sample sizes, are conducted in a timely manner, and are updated annually. The Department of Labor uses OES data to enforce prevailing wages for the Foreign Labor Certification program and the Service Contract Act. If Congress wants accurate Davis-Bacon rates it should require the Department of Labor to use BLS data.

Better Geographic Coverage

The Department of Labor previously rejected the idea of using BLS data. One of the reasons they gave for doing so was concerns about BLS's geographic coverage. While the Wage and Hour Division issues Davis-Bacon rates for individual counties, the Bureau of Labor Statistics reports wages for Metropolitan Statistical Areas (MSAs). Some large counties are their own MSA, but most MSAs are agglomerations of multiple economically linked counties.

The Davis-Bacon Act states: "The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there."³⁰

The GAO argues that this provision prevents the Department of Labor from estimating prevailing wages at the MSA level. The Wage and Hour Division disagrees with this legal analysis. In response to a 2004 Inspector General report, the Wage and Hour Division stated that "the Davis-Bacon Act does not prohibit issuing wage determinations for broader geographic areas such as an MSA, and we routinely issue such wage determinations when sufficient data are not available on a county basis."³¹

The GAO report reveals just how routine those broader geographic determinations are. Only 11 percent of Davis-Bacon rates are based on data from a single county. Forty-two percent of Davis-Bacon rates are based on groupings of counties analogous to an MSA, while 40 percent of job classifications are based on statewide data.³²

Switching to BLS data at the MSA level would eliminate wage determinations based on statewide data. This would much more closely approximate prevailing local wages than the WHD currently does.

Steps Forward

Congress should transfer responsibility for collecting Davis-Bacon prevailing wage data to the Bureau of Labor Statistics. The OES already provides annual wage data for most construction jobs across the country. WHD could currently use OES wage data to set Davis-Bacon wage rates. The chief obstacle to using OES data is calculating hourly fringe benefit rates as required by the Davis-Bacon Act—the OES does not cover employee benefits.

The National Compensation Survey covers benefits and the WHD determined that the NCS provides the information necessary to enforce the Davis-Bacon Act in the areas that it surveys.³³ However, the NCS provides local wage information for only 154 metropolitan and non-metropolitan statistical areas. These MSAs cover just half of the U.S. population. Consequently, neither the OES nor the NCS directly provides all of the information necessary to enforce the Davis-Bacon Act.

These problems are solvable. To calculate prevailing construction benefits the Bureau of Labor Statistics could:

- Expand the National Compensation Survey. The BLS could expand the construction portion of the NCS to provide nationwide coverage of construction workers. The Inspector General suggested this approach in 2004.³⁴
- Collect Construction Benefits with the OES. The BLS could collect benefits data from construction employers through the OES. This would require overhauling the OES survey and would take some time to set up and train staff to conduct properly.
- Econometrically Model Benefits. A third approach involves using NCS data to econometrically model the relationship between wages and benefits in the construction industry. That model could be applied to the existing OES data to estimate fringe benefits for different construction occupations.

These solutions are not trivial undertakings. They would require Congress to transfer the resources for conducting Davis-Bacon surveys from WHD to the BLS.

However, if Congress did so the BLS could do what the WHD does not: scientifically and accurately estimate prevailing construction wages.

Conclusion

The Department of Labor's methods for calculating prevailing construction wages are scientifically unsound. The Government Accountability Office report demonstrates that the Wage and Hour Division calculates Davis-Bacon rates with a self-selected sample instead of a representative sample. Non-representative samples do not provide reliable information. WHD does not use basic statistical techniques, such as measuring non-response and weighting their data to mitigate this bias. Even if WHD did use a representative sample they have too few responses to be accurate.

Unsurprisingly, Davis-Bacon rates bear little correlation to market wages. In some cities they are below market rates, while in others they are well above market rates. On average, Davis-Bacon rates are inflated 22 percent above market pay. These inaccuracies hurt both workers and taxpayers.

Congress already spends \$600 million a year on another agency with professional expertise in calculating labor market statistics: the Bureau of Labor Statistics. BLS surveys do not suffer from the methodological shortfalls that plague WHD prevailing wage estimates. The BLS is internationally respected for conducting scientific and accurate surveys. If Congress wants accurate Davis-Bacon surveys it should direct the Bureau of Labor Statistics to conduct them.

APPENDIX

Bureau of Labor Statistics (BLS) and Wage and Hour Division (WHD) wage estimates are not directly comparable. To report comparable wage rates, The Heritage Foundation was guided by the methodology outlined by the Beacon Hill Institute on their comprehensive report comparing market and Davis-Bacon wages.³⁵

Market wage data come from the Occupational Employment Statistics program within the BLS. This data can be found online at <http://www.bls.gov/oes/>. Data on Davis-Bacon wages came from the U.S. Government Printing Office, "Davis-Bacon Wage Determinations," at <http://www.gpo.gov/davisbacon>.

Three job categories were selected for comparison: carpenters, electricians, and plumbers/pipefitters. The Davis-Bacon rate for each category was determined as follows. The Davis-Bacon rates for "Building" construction were identified from the on-line postings. Davis-Bacon rates often specify wages for general and specific tasks within an occupation. There may be wages for general "electricians," but also separate rates for electricians who perform specialized tasks. In these cases, the wages of the most general category was selected.

The BLS and WHD estimate wages for different geographic areas. The WHD issues wage rates at the county level, while the OES estimates wages for metropolitan statistical areas. The Heritage Foundation used county-level Davis-Bacon wages to create MSA-level Davis-Bacon wage rates. In MSAs with only one county, Davis-Bacon rates were calculated as explained above and directly compared to BLS data. In MSAs with multiple counties, Davis-Bacon rates were calculated separately for each county. A weighted average of Davis-Bacon rates was constructed, using as weights the relative population of each county according to Census Bureau estimates from the year 2009, which can be found online at <http://quickfacts.census.gov/qfd/index.html>. This weighted average was the final Davis-Bacon rate compared to BLS data.

In a few cases, the Davis Bacon rate is not the same for the entire county—for example, a certain occupation's wage rate may vary for different geographic regions within a single county. In these cases, The Heritage Foundation used the rate from the most populous part of the county.

MSAs examined and their constituent counties:

MSA: Jackson, MI MSA

Counties: Jackson County

MSA: Minneapolis—St. Paul-Bloomington, MN—WI MSA

Counties: Anoka County, MN; Carver County, MN; Chisago County, MN; Dakota County, MN; Hennepin County, MN; Isanti County, MN; Ramsey County, MN; Scott County, MN; Sherburne County, MN; Washington County, MN; Wright County, MN; Pierce County, WI; St. Croix County, WI

MSA: Sioux Falls, SD MSA

Counties: Lincoln County, McCook County, Minnehaha County, Turner County

MSA: Erie, PA MSA

County: Erie County

- MSA: Santa Rosa—Petaluma, CA MSA*
County: Sonoma County
- MSA: Lafayette, IN MSA*
Counties: Benton County, Carroll County, Tippecanoe County
- MSA: Terre Haute, IN MSA*
Counties: Clay County, Sullivan County, Vermillion County, Vigo County
- MSA: Spartanburg, SC MSA*
County: Spartanburg County
- MSA: Lakeland—Winter Haven, FL MSA*
County: Polk County
- MSA: Oakland—Fremont—Hayward, CA MSA*
Counties: Alameda County, Contra Costa County
- MSA: Newark—Union, NJ—PA MSA*
Counties: Essex County, NJ; Hunterdon County, NJ; Morris County, NJ; Sussex County, NJ; Union County, NJ; Pike County, PA
- MSA: Cleveland—Elyria—Mentor, OH MSA*
Counties: Cuyahoga County, Geauga County, Lake County, Lorain County, Medina County
- MSA: Nassau—Suffolk, NY MSA*
Counties: Nassau County, Suffolk County
- MSA: Honolulu, HI MSA*
County: Honolulu County

ENDNOTES

¹ See, for example, statements made during the Congressional debate. “I have received numerous complaints in recent months about southern contractors employing low-paid colored mechanics getting work and bringing the employees from the South.” Rep. John Cochran, Employment of Labor on Federal Construction Work, Hearings on H.R. 7995 and H.R. 9232 Before the House Committee on Labor, 71st Congress, 2nd Session, March 6, 1930, p. 26–27. See also Rep. Clayton Allgood: “Reference has been made to a contractor from Alabama who went to New York with bootleg labor. This is a fact. That contractor has cheap colored labor that he transports, and he puts them in cabins, and it is labor of that sort that is in competition with white labor throughout the country.” Legal compilation; “Statutes and Legislative History, Executive Orders, Regulations, Guidelines and Reports,” Part 1, Volumes 3-4, U.S. Environmental Protection Agency, 1973, p. 1688.

² It still has this effect. States that repeal their own prevailing wage laws see the the earnings of African-American construction workers rise and the earnings of unionized white construction workers fall. See Daniel Kessler and Lawrence Katz, “Prevailing wage laws and construction labor markets,” *Industrial and Labor Relations Review*, vol. 54(2), pages 259-274, January 2001.

³ U.S. Department of Labor, Office of Inspector General, “Concerns Persist with the Integrity of Davis-Bacon Act Prevailing Wage Determinations,” Report No. 04-04-003-04-420, March 30, 2004, pp. 12–13, at <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf> (April 13, 2011); U.S. Department of Labor, Office of Inspector General, “Inaccurate Data Were Frequently Used in Wage Determinations Made Under the Davis-Bacon Act,” Report No. 04-97-013-04-420, March 10, 1997, at <http://www.oig.dol.gov/public/reports/oa/pre-1998/04-97-013-04-420s.htm> (April 13, 2011); and U.S. General Accounting Office, Davis-Bacon Act: Labor Now Verifies Wage Data, but Verification Process Needs Improvement, HEHS-99-21, January 1999, at <http://www.gao.gov/archive/1999/he99021.pdf> (April 13, 2011).

⁴ Government Accountability Office, “Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey,” Report No. GAO-11-152, March 2011, at <http://www.gao.gov/new.items/d11152.pdf> (April 13, 2011).

⁵ *Ibid.*, p. 19.

⁶ James Heckman, “Sample Selection Bias As a Specification Error,” *Econometrica*, Vol. 47, No. 1 (January 1979), pp. 153–154.

⁷ See, for example, James McClave, Frank Dietrich, and Terry Sincich, *Statistics*, Seventh Ed., (Upper Saddle Hill, NJ: Prentice Hall, Inc.: 1997), pp. 11–15, 131–136.

⁸ Government Accountability Office, “Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey,” pp. 57–58.

⁹ *Ibid.*, pp. 24–26.

¹⁰ For example, asking for wage rates using union job classifications that do not reflect the practices of nonunion construction contractors.

¹¹ Government Accountability Office, “Davis-Bacon Act,” p. 8.

¹² *Ibid.*, p. 19.

¹³ *Ibid.*, p. 26.

¹⁴ Department of Labor, Bureau of Labor Statistics, “Union Members—2010,” Table 3, at <http://www.bls.gov/news.release/pdf/union2.pdf> (April 13, 2011).

¹⁵ Government Accountability Office, “Davis-Bacon Act,” p. 20.

¹⁶ *Ibid.*, p. 27.

¹⁷ Polly A. Phipps and Carrie K. Jones, “Factors Affecting Response to the Occupational Employment Statistics,” Bureau of Labor Statistics, Office of Survey Methods Research, 2007, at <http://www.bls.gov/osmr/abstract/st/st070170.htm> (April 13, 2011).

¹⁸U.S. Department of Labor, Bureau of Labor Statistics, “BLS Handbook of Methods,” Chapter 3, at <http://www.bls.gov/opus/hom/pdf/homch3.pdf> (April 13, 2011).

¹⁹Ibid.

²⁰Ibid.

²¹Government Accountability Office, “Davis-Bacon Act,” p. 19.

²²These error margins are at the 95 percent level, so the polls will be within that margin of the true value 19 times out of 20.

²³The central limit theorem (CLT) states that for a sufficiently large sample the sample mean is normally distributed around the true population mean. Knowing that the sample mean follows the normal distribution allows statisticians to estimate how far off it is likely to be from the population mean.

²⁴James McClave, Frank Dietrich, and Terry Sincich, *Statistics*, pp. 240–241.

²⁵Government Accountability Office, “Davis-Bacon Act,” p. 23.

²⁶The author thanks Heritage Foundation intern Thomas Capone for his invaluable help in compiling this data.

²⁷Sarah Glassman, Michael Head, David G. Tuerck, and Paul Bachman, “The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages,” Suffolk University, Beacon Hill Institute, February 2008, at <http://www.beaconhill.org/BHISTudies/PrevWage08/DavisBaconPrevWage080207Final.pdf> (April 13, 2011).

²⁸James Sherk, “Repealing the Davis-Bacon Act would Save Taxpayers \$10.9 Billion,” Heritage Foundation WebMemo No. 3145, February 14, 2011, at [http://www.heritage.org/Research/Reports/2011/02/Repealing-the-Davis-Bacon-Act-Would-Save-Taxpayers-\\$10-9-Billion](http://www.heritage.org/Research/Reports/2011/02/Repealing-the-Davis-Bacon-Act-Would-Save-Taxpayers-$10-9-Billion).

²⁹Ibid.

³⁰U.S. Code Title 40, §3142(b)

³¹U.S. Department of Labor, Office of the Inspector General, Concerns Persist with the Integrity of Davis-Bacon Prevailing Wage Determinations, Audit Report No. 04-04-003-04-420, 2004, p. 2 of Appendix B, at <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf> (April 13, 2011).

³²Government Accountability Office, “Davis-Bacon Act,” pp. 20–22. Note that the GAO was unable to determine the geographic level for 7 percent of job classifications.

³³Bernard Anderson, Assistant Secretary of Labor for the Employment Standards Administration, letter to Congress, attachment, “Evaluation of the Reinvention vs. Reengineering Alternatives for Improving the Davis-Bacon Wage Survey/Determination Process,” January 17, 2001, p. 1.

³⁴U.S. Department of Labor, “Concerns Persist with the Integrity of Davis-Bacon Act Prevailing Wage Determinations,” p. 17.

³⁵Sarah Glassman, Michael Head, David G. Tuerck, and Paul Bachman, “The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages,” Suffolk University, Beacon Hill Institute, February 2008, at <http://www.beaconhill.org/BHISTudies/PrevWage08/DavisBaconPrevWage080207Final.pdf> (April 13, 2011).

Chairman WALBERG. Thank you Mr. Sherk.
Mr. Mistick?

STATEMENT OF D. TOM MISTICK, PRINCIPAL, CHURCH RESTORATION GROUP, ON BEHALF OF THE ASSOCIATED BUILDERS AND CONTRACTORS, INC.

Mr. MISTICK. Chairman Walberg, thank you.

Member Woolsey, members of committee. Good morning and thank you for the opportunity to testify before you today. In the interest of time I request that my full written testimony be included in the record. My name is Tom Mistick. I am the owner of the Church Restoration Group based in Pittsburgh, Pennsylvania, and during my 35-year career, I have completed hundreds of projects under the Davis-Bacon Act as a general contractor and a subcontractor.

I also appear before you today on behalf of Associated Builders and Contractors. ABC represents 23,000 merit shop construction contractors that employ nearly 2 million workers. ABC’s membership is bound by a shared commitment to the merit shop philosophy based on principles of non-discrimination due to labor affiliation and the awarding of construction contracts through competitive bidding.

Repeated criticisms of the Government Accountability Office over many years have highlighted significant problems with the administration of the Davis-Bacon Act. The GAO report published last

week again makes clear that the U.S. Department of Labor is incapable of setting fair or accurate federal construction wages.

ABC and others have proposed numerous recommendations for common sense reforms for several decades, and unfortunately DOL's inability to implement meaningful changes illustrates that the process cannot be fixed and that the act should therefore be repealed. Davis-Bacon hinders economic growth, increases the federal deficit and imposes significant burdens on the contractors and taxpayers.

These burdens both increase costs and make it nearly impossible for small merit shop firms to competitively bid on federal projects, raising costs by eliminating competition. A recent CBO estimate found that Davis-Bacon raises federal construction costs by \$15.7 billion annually. For years contractors and experts have voiced serious concern about the waste and abuse of taxpayer dollars associated with Davis-Bacon, yet nothing has really been done to fix the obvious defects in the law.

I would like to highlight in some ways in which the DOL has failed to carry out its statutory mandates and contributes to construction industry unemployment rate of 20 percent by imposing inaccurate and artificially inflated wages. Instead of using sound statistical analysis, as Mr. Sherk mentioned, DOL sets Davis-Bacon wage rates by relying upon voluntary wage surveys with extraordinarily low response rates. The new GAO report finds the Davis-Bacon wage survey lacks transparency and most often does not reflect true prevailing wages.

Furthermore, the GAO found that most survey forms verified against payroll data were in error. The report also stated that almost one-quarter of the final wages for key job classifications were based on wages for six or fewer workers. I have personal knowledge of the dysfunctional DOL wage survey process, having formally challenged Davis-Bacon wage rates set for residential construction in Western Pennsylvania. They dramatically and inaccurately increased project costs.

Unions represent less than 10 percent of residential construction workers in Western Pennsylvania, yet DOL found that union wage rates prevailed for most of the public job classifications, although they couldn't produce enough job classifications to provide enough people to build a house. There were—the plumber was missing and the plasterer was missing, you couldn't even get accurate wage rates for the small subset that was there. This problem isn't unique for Pennsylvania.

The—again, the BLS has reported 13 percent of the construction workers are unionized, yet only—yet 63 percent of the GAO finds that the DOL reported union wage rates. Now after a 3 year legal battle and costs of—considerable costs, we received a favorable union ruling from DOL's Administrative Review Board. It found that DOL had indeed violated its own rules in conducting wage surveys.

But rather than demand any revision in the survey process or order a new survey, the board only required the agency to recalculate a few wages that it determined to be in error and left in place all the systemic failures of the DOL's wage survey process,

which the GAO report has again highlighted in the last week's report.

Like many other non-partisan government surveys before it, the GAO report illustrates a long-term systematic failure to achieve true reform of the survey process across several administrations.

It is clear to us that DOL will never accept meaningful reform and repeal is now the only solution. At a time of shrinking construction budgets, Davis-Bacon's fundamentally flawed system is arbitrarily limiting the amount of construction that could be built by needlessly increasing project costs. The taxpayers are getting six buildings for the price of seven because of this broken process. The clear answer to the problems created by the fatally flawed, and unfixable system is to repeal Davis-Bacon.

Let the market set acceptable wage rates through open and competitive bidding, just as it successfully does in the private industry and private construction market. The act needs to return to the neutrality that was once its original instance and its goal.

Mr. Chairman that concludes my formal remarks and I am prepared to answer any questions you may have. Thank you.

[The statement of Mr. Mistick follows:]

**Prepared Statement of D. Thomas Mistick, on Behalf of
Associated Builders and Contractors**

Chairman Walberg, Ranking Member Woolsey and members of the Subcommittee on Workforce Protections: Good morning and thank you for the opportunity to testify before you today on "Examining the Department of Labor's Implementation of the Davis-Bacon Act."

My name is Tom Mistick. I am the owner of Church Restoration Group, based in Pittsburgh, Pennsylvania. My company restores historic and sacred spaces across the United States, and offers a broad range of emergency and consulting services. For 35 years, I have directed the activities of two general contracting companies, a disaster recovery firm, a real estate management office and a millwork company. Much of the work performed by my companies has been performed under the Davis-Bacon Act.

I also appear before you today on behalf of Associated Builders and Contractors (ABC). ABC is a national trade association representing 23,000 merit shop contractors, employing nearly 2 million workers, whose training and experience span all of the 20-plus skilled trades that comprise the construction industry. ABC's membership is bound by a shared commitment to the merit shop philosophy. This philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through competitive bidding based on safety, quality and value.

The Davis-Bacon Act

The Davis-Bacon Act is an 80-year-old wage subsidy law administered by the U.S. Department of Labor (DOL) that mandates so-called "prevailing" wages for employees of contractors and subcontractors performing work on federally financed construction projects. ABC has long advocated for the full repeal of the Davis-Bacon Act, though we also have recommended numerous reforms over the years that could have mitigated some of the Act's damage to our economy through fairer implementation of its provisions by DOL. However, despite repeated criticisms from the Government Accountability Office (GAO) and DOL's own Office of Inspector General (OIG),¹ the agency has implemented few if any meaningful reforms in its administration of the Act since the early years of the Reagan administration. The latest GAO report published last week² makes clear that DOL is simply incapable of implementing the Davis-Bacon Act's provisions in a fair and common-sense manner. Therefore, ABC sees no alternative to repealing the Act entirely.

The Davis-Bacon Act, as administered by DOL, unnecessarily hinders economic growth, increases the federal deficit, and imposes an enormous paperwork burden on both contractors and the federal government. It stifles contractor productivity by raising costs, ignores skill differences for different jobs, and imposes rigid craft work rules. In addition, Davis-Bacon fails to provide equal access to work opportunities

because the complexities and inefficiencies in the Act's implementation make it nearly impossible for many qualified, small merit shop firms to competitively bid on publicly funded projects. These businesses—and the construction industry in general—are at an even greater disadvantage due to our current unemployment rate of 20 percent,³ and the traditionally low net profit margins on which we operate.⁴

From a fiscal standpoint, a recent Congressional Budget Office (CBO) estimate found the Davis-Bacon Act raises federal construction costs by \$15.7 billion annually, which ABC believes may be a conservative estimate.⁵ Numerous academic studies have shown that repeal of the Act would create real and substantial savings to the government without affecting workplace productivity, safety or market wages.

The main reason the Davis-Bacon Act causes so many problems is that DOL has failed to achieve the Act's stated objective of determining true "prevailing" wages and instead has repeatedly issued wage determinations that are vastly inflated above the true market rates seen on private sector construction projects. The evidence of DOL's failed wage survey method is easily shown by comparing two numbers: According to the Bureau of Labor Statistics (BLS), only 13 percent of construction workers in the United States are covered by any union agreement,⁶ yet, according to the latest GAO Report, 63 percent of all DOL wage determinations report that wages set by union agreements are "prevailing."⁷

Despite these facts and findings, Davis-Bacon remains in effect and continues to inflate the cost of federal construction by as much as 22 percent.⁸ For years, economists, legal and policy experts, and merit shop contractors across the country have voiced serious concerns about the waste and abuse of taxpayer dollars associated with Davis-Bacon—yet nothing has been done to fix the obvious defects in the law.

DOL's unwillingness to engage in meaningful corrective actions and reforms, along with the process' continuing burden on taxpayers and contractors, illustrate that the Act cannot be fixed, and must instead be repealed. In the remainder of my testimony, I would like to highlight some of the specific ways in which DOL is failing to properly carry out its statutory mandate, leading us to conclude that the Act must be repealed.

Wage Rates and Surveys

The methodology by which DOL determines Davis-Bacon Act wage rates is inaccurate and unscientific. It relies on voluntary wage surveys—often with an extremely low response rate—instead of using sound statistical samples already made available through other government data collections. The resulting wage rates are usually poor reflections of actual local wages. The problems associated with Davis-Bacon wage calculations have been well documented in previous Congressional testimony from ABC and, more importantly, reports by GAO and OIG.⁹

In addition, due to the systematic delays associated with the final publication of many Davis-Bacon rates, ABC is concerned that wage determinations made during an economic "boom" in construction are now being applied to a "bust" economy. In the case of government-backed loans and other projects that are subsidized by the government, these inaccurate determinations have resulted in projects being scrapped because of cost.

The new GAO report shows that the current Davis-Bacon wage survey process lacks transparency and does not reflect true prevailing wages. The report concludes that efforts to improve the Davis-Bacon wage survey process—both with respect to data collection and internal processing—have not addressed key issues with wage rate accuracy, timeliness and overall quality.¹⁰

GAO identifies "persisting shortcomings in the representativeness of survey results and the sufficiency of data gathered for Labor's county-focused wage determinations," notwithstanding cosmetic changes in DOL's survey collection and processing procedures. In addition, GAO points out that many of the agency's surveys are still years behind schedule.

The GAO report also finds that DOL "cannot determine whether its wage determinations accurately reflect prevailing wages," and "does not currently have a program to systematically follow up with or analyze all non-respondents." DOL procedure identifies nonresponse as a "potential source of survey bias and indicates there is a higher risk non-respondents will be nonunion contractors because they may have greater difficulty in compiling wage information or be more cautious about reporting wage data."

Just as the 2004 DOL-OIG report revealed that nearly 100 percent of published wage determinations contained errors, the GAO report found that "most survey forms verified against payroll data had errors." In addition, the report stated that more than "one-quarter of the final wage rates for key job classifications were based on wages reported for six or fewer workers."

Reaffirming yet another longtime ABC concern, GAO found that “contractors have little or no incentive to participate in the Davis-Bacon wage survey” as it is currently administered. The report cited insufficient resources with which to complete the surveys, the inability to provide all information requested and a justifiable lack of confidence in DOL’s process as contributing factors.

GAO also recommended “technical guidance from experts is considered critical to ensure the validity and reliability of survey results,” remarking that better survey response prediction models “such as statistical sampling rather than the current census survey” could be aided by collaboration with survey experts. However, instead of obtaining an evaluation of its wage survey process from experts in survey design and methodology, DOL informed GAO that it prefers to institute such changes based mainly on staff experience.¹¹

I have personal knowledge of the dysfunctional DOL wage survey process, having witnessed and challenged the 2000 wage survey in Western Pennsylvania, which dramatically increased Davis-Bacon wage rates on residential construction in the Pittsburgh metropolitan area when its results were published in 2003.¹² Keep in mind that during this time, the union market share of residential construction in Western Pennsylvania was (and still is) in the single digits. Yet as a result of the wage survey, DOL found that union wage rates “prevailed” in a great majority of the wage classifications for which survey results could be determined, while many of the most common classifications had no determined wage rates at all. After reviewing the data DOL collected to issue its new wage determination, and checking the math, it was clear to me that the results occurred because DOL relied on a totally inadequate number of responses (as few as a half-dozen wage reports setting the wage rates for thousands of workers), and that DOL had violated its own rules for calculating which rates prevailed in the region. One obvious reason why the responses were inadequate was because DOL failed to properly notify the largest non-union construction trade groups.¹³ The calculations were also wrong because DOL improperly counted union workers who were paid different wage rates as if they were all paid the same wages. There were many other flaws in the survey process as well.¹⁴

Along with ABC’s Western Pennsylvania Chapter, I filed a legal challenge at DOL against the results of the flawed wage survey. Three years later, and at considerable cost, we received a favorable ruling from DOL’s own Administrative Review Board, which found that the Wage and Hour Division (WHD) had indeed violated DOL’s rules on conducting wage surveys. But the Board did not order a new survey with instructions to obtain more meaningful responses from the nonunion contractors that comprised the vast majority of the residential contractors. Instead, the Board simply told the WHD Administrator to recalculate the wages that we had shown to be in error, leaving in place all of the other systemic failures of the wage survey process.

More recently, ABC learned DOL issued wage determinations that repeat the same errors identified in 2003. In addition, DOL has committed new errors, leading to newly inflated wage determinations in other parts of the country. One of the errors, confirmed by the GAO report, is that DOL has greatly expanded its issuance of “statewide” wage determinations which combine wage surveys from large and small metropolitan areas hundreds of miles apart into single wage determination rates. This practice plainly violates the language of the Act, and is currently the subject of a legal challenge.

At a time of shrinking public construction budgets, these inflated wage determinations arbitrarily limit the amount of construction that can be built by increasing the projected costs. Jobs have been lost and businesses have closed because of DOL’s bizarre implementation of the wage survey process, and because of the Davis-Bacon Act itself.

For years, ABC and other government studies and reports have pointed out these problems. We believe the GAO report illustrates a long-term systematic failure to achieve true reform of the survey process across several administrations. It is clear to us that DOL will never accept meaningful reform, and that repeal is now the only solution.

Job Classifications

Another key concern pertaining to Davis-Bacon is DOL’s lack of clarity regarding the job duties that apply to a particular job classification, which are determined by local practice. When DOL determines the prevailing wage rate for a classification is based on a union collective bargaining agreement, the job duties for that classification also likely will be governed by the union’s work rules in that agreement. Generally, union work rules require that only a certain job classification perform certain work. For example, the work rules may require a carpenter to perform a cer-

tain task in one location, but sheet rock hangers or perhaps even laborers are the only workers allowed to perform that work in another jurisdiction.

While each DOL wage determination lists several different classifications of workers (painters, carpenters, laborers, etc.), limited information is available on the actual job duties that apply to the classifications. Although the published wage determinations may identify the relevant local union for each of the listed job classifications (where the rate is based on the union's collective bargaining agreement), DOL does not provide detailed information as to whether there are any work rule restrictions attached to those wage rates and, if so, what those restrictions are. DOL's failure to provide such information makes it almost impossible for merit shop contractors to figure out the correct wage rate for many construction-related jobs. Not surprisingly, GAO's report agreed, finding DOL's current method of handling job classifications "confusing" and "challenging" for contractors.

Certified Payrolls and Fringe Benefits

Another burden on small business compliance with the Davis-Bacon Act—and also the Copeland Act—is the requirement that contractors submit weekly certified payroll reports to the government. This is a paperwork nightmare for many contractors and a significant administrative cost factor for every contractor. Recent upgrades of the system by DOL to include electronic filing are a small step in the right direction, but do nothing to solve the complexities of the certified payroll form itself, and in particular the confusion surrounding the proper credits allowed to nonunion contractors for their bona fide fringe benefit costs.

Repeated Failure to Implement Reforms

ABC has repeatedly called on DOL to follow the findings of past independent government studies, some dating back more than 10 years, to explore using alternative data to determine wage rates—such as data collected through the BLS Occupational Employment Statistics (OES) program. To date, DOL has not given serious consideration to utilizing these, or any other alternatives to its traditional survey method. ABC also has requested that DOL provide better clarity about job duties that correspond to each wage rate. Many states that have adopted prevailing wage laws similar to Davis-Bacon have at least published the job duties that are to be performed by each wage classification. DOL, however, has repeatedly refused to give contractors fair notice of what the job assignment rules are on the published wage determinations. A 2009 WHD All Agency Memorandum offered no relief to contractors lacking access to unpublished union work rules.¹⁵ ABC has received reports from its members that the current DOL is misdirecting contractors seeking guidance on the job classification issue. For example, DOL has told some contractors to contact a project contracting officer, even though the law is clear that only DOL officials are authorized to make final rulings on worker classification issues. Instead of fixing these problems with Davis-Bacon, the last Congress and this administration only made matters worse by expanding the Act's coverage in unprecedented ways under last term's stimulus bill.¹⁶

Conclusion

The clear answer to the problems created by the present system is to let the market set the acceptable wage rate through open and competitive bidding, as we see in the private sector. Multiple bills to repeal the Davis-Bacon Act have been introduced during this Congressional session alone, indicating that the time is right for Members of Congress to act.

ABC is pleased to see the Education and the Workforce Committee take a renewed interest in the problems associated with Davis-Bacon Act. We look forward to working with the Subcommittee on Workforce Protections on this issue. Mr. Chairman, this concludes my formal remarks—I am prepared to answer any questions that you may have.

ENDNOTES

¹ U.S. Department of Labor, Office of the Inspector General, Concerns Persist with the Integrity of Davis-Bacon Prevailing Wage Determinations, Audit Report No. 04-04-003-04-420, 2004, at <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf>. See also, Government Accountability Office, Davis-Bacon Act: Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data, May 1996, at <http://www.gao.gov/archive/1996/he96130.pdf>.

² Government Accountability Office, Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey, April 6, 2011, at <http://www.gao.gov/new.items/d11152.pdf>.

³ Bureau of Labor Statistics, Construction Sector at a Glance: Employment, Unemployment, Layoffs, and Openings, Hires, and Separations, March 2011. See <http://www.bls.gov/iag/tgs/iag23.htm>.

⁴ Construction firms often operate on extremely low net margins. According to the 2009 Construction Industry Annual Financial Survey, published by the Construction Financial Management Association (CFMA), an average construction firm's operating margin was only 3.4 percent, with many firms operating at even lower margins. Contract retainage further exacerbates this cash flow issue.

⁵ Office of Rep. Steve King, King's Davis-Bacon Repeal Bill Saves Taxpayers \$15.7 Billion, April 4, 2011, at <http://1.usa.gov/f0ioXw>.

⁶ U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release: Union Members Summary, January 2011, at <http://www.bls.gov/news.release/union2.nr0.htm>.

⁷ Government Accountability Office, Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey, April 6, 2011, at <http://www.gao.gov/new.items/d11152.pdf>.

⁸ The Beacon Hill Institute at Suffolk University, The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages, February 2008, at <http://www.beaconhill.org/bhistudies/prevwage08/davisbaconprevwage080207final.pdf>.

⁹ U.S. Department of Labor, Office of the Inspector General, Concerns Persist with the Integrity of Davis-Bacon Prevailing Wage Determinations, Audit Report No. 04-04-003-04-420, 2004, at <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf>. See also, Government Accountability Office, Davis-Bacon Act: Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data, May 1996, at <http://www.gao.gov/archive/1996/he96130.pdf>.

¹⁰ Government Accountability Office, Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey, April 6, 2011, at <http://www.gao.gov/new.items/d11152.pdf>.

¹¹ ABC takes issue with only one aspect of the GAO report, namely the report's recommendation that the Act be amended to allow DOL to expand the geographic scope of wage surveys beyond the civil subdivision of the state in which the work is to be performed. See, General Accountability Office, Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey, April 6, 2011, at <http://www.gao.gov/new.items/d11152.pdf> (page 35). Such an amendment would not "improve the quality" of DOL's wage determinations but would instead encourage DOL to combine wage data from totally separate wage markets, thereby undermining any prospect of determining the true prevailing wage in the smaller market. Indeed, as GAO confirmed, DOL is already conducting statewide surveys that violate the plain language of the Act, because such surveys do not determine the prevailing wage for a "civil subdivision of the state." A legal challenge is pending against DOL's unlawful wage survey practice.

¹² A more detailed summary of this case is contained in the decision of DOL's Administrative Review Board, which considered ABC's challenge to DOL's wage determination and overturned it after three years of litigation. See *Mistick Construction, Inc.*, No. 04-051 (ARB 2006) (attached hereto).

¹³ DOL later admitted it had obsolete addresses for the two largest residential construction trade associations in Western Pennsylvania. *Mistick Construction*, supra, at p. 6.

¹⁴ An independent study of DOL's Western Pennsylvania wage determination found more than a dozen systemic flaws in the wage survey process, which virtually guaranteed an inflated and inaccurate result. See Thieblot, Armand, *The Twenty-Percent Majority: Pro-Union Bias in Prevailing Rate Determinations*, 26 J. Lab. Research 99 (2005).

¹⁵ U.S. Department of Labor, *Job Duties of Employee Classifications in Davis-Bacon Wage Determinations* (All Agency Memorandum 205), January 16, 2009. The current administration has failed even to make public the limited guidance contained in this AAM.

¹⁶ Under the American Recovery and Reinvestment Act (ARRA), 40 federal programs (33 existing, seven newly created) became subject to Davis-Bacon, several of which found the wage requirements to have a "moderate to large" negative impact on program costs and efficiency. See, Government Accountability Office, *Recovery Act: Views Vary on Impacts of Davis-Bacon Act Prevailing Wage Provision*, February 2010, at <http://www.gao.gov/new.items/d10421.pdf>. One such program, the U.S. Department of Energy's (DOE) Weatherization Assistance Program, received \$5 billion under ARRA. However, delays stemming from the Davis-Bacon wage survey process resulted in fewer projects undertaken (including some "shovel-ready" projects) and fewer jobs created under this program. See DOE's Progress in Implementing the Department of Energy's Weatherization Assistance Program under the American Recovery and Reinvestment Act, February 2010, at <http://www.ig.energy.gov/documents/OAS-RA-10-04.pdf>.

Chairman WALBERG. Thank you, Mr. Mistick, and all the members of the panel. I appreciate that. Pretty good use of the time as well.

Mr. Sherk, I think I can safely say not only myself, but all of us here in the room and at this panel, are fully supportive of a fair day's pay for an honest day's work. However I see some very interesting facts in your testimony that you have given this morning.

And in my own district, you mentioned, in Jackson, Michigan, the Davis-Bacon prevailing wage calculations paying electricians roughly 40 percent more than the market wage while in one of our committee member's, Congressman Noem's, home state in Sioux Falls, South Dakota, plumbers and carpenters are being paid be-

tween 17 and 20 percent below market wages. We know that the GAO has found some serious flaws in the calculations of this.

How do you believe we can smooth out these inaccuracies and bring Davis-Bacon wage calculations back into line with what the market demands?

Mr. SHERK. The only way you are going to actually—or accurately survey wages is using a scientific methodology. When you have got such implausibly small sample sizes and when you have got an unrepresentative sample, you are simply not going to get accurate rates out of the existing survey, it is just not possible.

You can do the—you can turn the results, you know, overnight, you would have no errors, no return forms, but with these fundamental methodological flaws, you wouldn't get any accuracy.

I think what you want to do is move to the BLS, which has expertise in conducting these surveys. There are two surveys that they do right now, one is the Occupational Employment Statistics Survey. That covers nationwide every metropolitan statistical area. It gives you the wage data.

What it doesn't give you is the hourly fringe benefits data. Another survey is the National Compensation Survey, which the Wage and Hour Division has previously determined provides all the information they need, wage and—information for intricate levels of work.

The problem is it, doesn't have nationwide coverage. It only covers about half the population, and so you wouldn't be able to go into every, you know, metropolitan statistical area and get estimates.

So either expanding the Occupational Employment Survey to cover fringe benefits or expanding the geographic scope of the construction portion of the NCS survey, both of you—would give you accurate, timely and scientific wage estimates. You simply—you can't improve the existing methodology, it is too deeply flawed.

Chairman WALBERG. Okay, thank you.

I have another question and we can come to that but let me get a few of the questions I want to ask first. I am sure we can get back those.

Mr. Mistick?

Mr. MISTICK. Yes, sir?

Chairman WALBERG. You are a brave man in suing the Department. We will leave it at that.

Mr. MISTICK. Thank you, sir.

Chairman WALBERG. But in your 35 years of doing business, could you give a rough estimate of how much more your company has paid above market demand as a result of Davis-Bacon?

Mr. MISTICK. I could. I can actually give you a specific example of how Davis-Bacon was applied by the Pittsburgh Redevelopment Authority. They had a program that fixed commercial facades in elderly neighborhood commercial districts and commercial Davis-Bacon wages applied. You couldn't get commercial contractors to bid these \$5, \$10, \$15,000 jobs, so they did the work without Davis-Bacon.

And at the end of the job, which was completed on time, on budget and of sufficient quality, the contractors simply turned in his

payroll data to the Authority and the Authority wrote checks to the employees and that was generally—

Chairman WALBERG. That is not a normal occurrence you would—

Mr. MISTICK. That is not the normal occurrence, and I doubt that anybody in D.C. would approve that process, but it is what they did to get the work done. And generally you paid 15 to a 30 percent premium on the contract cost to satisfy the commercial wage rates that were required to be paid by Davis-Bacon. Instead of commercial contractors, you had remodeling contractors that did \$5 to \$25,000 projects, and that was the differential or premium that the government was paying on that work.

Chairman WALBERG. And so you would—I would assume that you believe that this has hurt your productivity and the ability to hire employees and create jobs? Is that an accurate statement?

Mr. MISTICK. It certainly reduces the amount of federal construction and thereby limits the amount of work that the—a contractor can get and the opportunities for additional employment for his workers.

Chairman WALBERG. Okay. Okay, thank you.

In the remaining minute or so, Mr. Markey, I will give latitude for you to answer.

Mr. MARKEY. Mr. Sherk talks about using BLS data—

Chairman WALBERG. Turn your mic on, please. The time is running out.

Mr. MARKEY. He talks about using BLS data. The statute talks about prevailing, the regulations, which happen to have been amended in 1985, defines prevailing as more than 50 percent. All BLS data is averaged, you will never get prevailing rate if you use BLS data.

If more than 50 percent earn \$35, and the remainder earned somewhere between \$25 and \$30, the average BLS data that would come back would be like 33 or something like that. That is not prevailing, according to the statute in the current regulations.

Chairman WALBERG. Thank you. I am sure that there will be follow up questions to that and the opportunity to answer from the other side as well.

And I now turn to our ranking member, a gentlelady from California, Ms. Woolsey.

Ms. WOOLSEY. Mr. Chairman, I want to go on record for this hearing and all hearings in the future that any of our witnesses who bring testimony using the logo and the label of their organization when they present their testimony and refer to their organization cannot argue that they are not representing that organization when they provide their testimony.

We, as members of Congress, if we write a letter on our letterhead, we are congress people when we talk about that and the same thing goes for our witnesses. I really want you to know I discount testimony that would use that double standard.

Chairman WALBERG [continuing]. I just know that it is a fairly normal process for a number of entities that—

Ms. WOOLSEY. [Off mike.]

Chairman WALBERG [continuing]. Represent—

Ms. WOOLSEY. I mean if they don't use the logo, don't say this is who sent me, this is who I am—I work for. That is an entire different thing than to—use the heft of the organization and then deny that they are part of it.

Chairman WALBERG. Duly noted, your time is running.

Ms. WOOLSEY. Okay, I would like to ask you Mr. Eisenberg (sic) about in your testimony you state that a great deal of empirical research refutes the claim that prevailing wage inflates construction costs, so could you tell us how that can be? I mean if prevailing wage requirements lifts workers' wages, how does it not increase the overall cost, and how do we calculate how—the benefits of that overall cost to the community?

Mr. EISENBREY. Well the, you know, at first glance, it is true. You think that having a higher wage will necessarily lead to higher cost in construction. But it turns out that if you are paying a higher wage to a more skilled worker, someone, you know, a journeyman who has had a 5 year apprentice program and a lot of experience as opposed to, you know, someone with much less experience, you get a higher quality work, you get the work done more efficiently.

And these productivity improvements more than make up for or can more than make up for the costs. After all, the wages are only 30 percent, 25 to 30 percent of the cost of construction. So that when Mr. Sherk for example says that 22 percent higher pay leads to 10 percent higher costs, that almost can't be because the percent of the construction costs that is attributed to wages is only 25 to 30 percent and the math just doesn't work out.

But, you know, on the one hand you have the theory on the other hand we have actual experience. We have states, we had in the middle and late 1990s Michigan suspended its state prevailing wage law because of a judicial decision. Kentucky passed a prevailing wage law for school construction and Ohio repealed it.

So various researchers studied what happened following that, the expectation was some people claim that construction costs would rise 22 percent or 25 percent. In fact, at the end of the day, school construction costs were unchanged. There was no significance statistically significant difference. And the reason was—

Ms. WOOLSEY. That was in Kentucky?

Mr. EISENBREY. That was in Kentucky, Michigan and Ohio.

Ms. WOOLSEY. Oh.

Mr. EISENBREY. Going back farther, the same thing in Kansas. Kansas repealed its state prevailing wage law in 1987 and the results were no higher—the construction costs didn't fall, there was no statistical difference in construction costs before and after.

Apprenticeship training however, fell off almost, you know, just fell off the table—38 percent drop in apprenticeships, 54 percent drop in minority apprenticeships and safety and health suffered as well. By bringing in younger, less experienced, less skilled workers, it raised the serious injury rate by 21 percent. So all of these things, you know, come along with the notion of doing away with prevailing wages.

Ms. WOOLSEY. So, Mr. Mistick, it seems like you said that you think federal construction is limited because of prevailing wage.

But it seems like you said that you didn't have any problem with hiring and quality even though you were—had to—

Mr. MISTICK. You know there are other ways besides a simple wage rate to drive up the cost of federal construction. When a collective bargaining rate is determined to prevail, it imports into the process all of the work practices that are covered by that collective bargaining process.

Western Pennsylvania for example on jobs that—on Davis-Bacon jobs that are subject to the collective bargaining agreement, carpenters have to unload the trucks and distribute the material on site, and electrician unloads the truck and distributes the materials on site rather than a laborer.

Now the laborer can make a Davis-Bacon wage that is quite comfortable, but he is not allowed by the enforcement division to cost effectively prosecute the federal construction.

Ms. WOOLSEY. Okay, thank you.

Mr. MISTICK. Thank you.

Chairman WALBERG. I recognize now the full committee chairman, Chairman Kline.

Mr. KLINE. Thank you Mr. Chairman.

I thank the witnesses for being here today. I have got a couple of questions, and I am going to of course abide by the 5 minute rule. I was just struck by the ranking member's assertion that when we have witnesses who appear and have a logo on their letterhead that they have to agree that they are speaking for the entire organization.

And Mr. Sherk, I think you recognize that you are indeed an employee of the Heritage Foundation and appropriately use the letterhead, but your position would be that you haven't got an agreement from the Heritage Foundation board and the 700,000 or so members that you are indeed representing the entire Heritage Foundation, is that correct?

Mr. SHERK. That would be exactly correct.

Mr. KLINE. Thank you. And the ranking member then asserts that because she is a member of Congress, and has the congressional seal at the top of her letter, that she is of course speaking for herself, but I doubt if the ranking member really believes that she is speaking for all 435 members of Congress. Let us see—

Ms. WOOLSEY. Oh, wait a minute—

Mr. KLINE. I think—

Ms. WOOLSEY. Will you yield—

Mr. KLINE. I am happy to yield.

Ms. WOOLSEY. Yes, I actually am on record speaking to and representing my entire constituency. If they don't like it then they have to—they will dis-elect me.

Mr. KLINE. Thank you and now reclaiming my time, I am no doubt that you are representing your position of your constituents, but the congressional seal doesn't mean you are representing all 435 members of Congress.

I think that all of us would agree that shortchanging workers and overcharging taxpayers is unacceptable and it looks like that may be what we are getting in many cases according to the GAO report.

Dr. Sherrill, it is nice to have you back again. It seems like only a week or so, you were here with a controller general.

For this report, the GAO interviewed contractors who stated, quoting that “DOL’s current method of handling job classifications was confusing and challenging”. Can you help us with any further detail about the issues raised by these stakeholders, the confusing and challenging?

Mr. SHERRILL. Yes, one of the key issues that were raised is, especially I think by some of the smaller contractors is that they would in some cases have a worker doing a certain type of job activity part of the time and a different job activity another part of the time so they were confused about how they ought to be classifying that worker with regard to which specific job classification.

So there were issues like that where some of the smaller employers really needed more guidance and instruction about, you know, you know how to fill out the survey form properly.

Mr. KLINE. And so this would be information presumably coming from Wage and Hour that they need or?

Mr. SHERRILL. I mean this would be the kind of thing that could be done in better—the Department of Labor hasn’t pretested the survey. I mean we have—one of the themes that GAO—the I.G. has noted is that there is a fairly high level of errors that are identified in the way survey data reported.

And I think part of the issue is that the labor survey form has never really been pretested to get a better idea of, you know, what, where, what could have been made more comprehensible, where are the issues.

Labor is planning to do that to revise the survey, but we think it is critical that they really incorporate sort of methodological expertise as they revise the survey to help avoid some of those kinds of errors and confusion.

Mr. KLINE. Thank you. It appears that there have been studies going back for years and decades complaining about this process and the many inaccuracies and the current GAO report was again, pretty negative about the Department of Labor’s attempts to change the current practices.

But I am—we have heard from the Department of Labor that it has made improvements to the process. Could—do you agree that these improvements are significant? It is really going to improve things? Can you address that?

Mr. SHERRILL. The Department of Labor has taken a number of steps to make improvements. In recent years they have really focused on different strategies to increase the timeliness of conducting the surveys. They have taken efforts to better verify the data.

But one of our key findings was they haven’t sufficiently addressed some of the fundamental issues with the survey dealing with the quality of the survey, how representative is it. Do you have sufficient data to make a representative judgment? Those kind of sort of more fundamental issues. So they made progress in some areas, but in others haven’t gone far enough.

Mr. KLINE. Okay, thank you.

And Mr. Markey, the Wage and Hour division has previously used McGraw-Hill Construction Analytics and there is a study I think came from 2005. Could you produce that for us for the record please?

Mr. MARKEY. Yes I can.

Mr. KLINE. Thank you.

I yield back Mr. Chairman.

Mr. BUCSHON [presiding]. The chair now recognizes the gentleman from New Jersey, Mr. Payne.

Mr. Miller?

Mr. MILLER. Just quickly, on the question—Mr. Kline just raised a question about the McGraw-Hill. From the GAO's point of view, is that a legitimate undertaking by Department of Labor?

Mr. SHERRILL. The McGraw-Hill review was conducted in 2004. It was really a view of Department of Labor's processes for doing the—

Mr. MILLER. But are they not now using them on an ongoing basis?

Mr. SHERRILL. I think you would have to ask the Department of Labor, sir what they are doing here. They are—

Mr. MILLER. Well, let me ask the Department of Labor then quickly.

Mr. MARKEY. As my testimony indicated, it had several recommendations and we acted on all of those. And, you know, where it went through the IT personnel training, and we are seeing real progress. With the new surveys, we are receiving a much greater response rate that we had in the past. These are the surveys we initiated in 2009 and 2010.

Mr. MILLER. But that—the McGraw-Hill is not an ongoing process it was used and you are responding to the recommendations that McGraw-Hill made, is that correct?

Mr. SHERRILL. That is correct.

Mr. MILLER. Let me just say, I have—I guess I have seen this process sort of both ways. I am fortunate to represent an area that over the last 20 years has had billions of dollars of heavy construction in the refining, chemical industries, steel mills, and I have seen when these private contracts were left a number of years ago, over the last 10 years, the influx of people from all over the country coming and sleeping in their cars, camping in the parks, bunking up five, six, seven people to a motel room, using county facilities, law enforcement facilities, county hospital, health care clinics, using all of those facilities and then leaving the minute the job was over.

Today, all of those fields, the major oil companies, the chemical companies, that work is now done under project labor agreements. It is entirely different situation. For the residents of that area who are employed in those jobs, who get the benefits, who return the revenues to the, if you will, their pay to the community and it is a much different proposition.

And it took time to evolve over to that process, but I think it is clear that Davis-Bacon provides much of that same benefit to communities. I mean I—actually when I was a young man working my way through college, I worked alongside people, and everybody I worked alongside of came from long distances to work in those re-

fineries and turnaround times or refurbishing or modernization in those trades. But they put nothing back into the community.

And that is the world of difference. Today, that is the case and I think that we are all better off for that reason. And obviously those negotiations are carried on with some of the largest entities in the world. They are mature negotiators they have made that determination to go in that direction.

So I would hope that we wouldn't be considering the repeal here. I do think that the GAO report—I get a little sense here that we have got sort of two different photographs and there is the number of things that have been going on to improve this, if I look at Mr. Markey's testimony, to improve the timeliness and the responses to the surveys. But some of the GAO work was on previous work to that.

I think we need somehow to reconcile both of your testimonies to see if we get an accurate picture of where it yet needs to be to be done. And then to the question of whether or not the response rate is sufficient or not, and accurate enough I think is an issue that we should continue to look at.

But I would like to get some, maybe I can formally ask the GAO if you would look at—if the testimony of DOL, I don't know if you have prior to this hearing because it appears that there is a little bit of mismatch in sequencing if you will.

I am not putting intent anywhere here, I just—the question of sequencing. Some things that have been done subsequent to the surveys that you may have been looking at that were an earlier iteration. That is—does that make any sense to you?

Mr. SHERRILL. That is fair because we did our analysis based on the data, the surveys that were available at the time for us look at that.

Mr. MILLER. Okay.

Mr. SHERRILL. So some of it was a snapshot of where they were at that time.

Mr. MILLER. I think that would be helpful to us.

Finally I just want to say I think Mr. Mistick, the \$15.7 billion is not annually, it is over 10 years. And it is a result of a CBO—informal CBO estimate. It is not a formal finding of CBO, just to clarify the record. It is—there is a little bit of difference between us two as you might imagine.

Mr. MISTICK. It is still on the plus side.

Mr. MILLER. No I understand, I understand. But you could also argue, I think, that the issue of the timeliness drags the wages back in time as opposed to being current, but more to be said later.

Mr. MISTICK. I agree with that observation, Mr. Miller.

Mr. BUCSHON. The chair yields 5 minutes to himself for a few questions. Mr. Mistick, you have a lot of experience as a stakeholder in all of this and trying to understand how to comply with the Davis-Bacon, and in your opinion, what is really the most troubling that you find with the findings of the GAO report?

Mr. MISTICK. It is—part of it consistent series over literally decades in which the department fails to produce accurate numbers. And we can talk about—computers and doing things faster, but all we are going to do is produce wrong numbers more quickly. What

it has produced most generally by the Department of Labor's survey are numbers that are wrong.

We have to be able to say out loud that if 13 percent of the workforce belongs to a union and 65 percent of our data points are union rate, *prima facie*, that is wrong. And that is what we need to address. We already pay to collect a great deal of data, as Mr. Sherk has mentioned, in the occupational waste surveys.

Advantages of which are that it is done on a county by county basis so that we can get to that fine granularity that is important in doing these surveys, plus the occupational waste survey has written classifications for the job.

That doesn't exist and it is part of the problems that Dr. Sherrill mentioned with people participating in the survey because there is no written description of what a carpenter, or painter, or plasterer does and that can vary from locality to locality. That is the biggest problem in my mind. And I don't see any impetus after 80 years of trying to really get it right at the Department.

Mr. BUCSHON. If a contractor has a question regarding a job classification issue, what type of guidance does DOL offer?

Mr. MISTICK. Well, you can certainly call DOL and ask them and you might get a piece of oral tradition. For example, if I say, what is carpentry work to the DOL? They say well, what is ever done with the tools of the trade. Well that is not really an answer, is it?

There have been instances more recently where the DOL has referred contractors to the contracting officer, who is the last person in the world to decide what job classifications are, this is a procurement specialist that has no background in the labor issues. So it is very difficult. It is not written down. It is also true in many state prevailing wage situations where there are no written guidelines for what the classifications are.

Mr. BUCSHON. Mr. Eisenbrey, I am a physician. I found it interesting that you were trying to correlate the incidence of workplace accidents and that type of safety issues related to how much people are paid on the job.

And how that—I am trying to find out how that—make that mental leap why, I mean this is a traditionally held view I think about labor, that if a union isn't involved in a project that people are going to be more—are more going to be, are more likely to be injured and hurt on the job which is a view, by the way, that I don't hold.

So I want to know, what specific data do you have, you know, that related to David-Bacon Act that there is any correlation at all with workplace accidents and injuries that just doesn't seem to apply to me.

Mr. MISTICK. What I cited was a study by Professor Peter Phillips from the University of Utah of what happened in Kansas after the repealed their state prevailing wage law. And I am not saying that there is a direct cause, but I am just reporting what happened afterward and—

Mr. BUCSHON. But I mean—I think—can interrupt for just a second. I think you wanted to get across to the committee that, like I said, a typical labor opinion that if labor isn't involved that there

will be injuries on the job to try to muddy the water about the whole issue.

Mr. MISTICK. No, no, no, no.

Mr. BUCSHON. But the intent of this is not to say that people shouldn't have a prevailing wage, but the question in mind is, what are the statistics behind it?

Mr. MISTICK. Well actually what I said was, that there is a rationale for why that would happen, which is it—I didn't say anything about unions, what I said was, if you pay less, you are going to get less experienced workers who will be more likely to get hurt on the job. That if you pay—and take physicians. If you paid physicians half as much, would you get as high quality physicians? I mean I think the answer—

Mr. BUCSHON. Actually you would because they are all trained the same and my time has expired. Mr. Bishop?

Mr. BISHOP. Thank you. Thank you Mr. Chairman and thank you for having this hearing. You know, I am having a hard time believing that this hearing is about a survey methodology or survey quality. I think it is important for us to note that in the debate on H.R.1 there was an amendment offered by Mr. King of Iowa to repeal Davis-Bacon.

Thankfully that amendment failed 189 to 233 but with one exception, every member of this sub-committee including the chairman of the full committee, voted for that amendment. So this hearing is much, much, more than about survey methodology.

I would also note for the record that Congressman Bacon preceded me as the representative of New York One and he was a Republican I should point out, and I will also point out that Mr. Shrek (sic) you use—Sherk, pardon me, you use a lot of data from Long Island. I represent about half of Suffolk County, so chances are the carpenters and the electricians and the sheet metal workers you are referring to are people that I represent.

And in preparing for this I read a document that you wrote Mr. Sherk, and I will just read the opening sentence of the last paragraph which says, "Repeal Davis Bacon. America can no longer afford such special interest handouts". Do you recall writing that?

Mr. SHERK. I have written words to that affect many times.

Mr. BISHOP. Okay, well so am I to understand that a carpenter making \$77,000 a year constitutes a special interest?

Mr. SHERK. The special interest that I was particularly referring to is unions. So there have been studies of what happens when you repeal prevailing wage law.

Mr. BISHOP. All right, let us go to that. The difference between the prevailing wage and the market rate for Long Island, carpenter who is, if he is fortunate enough to work 40 hours a week for 52 weeks a year would make approximately \$77,000. The market rate, person would make about \$59,000 a year.

Now these \$77,000 a year guy, remember, he is the guy I represent, okay. Now, if we were to impose a tax rate on that person, that reduced his take home pay by 30 percent, is it fair to say—I know you don't speak for the Heritage Foundation, but is it fair to say that the Heritage Foundation would refer to that tax rate as confiscatory?

Mr. SHERK. We would oppose certainly any such taxes. But if you had say a subsidy, basically we believe people should keep what they earn.

Mr. BISHOP. Okay.

Mr. SHERK. But—

Mr. BISHOP. But, but, in order to keep what you earn you first have to earn it, correct?

Mr. SHERK. If you are earning it—

Mr. BISHOP. But you are asking a person to take a 40 percent reduction in pay to do the same job, is that not correct?

Mr. SHERK. What you are basically requiring them to do is work on the open competitive market and not have, basically government—

Mr. BISHOP. But the fact is that if your construct were to take place. If we were to repeal Davis Bacon, that laborer or that carpenter now making 77 grand a year, would be making 59 grand a year, right?

Mr. SHERK. [Off mike.]

Mr. BISHOP. And so let us stay with that for a second. So he now has \$18,000 less per year to spend. Now if we were to tax everyone, so that such that they had \$18,000 a year less to spend, would there not be some enormous human cry that that is a job killing tax rate because we would be taking money out of the economy and out of circulation. Isn't that how that tax rate would be dealt with, perhaps reasonably?

Mr. SHERK. Well effectively, what you are having is not a tax but a subsidy. So again, there are—

Mr. BISHOP. This is the individual who now has \$18,000 less per year to spend, call it a subsidy call it a tax. He has got 18 grand less per year to support his family. And he has 18 grand less per year to buy goods and services which have a ripple effect through the economy. Is that not correct?

Mr. SHERK. No, I don't believe that is correct.

Mr. BISHOP. Why is it not correct? If we were to tax that person \$18,000 you would claim that we were taking money out of the economy. And that is the best thing for us to do is leave the money in the hands of the people because they know how to spend it better than the federal government. Is that not the case?

Mr. SHERK. But what you have essentially got a law that requires—is your hiring of four construction workers for the price of five. If you paid the individuals market rates and assume that—

Mr. BISHOP. I am trying to deal with the people I represent. And if your recommendation were to ever take on the force of law, those people would be very, very adversely impacted.

Mr. SHERK. Those fortunate enough to work on the federal construction jobs, some of them would see lower pay. Those who are unemployed right now might benefit from—

Mr. BISHOP. All right, let us try this. The prevailing wage, not the union wage, the prevailing wage for all counties in Virginia for a backhoe operator, which I guess would be called a laborer, is \$11.28 an hour. That is around \$450 a week, so roughly 23 grand a year. Is that what we have come to? We have come to arguing about whether or not we can afford to pay somebody 23 grand a year?

Mr. SHERK. We did a study actually on Davis-Bacon rates in Virginia a couple years back. I haven't updated it since then, it was 2008. But what we found was actually that the Davis-Bacon rates in Virginia, because of the inaccuracies, were about 5 percent lower than the market rates and that you had inflated rates in northern Virginia, in the rest of Virginia they are substantially below the market rates. So it is—if you have got the—survey, I—

Mr. BISHOP. It increased it—let us say that it is—let us say you are right. I am sorry, my time—

Chairman WALBERG [presiding]. The gentleman's time is expired.

Mr. BISHOP. Thank you.

Chairman WALBERG. We will now go to the gentlelady from Hawaii, Ms. Hirono.

Ms. HIRONO. Thank you Mr. Chairman. I would like to insert into the record of this hearing a letter that was sent to the chairman of the full committee and the ranking member of the full committee from the Congressional Black Caucus, the Congressional Hispanic Caucus, Congressional Asian—Pacific American Caucus in response to the fact that we are having this subcommittee hearing wherein they say prior to the enactment of Davis-Bacon in 1931, there were many shocking examples of abusive labor practices and wholesale exploitation of female workers and workers of color.

That is just part of what was in the letter to the full committee chairs and a ranking member. I would like to insert the rest of that letter for the record of this hearing.

[The information follows:]

Congress of the United States
Washington, DC 20515

April 13, 2011

The Honorable John Kline
Chairman
Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
2101 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kline and Ranking Member Miller:

It has come to our attention that the Subcommittee on Workforce Protections will conduct a hearing to examine the Department of Labor's implementation of the Davis-Bacon Act. As Chairs of the Congressional Black Caucus, Congressional Hispanic Caucus, Congressional Asian Pacific American Caucus, and each Caucus' respective labor taskforce, we support the improvements to the implementation of the Davis-Bacon Act. However, we strongly oppose all efforts to eliminate this important legislation.

Prior to the enactment of Davis-Bacon in 1931, there were many shocking examples of abusive labor practices and wholesale exploitation of female workers and workers of color on construction sites. For the last 80 years, the Davis-Bacon Act has protected the wages of all construction workers, including workers of color and women, who are particularly vulnerable to exploitation. Further, studies show that prevailing wage laws provide social benefits from higher wages and better workplace safety, increase government revenues, and elevate worker skills in the construction industry.

We believe that Davis-Bacon has been instrumental in bridging the wage gap for historically disadvantaged sectors of our society. In the face of decaying social and economic opportunities, this measure provides women and people of color with an important tool to achieving greater parity with their mainstream counterparts. The direct and indirect positive effects of Davis-Bacon prevailing wage regulations make them a prudent and beneficial policy. Additionally, Davis-Bacon prevailing wage regulations have no adverse economic impact.

Members of our caucuses have stood at the forefront of promoting rights for workers of color and female workers. The Davis-Bacon Act has made a valuable contribution to instituting protective equity and stability to American workers everywhere. We believe this important labor protection should be continued and strengthened, not eliminated.

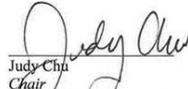
Sincerely,



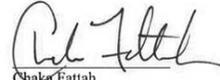
Emanuel Cleaver
Chair
Congressional Black Caucus



Charles A. Gonzalez
Chair
Congressional Hispanic Caucus



Judy Chu
Chair
Congressional Asian Pacific American Caucus
CAPAC Economic Development Taskforce



Chaker Fattah
Co-Chair
CBC Education and Labor Taskforce



Danny K. Davis
Co-Chair
CBC Education and Labor Taskforce



Raúl M. Grijalva
Chair
CHC Education and Job Training Taskforce

Chairman WALBERG. Without objection. So ordered.

Ms. HIRONO. Thank you. I found the exchange that we just heard very interesting, and, Mr. Sherk, I am curious to know is the position of the Heritage Foundation, which does advocate market rates in this arena, whether or not the position of the Heritage Foundation or your own position for that matter, is that government not set minimum wage either?

Mr. SHERK. Certainly my personal position would be that the minimum wage is destructive to those it tries to help, that it produces employment opportunities and the ability of people to get a start on the job ladder and move up. So generally speaking, I would be against that. But, in this case, it means that the David-Bacon rates—they even—the market rates. They are so far above and beyond even the minimum wage that they—it is apples and oranges.

Ms. HIRONO. So, the answer is that you would rather that—you don't think that the government should set minimum wages either?

Mr. SHERK. I, generally believe—speaking—I believe that minimum wage laws hurt those they are trying to help.

Ms. HIRONO. Thank you very much. We obviously have a disagreement on that.

Mr. Eisenbrey, I don't think that you were able to complete your testimony, and it is very clear from this hearing that apart from the survey design and methodology, which we hope will be, you know, appropriate, that we don't have enough people participating in the survey, and I don't think you had a chance to finish your thoughts on some of the ideas that you would have to ensure a higher and more representational participation.

Mr. EISENBREY. Well, thank you. Can I make one other point before I answer your question?

Ms. HIRONO. Please.

Mr. EISENBREY. I just like the record to be, clear that when Mr. Sherk talks about the market rate, you shouldn't take that as a fact that he is asserting that the occupational employment statis-

tics rate is the market rate, and he compares it to I think the building rate under Davis-Bacon, which is actually an unfair comparison because the OES includes residential construction where the rates can be half as much as the building rate.

So, he is lumping in a lot of very low wage people and comparing them to people with higher skills in a narrower segment of the market, and it really isn't a fair comparison, and I would say everything that he said based on that has to be therefore taken with a grain of salt.

Ms. HIRONO. Thank you for that clarification.

Mr. EISENBREY. But in answer to your question, I think that the Department should be doing everything it can and it is making new efforts—you have heard from Mr. Markey—to get better responses to the surveys. I think that there are tools that the department hasn't looked at that they should.

In Michigan one of the world's greatest survey institutions is at the University of Michigan, and they will pay people to complete surveys. That is an incentive that ought to be looked at.

But, the more obvious one is to say that anyone—any subcontractor, anybody who is doing federal construction work and being paid by the government should complete these surveys. They should be required to complete the surveys as a condition of working on federal projects and getting federal taxpayer dollars. That would do a lot to increase the response rate.

Ms. HIRONO. Mr. Markey, would you like to respond to these two suggestions to improve your return rate?

Mr. MARKEY. Well, we are taking—

Chairman WALBERG. Microphone, please.

Mr. MARKEY [continuing]. We are taking efforts to improve the response rate. As I indicated it has usually been a series of mailings and with the low response rate in residential construction we have changed that methodology. We are supplementing mailings with telephone calls and visits to contractors and contractor associations. We have started that in—2010, and we have several surveys ongoing regarding that.

After we cleaned up all the old surveys, as I talked about, we started piloting surveys under this new methodology where we don't have a one size fits all, and we don't survey every type of construction at the same time.

If we look at the response rate in Georgia that we published in 2009, I think the survey was 2003 or 2004—and we look at the response rate in Georgia which we are currently surveying now, I think we have, just for a building in heavy, over 7,000 responses, for Georgia. We didn't have anywhere near that back in 2003 when we did this survey.

Chairman WALBERG. Thank you, the gentlelady's time has expired.

Ms. HIRONO. Thank you.

Chairman WALBERG. Move on to the gentleman from New Jersey, Mr. Payne.

Mr. PAYNE. Thank you very much. It is a very interesting discussion, and it has been around for a long time. I, unfortunately, had to run to another committee so I know that many of the questions

were asked and answered although I do have a question of Mr. Markey.

You know, today's statement, and this is what the discussion even to the previous member had made claims that the Department of Labor survey is difficult to complete and presents a major problem.

The GAO study found that 19 of 27 contractors and interested parties, 70 percent are interviewed, said that the survey was generally easy to understand though some identified challenges with completing specific sections such as how to apply the correct job classifications. Does the Department frequently receive complaints about the form, and what support do you provide to contractors completing this form?

Mr. MARKEY. Well, when we do a survey, we conduct extensive pre-survey briefings. That includes all stakeholders. It—the building trades. It is contractors' associations. It is small contractors.

Besides stressing the importance of responding to the survey, we go through the data collection form block by block. We send out to everybody who we determine has been involved with construction activity a letter requesting a response. With that is a two page instruction sheet that indicates how you complete the form.

We have a—on our Web site we have our phone number that—if they have any problems. And probably, most importantly, we get in a form and it indicates that—there are questions as to something on the survey, and I will direct one of Mr. Mistick's concerns about area practice.

We immediately called that respondent and we say, did you mean this? Okay, you have put a question mark next to the classification as to whether it is really a carpenter or an electrician or whether they do a subspecialty of hanging sheetrock or pulling low voltage wiring. And we question them regarding that. So, I think there is a lot of technical assistance going on in the survey process.

GAO in its report said that 70 percent of the respondents indicated they had no problems with the form. It was rather simple. We do on site verification through a private accounting firm, and one of the things they always ask is, did you have any problems with the form? What do you think about this? What do you think about that? And the response is, it is not particularly difficult or time consuming to fill out.

Mr. PAYNE. Thank you. Also, you know, the whole question about prevailing wages and so forth, I—of course if, you know, I was the builder, I certainly would want to have wages as low as possible. I mean, I wish I can dictate the rate that my doctor charges. But, that is just not the way it happens. I mean, it would be great to have you know, what needs to be supplied as inexpensive as it can be, therefore the profit would be much greater.

So, I, you know, I think in some of these instances, we have to look at the value of work done. What is the—how do we determine that? You know, someone comes in and just say the prevailing wage is just too high, and that is what many of the entrepreneurs say. The workers say that what they are doing, they think that what they are providing is equal to what they are paid.

So, I guess this is an argument that, you know, we are going to see, you know, on and on according to what side of the shovel you

are on. So, you know, I think it is driving down wages. I am not so sure, as have been indicated, to get more productivity. That is a new concept.

We really have to, I think, make sure that we have qualified people. I am glad that the letter from the minority caucuses was introduced because there is a misconception that people feel that minority workers don't support Davis-Bacon, and we have our labor task force members who signed the letter just to the contrary.

And so, I certainly think that this discussion is important, and hopefully we can improve it. But, I think to try to eliminate the Davis-Bacon Act would be a step in the wrong direction.

Chairman WALBERG. I thank you, gentlemen. And now turn to the gentleman from Ohio, Mr. Kucinich.

Mr. KUCINICH. Thank you very much Mr. Chairman, and I am going to ask some questions of the—for Mr. Markey from The Department of Labor. You know, in reading over the GAO report and you may have answered this already, so excuse me for asking it if you have, is it your position that if you had more people who were able to inspect, you could keep up with the flow of the work and therefore ensure better enforcement?

Mr. MARKEY. Well, no, agencies are always looking—

Mr. KUCINICH. Could you speak into the mic?

Mr. MARKEY. Agencies are always looking for more people but this is more related to the wage determination process. I indicated we have added people. As we continue to re-engineer the processes, we are timing each segment of how long it takes and we will add staff in the field as necessary.

Mr. KUCINICH. What can you see are the major challenges that you face with respect to having staff in the field to make sure that you keep up with the workflow? Are you facing budget cuts in terms of cutting back staff that would be able to seek proper enforcement?

Mr. MARKEY. The Department has received a budget cut in wage now, and we are sharing it.

Mr. KUCINICH. How will that affect the work?

Mr. MARKEY. With regard to this particular function of wage determinations, at this point in time we consider it critical enough that it is not affecting the work.

Mr. KUCINICH. You consider it what, please?

Mr. MARKEY. We consider the wage determination process in our efforts to improve it and to shorten the timeframes of the age of wage rates, important enough that any cuts will not be absorbed in that portion of our operations.

Mr. KUCINICH. I am glad to hear you say that because in looking at your testimony you point out the historical importance of the Davis-Bacon Act, and I think that in this debate over Davis-Bacon wages that it is important that we talk about the construction benefits to the taxpayers, quality of work, workplace safety issues that may not be easily monetized, but once they are, actually indicate that the taxpayers overall are not just getting quality but they are getting value. Would you agree with that?

Mr. MARKEY. Yes, I would.

Mr. KUCINICH. I would like to ask Mr. Sherk—I read your report repealing Davis-Bacon, which you advocate, and I heard you an-

swer one of my colleagues. What do you—I am going to pick up on your comments about minimum wage. Do you think there should be a minimum wage?

Mr. SHERK. Well, again, it is—the minimum wage only—you are talking basically 3 percent or so of workers. The—it doesn't—construction workers—

Mr. KUCINICH. Philosophically though.

Mr. SHERK. But, generally speaking I think it hurts those it is intended to help that it prices low skilled—very low skilled—workers out of the labor market.

Mr. KUCINICH. So, right now the minimum wage is about \$7.25.

Mr. SHERK. Yes.

Mr. KUCINICH. Would you say that maybe more people would work if the minimum wage was like, say, \$5?

Mr. SHERK. Certainly you would have—right now if you are among skilled workers—say you are a high school dropout and you can only provide \$6 an hour worth of value to the company. Well then nobody is going to pay you \$7.25 an hour and benefits to bring you on. But, what you find is that when workers—they starve on minimum wage. It is an entry level wage. The two-thirds of minimum wage workers get a raise within a year.

It is the bottom rung of a career ladder, and you work your way up. Cut off that bottom rung, don't give them the opportunity to develop skills, and you wind up hurting them and preventing them from, you know, working their way up and earning higher pay.

Mr. KUCINICH. I am just doing some off the cuff math on minimum wage 15—the minimum wage at a yearly rate would be \$15,080. That is at the \$7.25 an hour. Let us say we made it \$5 an hour, it would be, I don't know, over \$10,000, I guess. When you look at the federal poverty numbers, because you have to put this in a broader perspective, people would actually have a job and be driven into poverty.

This is a conflict that we have here. So, what I would suggest to you, respectfully, is that the philosophy that brings any of us to these tables, on this side and on your side, have to meet some real world realities about, you know, what people need to make a living.

And I know that in your testimony you sketch out—actually with respect to the minimum wage—with respect to Davis-Bacon wages, I know you try to establish the difference between the Davis-Bacon Act and the market wages in various communities. I looked at that. But the question is though, if you monetize all the value—

Chairman WALBERG. I thank the gentleman for his philosophy and appreciate that—

Mr. SHERK. Thank you for that, Mr. Chairman.

Chairman WALBERG [continuing]. Yes. I thank you for that and—

Mr. KUCINICH. So is my time expired?

Chairman WALBERG. Your time has expired—

Mr. KUCINICH. I thought you were just thanking—

Chairman WALBERG [continuing]. Significantly. [Laughter.]

Philosophy, philosophy, we all have it, and I thank you for yours whether I agree or disagree. I also thank the members of the panel for being here today to provide checks and balances to each other,

to provide philosophy in the process and provide more information as we go forward in our committee deliberations.

And now I turn to the gentlelady from California, ranking member Woolsey for closing comments.

Ms. WOOLSEY. Thank you, Mr. Chairman, and I also thank the witnesses today and would like to ask the Department of Labor if they have items that they would like to submit for the record?

Mr. MARKEY. Yes, we would.

Ms. WOOLSEY. Mr. Chairman, would that be acceptable to you?

Chairman WALBERG. Without objection.

Ms. WOOLSEY. Thank you. It is clear from today's testimony that the Department of Labor is taking steps to improve its prevailing wage survey process. They have instituted several reforms aimed at producing more timely, more accurate wage rates, and they continue to look at ways to advance the survey procedures.

We have also learned of the problems with using Bureau of Labor statistics data in place of a true prevailing wage survey, which amounts actually to an imprecise wage rate and a wage cut for construction workers.

So, as I said before, Mr. Chairman, the last thing construction workers need in this economy is to have their wages cut. We need to ensure that prevailing wage protections exist so that the federal government does not subsidize a race to the bottom with our nation's construction investments. Instead, we must continue to encourage competition, contribute to the development of a skilled workforce for the future and pay livable wages.

I yield back.

Chairman WALBERG. I thank the gentlelady and would concur. We certainly want to see jobs, efficiency, all of that expand. We also want to make sure that there are no unnecessary hindrances to hiring and completing jobs.

I have had the benefit of having a youngest son who is working in jobs probably as we speak. Today he will work for prevailing wage and he will work for non prevailing wage. He will do the same process at each site and will do the same quality work.

But there will be significant difference in the wages that he receives. He understands that. He doesn't complain about the bottom line of the check at the end of the month.

But he does complain about the fact that he knows there are jobs that he will not be on and there will be additional employees that will not assist him on some of those jobs in construction because of additional costs that to him, seem unnecessary.

Now we know that it goes the other way as well, according to the GAO report. And I think that is the purpose of this hearing, this subcommittee and our deliberations, to find what moves this nation, its workforce, its economy forwards. I love Michigan. It is a state of my choosing.

But I also know that state led the nation in an unrivaled unemployment recession, depression as it were, for too long and sadly, a couple other states have now joined it at the bottom of the pile.

And regulations, cost structures, prevailing wages, requirements by the government in Davis-Bacon—whatever it might be that destroys the opportunity to move forward must be dealt with.

And so we will continue looking at these issues and hopefully come to a conclusion that will benefit the worker, the employer, the regulator—I noticed I put regulator third, though I appreciate the work that is done, what you are asked to do, but nonetheless, ultimately it benefits the economy and moving forward in this great nation. It is too great to hold it back.

So having said that, there being no further business, the subcommittee stands adjourned.

[Additional submissions of Mr. Walberg follow:]

Prepared Statement of Women Construction Owners & Executives, USA

Women Construction Owners & Executives, USA (WCOE) is pleased to submit testimony before the Subcommittee to share our views about prevailing wages rates under the Davis-Bacon Act. WCOE is a national association representing women owners and executives in the construction industry. Members of WCOE include general contractors, architects, engineers, manufacturers, construction project managers, and trade subcontractors.

Women represent a small, but growing, segment of the construction industry. According to the most recent U.S. Census Bureau Survey of Business Owners from 2007, 10% of construction firms nationwide are women-owned businesses. The Center for Women's Business Research 2008 Biennial Update reported that there were nearly 500,000 women-owned construction firms nationwide. American Express OPEN's 2011 "State of Women-Owned Businesses Report" highlighted the recent growth for women-owned businesses in the construction industry. Between 2002 and 2010, there has been a 41% growth in the number of women-owned construction firms. Furthermore, construction is one of only two industries in which the growth of women-owned businesses regarding number of firms, employment and revenues has outpaced industry-level growth.

The issue of prevailing wage rates determined by the Department of Labor (DOL) under the Davis-Bacon Act is critical to women construction company owners. WCOE's membership includes both union signatory and non-union companies and they mirror the overall industry statistics (2010 Bureau of Labor Statistics) with nine out of ten companies operating under "open shop" guidelines.

The majority of our members are classified as small businesses according to SBA criteria and since 87+% are non-union or "open shop", they are at a significant disadvantage when federal, state and local construction contracts require union wages and benefits. In addition, the March 2011 Government Accountability Office (GAO) report "Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey" findings that DOL does not provide a fair determination of local prevailing wages comes as no surprise to us. The 50 percent rule under Davis-Bacon requires DOL to collect wage data on at least three workers from two different employers. This calculation is not likely to be representative of the actual wages paid to construction workers especially when both of the employers surveyed are paying union rates. Union signatory construction companies (13%), which tend to pay higher total compensation (wages and benefits) than non-union companies (87%), are not representative of the entire industry.

We understand the repeal of Davis-Bacon is nearly impossible in the current climate, however we urge the Subcommittee to focus on redirecting the wage and benefit research to the states and localities who have a better understanding of local dynamics within the construction industry. At a minimum, DOL should be mandated to include non-union wages and benefits when deciding the prevailing wage for any area. After all, these wages do represent 87% of the construction industry work force.

Recently, the Small Business Administration (SBA) implemented its women owned small business procurement program to provide women-owned businesses greater access to federal contracting. The Women Owned Small Business Federal Contract Program (WOSB-8m), which has taken eleven years to enact, permits contracting officers, for the first time, to restrict competition for federal contracts to women-owned businesses in 83 industries where women-owned firms were determined to be underrepresented. Twelve of these broad 4-digit NAICS industry codes (which encompass 60 six-digit specific NAICS codes) are in the construction industry. The Davis-Bacon requirements are a barrier to women-owned construction companies securing government contracts. Implementation of the WOSB-8m Program in these 60 construction NAICS codes may not do much to help open the doors to federal construction projects unless the Davis-Bacon requirements are revised. If the

WOSB-8m program is about providing parity, then we submit the prevailing wage methodology and requirements currently utilized will severely limit women-owned construction companies' ability to compete for government contracts.

In summary, we believe Congress should re-examine the industry standards for determining prevailing wage rates and take into consideration the established fact that 87% of construction companies in this country are non-union. WCOE would like to thank the Subcommittee for giving us the opportunity to share our views.

Concerns Persist with the Integrity of Davis-Bacon Act Prevailing Wage Determinations

APPENDIX B

U.S. Department of Labor

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



FEB 18 2004

MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General
for Audit

FROM:

[Signature]
VICTORIA A. LIPNIC

SUBJECT:

Draft OIG Audit Report on Davis-Bacon Wage Determinations

Thank you for the opportunity to comment on your draft audit report entitled "Concerns Persist with the Integrity of Davis-Bacon Act Prevailing Wage Determinations."

You have recommended that the Employment Standards Administration "promote changes to the *Davis-Bacon Act* that allow reliable and objective sources of data and a defensible methodology, such as that offered by BLS surveys, to be used in prevailing wage determinations." ESA is not convinced that the report is supported by data or analysis relevant to a statutory provision. Also, the report does not provide any guidance on what changes might be appropriate.

In addition, your report acknowledges that there are obstacles to using BLS surveys, but concludes that you "do not believe they are insurmountable." The report does not identify these obstacles that would presumably apply to any sample survey. Since the report does not identify these obstacles, the report provides insufficient guidance on how to overcome these unspecified obstacles.

As indicated in your report, the Wage and Hour Division (WHD) previously explored the possibility of using BLS survey data as a basis for Davis-Bacon wage determinations. In addition to funding several pilot surveys to determine the feasibility of collecting fringe benefit data as part of BLS's National Compensation Survey (NCS), WHD also worked with BLS to examine the extent to which the Occupational Employment Statistics (OES) survey might provide detailed construction industry wage rate information by locality and occupation. As you know, in the last days of the previous administration, former Assistant Secretary Bernard E. Anderson concluded that while the use of BLS data was attractive from a timeliness and accuracy standpoint, "the feasibility of meeting the Davis-Bacon statutory requirements, the cost of obtaining fringe benefit data, and our concerns about the completeness of the wage data when classified by occupation and type of construction" led to the conclusion that improving the current wage survey process offered the "best and most cost-effective solution for long term improvements in the Davis-Bacon wage determination program."

Although the decision to no longer pursue a BLS approach was based in part on concerns with meeting the Davis-Bacon statutory requirements, these concerns were not the only

reasons expressed in former Assistant Secretary Anderson's letter. Also, the fact that the statutory provisions of the Davis-Bacon Act presented obstacles for using BLS data does not mean that the statutory requirements are without merit. For example, BLS conducts and reports survey data for a Metropolitan Statistical Area (MSA) rather than the county-by-county basis that traditionally has been applied under the Davis-Bacon Act. If the statute were changed to allow a MSA type approach as the base level for calculating prevailing wage rates, that would certainly make using BLS data more viable; however, it would not necessarily provide a more accurate reflection of prevailing rates for all areas within the MSA. As we noted in the closing conference, Spotsylvania, Warren, and Arlington counties in Virginia are all part of the Washington, DC MSA; however, it is not clear that the prevailing rate paid to carpenters performing building construction in all three counties should be the same. The difference in such wage rates might be even greater if state lines were crossed and the Virginia counties were combined with wages in other parts of the MSA such as the District of Columbia or Montgomery County, MD.

As demonstrated above, the county-by-county geographic approach currently used for collecting and reporting data for Davis-Bacon wage determinations is different from the MSA approach used by BLS, but that does not mean that the underlying basis for the current Davis-Bacon approach is without merit and should be changed. We would also note that the Davis-Bacon Act does not prohibit issuing wage determinations for broader geographic areas such as an MSA, and we routinely issue such wage determinations when sufficient data are not available on a county basis.

In light of your recommendation, however, it might be useful to reexamine the conclusions reached by the prior administration and again explore with BLS the possibility of using BLS data. We do not agree, with your concerns about the current universe survey approach as opposed to a sample survey, but we are willing to reevaluate the feasibility of conducting Davis-Bacon surveys using a sampling methodology. If a change to a sample survey methodology for Davis-Bacon wage determinations is pursued, it should involve the use of BLS data and should not overlay a whole new sample survey conducted by Wage and Hour.

Your report expresses continuing concerns regarding issues raised in earlier OIG and GAO reports. Specifically you note that errors in wage data continue; wage data may be biased; and timeliness of wage decisions is still an issue. These are issues that any survey program must continually address, and we believe we have made and are continuing to make progress in addressing these issues.

In documenting your concerns that errors in the wage data continue, you note that the contractor conducting on-site reviews of wage reports submitted by contractors and third parties found that one or more errors existed in nearly 100 percent of the wage reports they reviewed. While it was not within the scope of your current audit to measure the impact of the errors, you did note that errors identified in your 1997 audit report resulted in inaccuracies in the published wage determinations that ranged from an overstatement of \$1.08 per hour to an understatement of \$1.29 per hour. However, as noted in WH's response to that earlier audit, only about thirteen percent of the affected wage

determination classifications needed to be changed based upon the audit findings, and most of those changes were small and likely would have fallen within the statistical margin of error normally associated with sample surveys.³ Even the extremes of \$1.08 and \$1.29 per hour identified by your earlier audit would often fall within the 90 and 95 percent confidence intervals calculated for many BLS published survey results. Nevertheless, we share your continuing concern regarding the accuracy of the data submitted and we remain committed to making the data used in Davis-Bacon wage determinations as accurate as possible. In this regard, based upon the last GAO recommendation, our on-site verification efforts now target those data submissions that would have the greatest impact upon the resulting wage determination.

With respect to your concern that wage data may be biased, this is a concern with any survey, be it a sample survey or a universe survey. Although the source of the potential bias may be different, the potential is always there. For that reason WH continues to make every effort to reach out to all parties and encourage participation by all segments of the construction industry. Further, we would note that after years of extensive on-site verification we have found no evidence of fraud or intentional misreporting by construction contractors, subcontractors, or third parties. Thus, while we continue to be vigilant, we have found no evidence to indicate a recurrence of the 1995 incident discussed in your report.

Your third concern – the timeliness of wage decisions – also continues to be a critical concern of WH. In some respects, however, a full evaluation of this issue is premature because all of the infrastructure improvements have not been fully implemented. As with many large infrastructure projects, it is difficult to measure incremental improvements because the whole system is integrated and the full benefit of individual improvements cannot be fully realized until all aspects of the project are completed. Nevertheless, this fiscal year WH is establishing baselines and developing timeliness measures to ensure that we remain focused on this issue.

Finally, as noted in your audit report, WH has contracted with McGraw-Hill to conduct a comprehensive review of the Davis-Bacon wage survey and determination process. While such external reviews are elements measured by the PART process, the McGraw-Hill effort is not simply to help WH respond to the PART. We fully believe, as the GAO report in May 1999 concluded, that the system changes we are pursuing with the Davis-Bacon wage survey program have the potential to improve wage determinations. We want to make this the best and most efficient system possible and for that reason we are eager to have the benefit of McGraw-Hill's independent analysis and recommendations.

Again, thank you for your comments and recommendations. We will keep you apprised of our further discussions with BLS.

³ For example, the following are the 90% confidence intervals for a few randomly selected construction occupations in Abilene, TX and Washington, DC: Abilene: Carpenters = \$1.91; Electricians = \$2.77; Painters = \$1.94; Plumbers = \$1.18. Washington, DC: Bricklayers = \$1.04; Carpenters = \$2.43; Electricians = \$2.76; Painters = \$2.45; Plumbers = \$2.89; Reinforcing Iron Workers = \$3.73. The 95% confidence interval would be even greater.

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**McGraw Hill
CONSTRUCTION**



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

Davis-Bacon Process Evaluation

Final Report

July 29, 2004

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Executive Summary:

The U.S. Department of Labor, Employment Standards Administration Wage and Hour Division, contracted in August 2004 with McGraw-Hill Construction Analytics to conduct an in-depth analysis and documentation of the current Davis-Bacon wage survey and determination processes and operations being performed by the DOL Wage and Hour Division. The following report presents the findings of these analyses and identifies areas of opportunities for the DOL Wage and Hour Division to modify or change existing practices.

The core team from MHC performing this documentation and analysis consisted of Anita Gryan – associate director, MHC Analytics, James Kerr – sales director, MHC Dodge, Matt Barnum – product manager, MHC Analytics, Derek Drelling – director of product development, MHC, Pete Seggelink – national distribution manager, MHC, and Burleigh Morton – senior director, MHC Analytics. To gather the required data and knowledge, members of this team conducted in-person visits and follow up phone calls with: 1) DOL WHD headquarters staff in DC; 2) all five WHD regional offices; 3) Bureau of the Census in Jefferson, IN; 4) Construction Industry Research and Policy Center (CIRPC) at the University of Tennessee, Knoxville; 5) SID – computer consultants for WHD; and 6) stake holders from organized labor, open shop organizations, and federal agencies. Phone interviews were also conducted with the accounting firm of Harper, Rains, Stokes and Knight, plus with the Bureau of Labor Statistics. The DOL WHD headquarters staff provided the MHC team with all relevant Davis-Bacon wage determination background information available.

Focus and Direction Needed from Washington:

The *lack of strong leadership* from WHD headquarters in DC has led to variations at each regional office in how the WD-10 forms are processed. Best practices are not established or systematically documented and shared. While local area contractor job rules and procedures vary and affect the actual WD-10 data being collected, the process of collecting and processing the data do not. Despite this, feedback from regional offices consistently indicates a lack of structure, well-documented procedures, and marching orders from headquarters. The lack of effectively communicated standards and direction from DC has created an environment where the most dedicated individuals at the regional offices must fend for themselves. Others, less motivated, are left to shuffle along. This has lead to unacceptable delays, by any reasonable standard, in the time required to complete the surveys and the resulting non-publication of wage determinations. Regardless of the competency of individuals at the regional offices, effective leadership from DC is an absolute necessity, especially during times of change, which have characterized the last several years at WHD.

Technology Must be Effectively Utilized:

Anticipated productivity enhancements still have not been realized from the Automated Survey Data System (ASDS) and Wage Determination Generation System (WDGS). Success today for those in the business of processing information depends on realizing greater efficiency through the use of technology. Stagnation and failure result whenever this does not happen. Despite multiple years in development and partially due to its concurrent implementation, until more recently ASDS has proven to be more of an inhibitor than a booster to productivity gains.

There is no current linkage between ASDS and WDGS, making it impossible to truly assess the effectiveness of WDGS. Furthermore, this precludes any wage determinations from being issued through the systems that are presently in place. By preventing the DOL from generating updated wage determinations through these system interfaces, hoped-for productivity gains have proven illusory.?

[To its detriment, not having a technology savvy leader at headquarters in DC has left the DOL WHD beholden to its outside technology partners.] It has also put an unfair burden on these partners to interpret and set goals. Without clear expectations having been set by DC, the practice of the squeaky wheel getting oiled first or the "interesting" technology taking precedence is understandable, but has proven largely ineffective and needs to be replaced by an appropriate technology implementation plan established by strong leadership in DC. A leader in DOL WHD headquarters must be passionate in seeking and listening to input from the regional offices regarding technology, but also have the technology know-how to discern what is possible and to create an appropriate strategy and implementation plan and schedule. Understanding information technology and how best to use it to drive enhanced productivity needs to become a WHD core competency, even if the technology platform itself is provided through an outside partner. Only when this happens can the DOL meet its constituency needs by providing updated wage determinations in keeping with Davis-Bacon regulations.

Metrics and Goals:

Having *metrics and goals is necessary to succeed* and satisfy customers or constituencies, no matter the type of organization, whether private, not-for-profit, or governmental. Metrics enable an organization to understand what is working and what is not. When properly established and monitored at the individual contributor, team or group level, performance against meaningful metrics enables management to better identify and reinforce "best practices" and to take corrective actions when necessary. Without agreed upon benchmarks to be evaluated against, people, managers and organizations are at a severe disadvantage. For the most part, this is the situation existing at the five regional WHD offices. The primary culprit again is the *lack of strong leadership* from Washington DC.

Whether it is the Total Quality Management (TQM) approach having been successfully implemented by firms such as 3-M, Ford, and Motorola, the Six-Sigma program used throughout General Electric, or the quality management principles of ISO 9000, all of these methods advocate the importance of establishing metrics. To be effective, metrics and goals must be realistic and fair, based on objective interpretation of the relevant facts. No such measures exist within the Davis Bacon wage survey framework.

Also in place
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summary

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No major process disconnects uncovered. There was a twofold purpose to conducting an in-depth analysis and documentation of the current Davis-Bacon wage survey and determination processes and operations performed by the DOL WHD. The first was to identify potential disconnects, flaws or opportunities for improvement in the process itself. The second was to uncover any non-direct process related reasons for why wage determinations are not being issued in a timely manner.

The most significant observation identified in our process mapping effort was the totally different approach taken by the Bureau of the Census in Jefferson, IN versus the one employed by the DOL WHD. The Census operations involved in the DOL Davis-Bacon wage determination process are well managed and extremely well executed. They efficiently handle all outbound and inbound WD-10 survey work. The printing process is largely automated, yet to accommodate a variety of different sized package enclosures the assembly of the final mailings require manual effort. Census has systematically and carefully analyzed all of the DOL WHD activities. Measures and metrics are religiously kept. Census believes changes can be made in the mailing pieces to more fully automate their handling and thus drive down costs through realized efficiencies. They also feel the forms' visual appeal can be enhanced for the benefit of the Davis-Bacon wage determination constituents who fill them out. Consistent with comments from many individuals at the WHD regional offices, Census believes the direction and feedback they receive from DOL WHD headquarters staff in DC is poor.

Key Recommendations:

- ◆ Hire a DOL WHD leader with a strong understanding of today's existing information technology and its capabilities. This person should have a proven track record of successfully implementing a TQM approach to restructure or create an information solution that entails the gathering, electronic processing, and analysis of data. This individual should also have demonstrated experience in team building a geographically dispersed organization. In addition, an individual who has managed outside contractors on a system-wide re-engineering project would be a real asset.
- ◆ Seriously evaluate the option of dismissing SID. The ASDS and WDGS information technology still does not function appropriately, after years in development. There is no acceptable reason for the poor ASDS response time that exists and which continues to hamper the productivity of the WHD analysts, given today's systems technology capabilities. There is also no justifiable excuse for why the linkage between ASDS and WDGS has not been made. The scope of the data processing required for the Davis-Bacon wage determinations is relatively straightforward. Many companies with programming and systems expertise could readily step in and do a much better job than SID. The experience and knowledge SID possesses, due to their years of involvement in ASDS and WDGS, does not offset the benefits to be realized by bringing in a more competent software and information knowledge management partner. While SID the company has been involved for only the past couple of years, many of the key individuals at SID are the same people who have been involved throughout the Davis Bacon technology re-engineering.

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- ◆ Establish metrics and goals. The development of some initial metrics and measurements of throughput has been recently piloted. While input from each regional office and from the individual WHD analysts to set fair and realistic metrics is absolutely required, ultimate responsibility for their creation should rest with DOL WHD headquarters staff in DC.
- ◆ Improve communications with constituencies. Union contractors know the benefits to them of responding to the WD-10 surveys and are conscientious about compliance. In fact, the unions themselves, in many cases, step in to assist. Messaging to open shop contractors must be enhanced, so they understand the realities of the Davis-Bacon wage determinations and the consequent benefits to them of filling out and returning the WD-10 forms. Changes to the Davis-Bacon regulations to prevent competitors from finding out the wages being paid by open shop contractors on specific jobs, via the freedom of information act, would greatly alleviate a major reason for open shop contractors' unwillingness to return WD-10 forms.
- ◆ Redesign WD-10 forms and mailing documents with direct input from the Bureau of the Census national processing center in Jefferson, IN.
- ◆ Many other recommendations are listed in the expanded recommendations section, which follows.

DRAFT**General Background:**

Congress tasks the Wage and Hour Division (WHD), U.S. Department of Labor, with issuing wage determinations on an on-going basis legislated by the Davis-Bacon Act (DBA) and its attendant regulations. Due to recent OIG and GAO audits, efforts have been made to enhance and update the current wage survey and determination methods with the expectation that this would improve the timeliness and quality of wage determinations. Equally important, the DBA wage determination process is currently undergoing the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) review.

Study Purpose and Scope:

The purpose of this evaluation is to conduct an in-depth evaluation of the current Davis-Bacon Wage survey and determination processes.

- Evaluate the recent steps taken by the Department of Labor, Wage and Hour Division, to improve the timeliness and quality of wage determinations specified by the Davis Bacon Act and concomitant regulations.
- Determine whether the improvements have produced more accurate and timely prevailing wage determinations.
- Identify potential opportunities for further improvements to the data collection, survey analysis, and final wage determination processes in support of more accurate and timely wage determinations.
- Assist WHD in its response to Section IV of the PART review that inquires about independent evaluations of this program.
- Develop a graphical flow chart of the DBA wage survey process.

Findings:◆ **Best Practices**

- Metrics established in the San Francisco and Dallas regional offices to aid in determination of workflows and time required to complete a survey. This provided management with minimal metric data needed to plan for the time and resources needed to complete a survey.
- Pre-survey briefings employed in Dallas and Chicago to encourage participation in statewide surveys. Meetings were held with major industry associations and trade unions with the objective of improving response rates and overall quality of the survey responses.
- Use of the Census National Processing Center in Jeffersonville, IN, has greatly improved the collection process by providing a well-organized methodology for outgoing mail and for the digitization (scanning) of survey results.

◆ *Procedural and Technology Obstacles:*

- To date, the ASDS and WDGS platforms do not have connectivity. No technical options currently exist for transferring data between them, thus stalling issuance of any determinations for which field survey work has already been completed for some time. Manual transfer is so cumbersome that apparently that is not an effective option either.
- There is a strong need for training programs at all levels of personnel involved in the DBA survey and determination process. Formal training programs and materials are required for both the technological aspects of the process and for the survey process itself.
- Internal communication on technology issues, survey schedules, policies and procedures needs improvement. External communication with stakeholders is weak in many areas; improvement could greatly aid in regularly reporting the return rate of surveys and the quality of the data received.

◆ *Program Management:*

- There is a need for strong leadership from WHD headquarters. There are several individuals managing parts of the survey and determination process and the methodological and technological efforts. An individual with a more holistic view of the entire DBA process is needed to give the overall program improved vision and guidance.
- Regional offices are looking for direction on all aspects of the survey process. There is too much "passing of the buck" back to the regional offices from DC, which results in a lack of consistency in process and application at the regional office level.
- Metrics need to be developed for almost all aspects of the program. Field management of the survey process will be greatly improved with simple metrics such as the number of WD-10 forms process per day, per analyst. Managers will be able to establish minimum work output requirements that are consistent with the completion date for statewide surveys. Adequate staffing in the regional offices is an issue, but without metrics, no definitive conclusion can be reached. It is our understanding that WHD management is now addressing this issue and that metrics to measure overall throughput will be in place later this year.
- If performance metrics are developed utilizing the current system (which is under performing), any benchmarks on project throughput volumes should account for this current situation and be careful not to set goals that are artificially low.
- There is a strong need across the program for more technological savvy; particularly as to what technology can and can not do to improve the DBA survey and determination process.

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✦ *Unexpected Practices and Delay Points:*

- Dodge Reports are used as the primary source for identifying contractors to which the WD-10 survey forms are mailed. Specific Dodge Report data is selected utilizing a model at the University of Tennessee (CIRPC) that determines which construction projects in a given state fall within the defined parameters of a survey. A listing of Dodge Report numbers is sent to McGraw-Hill Construction and full detail Dodge Reports are returned to CIRPC in electronic format. The selection criteria in the model need to be examined and updated to ensure that data being sent to ASDS does not include unneeded projects or exclude projects which should be used in the survey. This is particularly true for residential projects.
- Partly due to the lack of metrics and technological savvy, changes have been made without a thorough understanding of the full impact and consequences of the change.
- The lack of meaningful metrics makes it almost impossible to project survey completion times and the required resources needed to complete a survey within the timeframes established by management.
- Communications between CIRPC and the regional offices; between Dodge and CIRPC, between the regional offices and DC; between DC and the software consultants; between Census and WHD, need streamlining so that all participants in the survey process are aware of how their role fits into the overall process.
- Several statewide surveys have been completed and are in the process of having determinations developed. Since WDGS is not yet connected to ASDS, this is a labor-intensive effort in DC that has precluded the issuance of even the first statewide determination.
- Lack of strong overall program leadership results in a reactive approach to problems and issues as they arise. This more reactive approach, rather than a proactive approach, is detrimental to the long-term goals of WHD and often results in band-aids being applied to resolve an issue that remains as a long-term impediment.

✦ *Other:*

- For statewide surveys, limited analysis is done regarding what to expect as to response rates, survey volumes, system capacity requirements, human resource needs and rates of throughput. The statewide approach should have been piloted in parallel with MSA approach to be sure that there was a successful working model in place before rolling it out on a national basis.

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- More residential projects are required to improve the survey responses for these building classes that include apartments and houses. Limited residential data is provided for entry into ASDS. Revising the model parameters can change this situation.
 - Utilizing the statewide survey approach, it may become necessary to alter the time frames covered by the survey in order to control volume and to ensure that there are sufficient projects in both rural and metro areas to yield a satisfactory survey result. It is recommended that a six month time frame be considered for metro areas within a state, and that twelve months of data be used for rural areas (non-MSA), depending on the volume of construction covered in the respective time frames
 - Historically, and ongoing, there is a low participation rate among non-union contractors. The underlying reasons are varied; too much time required to complete the survey forms; concern that confidential wage data that can provide the company with a competitive edge would be made public; don't build federal projects, etc. Short of making survey response mandatory, it is recommended that a more formal and effective outreach program be initiated to improve this sector's participation rate in the wage surveys.
 - The new ASDS approach provides for propagation of statewide rates into all "similar" counties across a specific state. This may create an incentive for broader participation among non-union and union contractors.
 - Existing databases of wage data from private providers, such as Marshall & Swift, are not viable options to the WHD wage survey process. Data collected by these private companies tends to be heavily weighted to the CBA wages applicable to local areas as union hiring halls and CBA's are their primary inputs.
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Technology Background:

Technology improvements have been a primary focus of the Davis Bacon reengineering initiative. Both GAO and OIG reports have cited the role that technological advances could play in improving process flow and quality control throughout the Davis Bacon prevailing wage process. Furthermore, technological improvement could provide more convenient access to the wage determination process through online survey administration.

Two key technological advances were identified that would enhance the quality of the occupational prevailing wage data, improve the system capacity to allow more frequent review of all Davis Bacon wage rates and at the same time open the process up to a broader audience.

Knowledge Management

It was recognized that systematic rule-based review of incoming wage survey data could provide a rigorous, and automated analysis in order to validate the survey responses as well as highlight potential inconsistencies. "Expert systems could be developed that would automatically review survey data to detect potential problems needing additional review or verification." The existing tools and applications used throughout the wage survey process relied entirely on the scrutiny of the wage analysts to assess the validity of incoming wage data. Additionally, many of the routine processes could be performed systematically, thereby substantially reducing the time spent by wage analysts in both survey preparation and review. To achieve this, a tool has been integrated into the survey processing application.

Electronic Data Processing: Scanning/Imaging and Online Submission:

Electronic data processing capabilities were identified in order to relieve the wage analysts from the data entry process and likewise reduce the potential for error in the survey data. As a result, document scanning and imaging capabilities have been evaluated and introduced to the data collection and processing system. Additionally, to take advantage of Internet technology, an online WD-10 form has been created and published on the world-wide-web.

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System Components:

The Davis Bacon reengineering has set out to improve and enhance two existing computer systems: Automated Survey Data System (ASDS) and Wage Determination Generation System (WDGS). These systems are described below.

ASDS is the tool used to administer all facets of any individual Davis Bacon wage survey, and additionally to manage multiple simultaneous wage surveys. It is intended to manage the entire survey process, including:

- Survey preprocessing
 - Scheduling a survey
 - Requesting necessary source data
 - Cleaning and preparing a sample for mailing
 - Transmitting request for survey mail-out
- Printing and mailing the survey
- Handling data entry from multiple sources
 - Scanned images of standard/non-standard survey responses
 - Web submissions
 - Manual keyed data
- Survey post-processing
 - Validating survey responses and highlighting potential erroneous data
 - Categorizing and segmenting survey responses
 - Aggregating and calculating proposed wage determinations
 - Feeding survey results to WDGS

The above steps are outlined below.

Survey Pre-processing:
[process diagram steps 1-17]

Survey pre-processing includes identifying the geographic scope, construction type and time period of a survey, setting schedules/dates, requesting and preparing Dodge input, then eventually requesting and mailing an assortment of announcements and survey packages. ASDS includes each of these features.

A wage specialist can create, schedule, and launch a new survey instance within ASDS triggering a request for relevant Dodge project information through analysis performed at CIRPC. Although straightforward, the process of requesting, compiling, transmitting, loading and validating the relevant project information for a survey can cause significant delay, postponing actual survey preparation. Current delays of several weeks should be shortened to 2 to 3 days.

Once the sample population of project information is available, the regional wage analysts begin verification of the project and contact information. At this time duplicate project and contact information is resolved accordingly, and addresses are reviewed for completeness. A utility nicknamed RoboAnalyst has introduced an "expert-system"

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component to this phase of the survey pre-processing function. The tool, although continually evolving, assists the wage analysts in the verification of project and contact information by identifying potential duplication and proposing resolution. While initial review found that RoboAnalyst recommendations were often poor and the process was overly time-consuming, subsequent upgrades have significantly improved functionality.

Upon completion of the pre-processing phase, a set of files is generated. SID transmits five electronic source files to the print-center, which then processes these files and returns to DOL for verification. Following verification, all letters and forms will be printed, assembled into envelopes, addressed and mailed. Currently, this hand-off between SID/DOL and the print-center appears to cause unnecessary delay.

Printing and Mailing Surveys:
[process diagram steps 17-24]

All of the Davis Bacon printing operations have been transferred to the Department of Census operation in Jeffersonville, IN. The files that are received in the Census print-center are loaded into a database file that controls the printing and assembly of the survey packages. Several package types are created that include a variety of enclosures. All of the printing is done on-site in Jeffersonville, including the forms, letters, instructions, and announcements. The packages are addressed, sorted and shipped on pallets for mailing. The printing process is largely automated, however, with the many different number and various sized package enclosures, the assembly of the final packages involves more manual effort. Census staff offered recommended changes that would allow more automated assembly, and potentially reduced cost to DOL.

The entire process is very efficiently run within the Jeffersonville facility. Census appears to have sufficient capacity to handle any volume of printing and mailing that could be generated in the Davis Bacon wage survey process. They did express concern regarding poor scheduling by DOL, as well as with inconsistency in the process flow. Furthermore, they were not comfortable with the feedback and guidance that they have been receiving recently, but admitted that their communication level may develop with the new DOL staff coordinators in Washington. Census staff offered several suggestions to improve visual appeal of survey mailings, as well as recommended ways to reduce the cost to DOL. The Census print center is a very efficient and well run operation.

Inbound Survey Processing:

◆ *Inbound Mail Survey Submission*
[process diagram steps 26-52]

The Census facility in Jeffersonville not only handles all outbound Davis Bacon wage survey mailings, but also manages all inbound survey mail correspondence. Incoming wage surveys are put through a rigorous review and data collection process that involves:

- Categorizing and tagging every individual envelope and all enclosures with a barcode label

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- Scanning all of the enclosures (including the return envelopes) to generate electronic images
- Collecting the survey responses through character recognition technology
- Validating the character recognition with manual key-from-image data entry
- Evaluating and documenting any discrepancies between automated character recognition data and manually entered data

Every piece of inbound mail is characterized as a batch. Each piece within a batch, including envelopes and all enclosures, is tagged with a unique barcode label, which identifies its batch number and type. Every item is scanned and the resulting imagery is transmitted to DOL to be accessed through ASDS. Any Davis Bacon WD-10 or subcontractor form is processed electronically with optical character recognition (OCR) software to "read" the survey responses. Manual keyed data entry is performed for verification on one hundred percent of these forms. Discrepancies between the OCR data and the key-from-image (KFI) data are sent through a manual adjudication process. Statistics are maintained to track all discrepancies. Analysis of these statistics could be used to identify potential problems with the survey form. Because imaging and OCR processing has only been used in the most recent wage surveys, there is no way to assess the accuracy of this process. However, the process is very thorough and should result in high quality data entry and validation. Furthermore, the resulting document imagery that is generated and accessible in ASDS will allow DOL wage analyst to further verify or clarify the wage survey information that has been collected.

Again, this process is very efficiently run by Census. The staff is very technical and has extensive knowledge and expertise in performing this work. Many of the tools, utilities and analytical methods have been developed onsite specifically for the purpose of electronic data capture. The only concern expressed by Census was that significant time had passed since the initial pilot and that any wrinkles would need to be worked out as the program rolled out on a larger scale.

♦ *Online Survey Submission*
[process steps 26-27]

An online version of the WD-10 survey form has been posted to allow for internet data collection. This follows the general focus on the use of technology to both improve and streamline the wage survey process through the use of technology. Although new, use of the online form has been substantial. While there were some initial troubles with online submissions it is expected that the use of these forms will increase and eventually provide a consistent data collection instrument that eliminates any data entry by DOL staff. Online submission of survey data not only increases accuracy of WD-10 submissions, but also increases accessibility to the Davis Bacon wage determination process.

♦ *Manual Keyed Submission*
[process step 53]

ASDS allows wage analysts to manually create and data-enter survey data. Items such as certified payrolls mailed to DOL may provide relevant wage survey input. This information may be entered directly through the ASDS interface.

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[process diagram steps 53-87]

Survey post-processing is crucial to the generation of consistent and accurate wage determinations. Survey post-processing is a very time consuming task that involves substantial involvement by the wage analysts. Again, technological advances have been stressed in order to streamline and improve this step in the wage determination process.

With the inclusion of the survey imaging provided in the Census process, ASDS should consolidate all of the information necessary for the wage analyst to work with the WD-10 wage survey data, thereby greatly reducing the need for paper filing and increasing productivity. However, presently the regional offices face substantial issues with system response time in this process. Delays of several minutes at a time are commonplace. Due to the poor system response time, wage analysts are forced thoroughly review, and often print, all material prior to making any telephone calls to validate survey data. This added preparation, combined with the system delay reduces analyst productivity.

Validating and Segmenting Survey Data:
[process steps 53-69]

Wage analysts must interpret and make numerous judgments about the validity of incoming wage survey data. The RoboAnalyst utility that is used survey preparation also provides an increased level of rules-based decision making to assist the DOL wage analysts in reviewing and validating the WD-10 wage survey data. This includes rule-of-thumb validation and variance testing of wage and fringe data, assistance with craft and area practice clarification, as well as evaluation of the survey sample for potential duplication. Again, as RoboAnalyst continues to evolve with the feedback of the DOL wage analysts, survey consistency and validation will continue to improve.

Improvements with the workflow defined by ASDS in this phase of the process could provide additional gains in productivity and ease-of-use for the wage analysts. Further effort should be made to work with the end-users to outline this work flow in order to enhance the ASDS application so that it more effectively walks the wage analysts through the process.

Aggregation/Calculation:
[process diagram steps 70-77]

Following the validation, clarification and area practice resolution of the survey, all of the wage survey data is aggregated and calculation is performed, resulting in a set of recommended wage determinations. Throughout the duration of McGraw-Hill's documentation of the wage survey process, and as a result of behavior identified in our meetings, the specifications of the survey aggregation/calculation process have fundamentally changed. This has led to a reengineering of the ASDS aggregate processing feature. When finished this module will allow regional offices to selectively combine geographies to yield more desirable wage determinations. Furthermore, only selected key crafts will be allowed to propagate into these aggregate geographies. Completed aggregate processing results in the calculated wage determination to be transferred to WDGS, reviewed by the national office and published by DOL.

WDGS is a tool that is primarily used to administer the wage determinations that result from the wage survey analysis completed in ASDS. WDGS is intended to allow DOL to maintain current wages established under collective bargaining agreements (CBA) where analysis has indicated CBA to be the prevailing wage. WDGS serves as the repository for the current public Davis Bacon prevailing wage data.

Currently there is no linkage between ASDS and WDGS. Without any information passing between these systems there is no way to assess the effectiveness of WDGS. Additionally, this lack of connectivity leaves DOL unable to generate updated wage determinations through these system interfaces.

ASDS and WDGS General Findings:

◆ *Speed/Throughput*

System speed and throughput was the most consistent complaint of the regional staff. Long delays and slow processing greatly diminishes the wage analyst's ability to process a reasonable volume of wage survey data. Additionally, it is unclear the exact capacity that the ASDS system will be able to handle. The volume of data in each of the surveys that was reviewed does not seem to be sufficiently large to justify the slow response time. Although some of the issues with speed may be due to communication with the centralized database server, the system is even sluggish in the application developer's office. Whether bandwidth needs to be increased, or the underlying system architecture needs to be streamlined, system performance must be improved to increase wage analyst productivity.

◆ *End-User Work Flow*

Functionally, ASDS appears to achieve most of the individual requirements outlined in the functional specifications documents. However, while general survey steps are outlined in ASDS menus that may be sufficient for broader survey administration, the system does not clearly lead the primary end-users (wage analysts) through the survey process. Increased focus on work-flow would not only help to define recommended practices, but would help to standardize and enforce procedures across all of the regional offices. Currently the field staff is independently developing many of the routines and techniques for using the ASDS system. Consistent standards and best practices in system usage have not been established.

◆ *System Process Flow*

There are several points throughout the administration of a wage survey where information or processing is handed-off between systems. These hand-offs are generating unnecessary, and often significant delays. Due to frequent modifications in the survey process and underlying system changes, there is little consistency in the structure of these transitions. Furthermore, long delays between surveys and lack of well-defined methods result in constant retraining and contribute to the delays.

◆ *Metrics/Program Management*

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ASDS currently features a minimal management reporting capability. Regional managers are not able to analyze the productivity of their staff, or even assess their pending workload. Meaningful measurement of the survey process could help to identify inefficiencies, as well as efficiencies in both system and manual processes. Without appropriate metrics the capacity of the system and adequacy of current staffing levels cannot be determined.

◆ *Training*

DOL field staff has received past training in the use of the new survey collection system (ASDS), however, there has been continued development and modification that has not been fully communicated to the regional offices. Programming staff has continually received feedback from the end-users and responded with numerous system changes and enhancements. These changes do not seem to be consistently and thoroughly communicated back to *all* of the regional users. Field staff has requested increased communication and advocated the use of news-groups and other forums to share and discuss issues.

◆ *System Implementation*

The Davis Bacon wage survey system (ASDS and WDGS) is incomplete. It is too early to fully assess the impact of these tools on the productivity and accuracy of the wage survey process. Clearly several technological advances have been implemented, such as RoboAnalyst and availability of an online WD-10 form. However, the lack of ASDS/WDGS connectivity, remaining system bugs and slow response times have left DOL unable to produce any results within the current system environment. Furthermore, progress in completing these applications has been slow. Much of the current work by the system developers involves supporting the *active* user community, thereby diverting the development effort away from completing the core system. Additionally, development of "bells-and-whistles" such as, telephony and graphical maps have distracted from concentration on the core requirements.

DRAFT**Process Mapping:**

(This section of the final report is cross referenced to step numbers on the process diagram beginning on page 25. The notations in square brackets denote the corresponding step number on the diagram.)

This process review was based on in-person session with each of the five WHD regional offices, the DC central operation, SID - the technology consultant rewriting the WHD's software platform, and the Bureau of Census operation in Jeffersonville, IN. As this study was underway it became apparent that the process is itself simultaneously being redesigned. The review here is focused on the process as it is designed and intended to work, though there are some components that have not yet been implemented.

Getting started:

- ◆ The wage determination process starts with the selection of the geography and construction types to be surveyed. With the recent move to full-state determinations, this now almost always covers a specific state and all construction types, though exceptions do exist. The regional manager contacts Construction Industry Research and Policy Center (CIRPC) at the University of Tennessee and requests from them a report on the number of construction projects that fall into the timeframe of the study. The goal is to include projects, which would have had peak construction employment during the time the study covers, usually during the last year. CIRPC maintains a database of the Dodge statistical data records that capture the project at the time construction was awarded. To these project records CIRPC applies their construction duration model which estimates when a project is well into the building process. [1-8]
- ◆ If the volume of projects reported back is deemed to be too high or too low, the window of time from which projects will be selected is shortened or lengthened until the resulting project list is deemed to be manageable and sufficient in size for a successful wage determination. There do not appear to be specific metrics as to what this ideal size might be. [10-11]
- ◆ Data for single-family housing projects are handled separately from all other projects as they are not included as individual records in the Dodge statistical database, but are available via an historical database of Dodge Reports. Additionally, construction projects reported out for bid by an owner for just a single trade or two trades are also not included in the process. This includes projects ranging from reroofing a structure to replacing a heating system that are not part of a larger building alteration.
- ◆ The list of projects is then sent to Dodge for retrieval of the full detail on the project reports (Dodge Reports), which includes the project size, type, location, and key "players" involved in the work - general contractors, any known subcontractors, construction managers, owner, engineers, architect - along with other details regarding the project scope.[12]
- ◆ The expanded project report information, in fielded electronic format, is then sent to the Section Chief in DC for review. This is to simply ascertain that the correct state and

project types are in the file returned. The file is then forwarded to SID and loaded into the ASDS programs for DOL. [13-14]

- ◆ Once the projects and associated players are loaded into ASDS the regional office wage analysts conduct a screening of the data to eliminate any project duplication, resolve any cases where a particular player appears in multiple ways, and generally review the data for questions or incongruities that should be resolved before the surveys are mailed. Once this is completed SID is notified to extract the data and forward the file to the Bureau of Census National Processing Center (NPC) to generate letters and WD-10 forms. [15-17]

- After the data files are released to the Bureau of Census NPC, the mailing of surveys and related notices begins. Each general contractor is sent a letter along with the survey WD-10 forms pre-printed with the key information on each project with which they were associated in the Dodge Reports. They are also provided a set of blank (not-preprinted) WD-10 forms for reporting on other projects they worked on in the requested time framed but which were not reported on in the Dodge Reports selected for the survey. [18-22]

- ◆ Interested third parties, such as congressional offices, labor unions (both national and local offices), trade associations, and any others who have requested notice are also sent a letter notifying them that a wage determination survey is about to be conducted in that particular state (or relevant geographic area). [24]

- ◆ At this time some regional offices begin conducting pre-survey briefings for contractors, and other interested parties, in their state. The purpose of these sessions is primarily to explain how to complete the WD-10 forms, the rules regarding what should be reported and can be included, and answer questions from the contractors regarding the process. This covers topics such as the meaning of peak week for reporting workers and hours worked, how many workers in a trade are required on a project during peak week to make it eligible for inclusion in the final wage determination, how to record area practice definitions, the size of a project that can be reported (anything over \$2000), etc. [23]

The labor organizations also frequently conduct their own independent sessions for their members to encourage participation and supply information on how they will/can provide assistance in filing the WD-10 forms on behalf of contractors in their organization.

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Survey is underway:

◆ Once a wage determination survey is announced and underway, there are several ways in which the wage data is actually submitted. The mailed returns are all directed to the Census facility in Jeffersonville, Indiana. The methods of submittal are:

- WD-10 preprinted version is completed and returned via mail
- WD-10 blank version is completed and returned via mail
- An electronic WD-10 is submitted via the DOL website. Web submittals go directly to ASDS
- A non-standard paper WD-10 "proxy" form is sent via mail
- Certified payroll records from federal agencies

(Volumes submitted via each of these methods was not available) [page 2a – Census Operations]

◆ In many cases the WD-10s sent to a general contractor will be returned with the requested subcontractors information having worked on specific projects. Depending on the method of submittal, these names are either entered by Census into the ASDS or sent to the regional office for data entry, and another round of letters and WD-10 forms are sent out to these newly identified subcontractors.[page 2a; 25,-28,33-57]

◆ Subsequent mailings attempting to elicit responses from non-responding contractors can be mailed out at the request of the regional office. [29,30,31]

◆ As paper responses are received by Census, each form is digitally imaged and also processed through optical character recognition (ocr) software that attempts to "read" each character on the form and store it in the proper field in the underlying database. The data recorded and the actual image are linked and stored in the ASDS for review by the analysts. At this stage, a Census staffer also manually enters the form and that human interpretation of the data is compared to the purely ocr-based version and then cross verified as much as possible. It is hoped that once a measure of the accuracy level of the ocr-generated data is known with a high-level of confidence, that the manual entry will be done on a statistically random basis to serve as a quality benchmark, rather than having 100% of the projects handled this way. The goal would be to minimize the time and expense due to the manual entry.[37-52]

Survey responses on pre-printed WD-10s have a code associated with each one that identifies it uniquely. The code combines information on the project and the contractor responsible for the reported work and wages.

Any other responses do not have this unique identifier and require additional work once the data is entered into ASDS.

◆ Non-standard WD-10 forms cannot be handled via ocr processing as the software cannot discern which data to record in which fields in the underlying database, although they are scanned and their images loaded into ASDS. Therefore anything submitted on a non-standard form must be manually keyed into ASDS. [37-35,52]

Survey analysis:

◆ Once the survey responses are entered into ASDS the regional analysts can begin their work with the data. A main component of this process is determining which submissions are duplicates. Because of the lack of an identification system from the voluntary submission from all of the various sources and methods of submittal, the analysts must review all returned surveys to ensure that each contractor/project wage survey is only represented once in the analysis. This process of identifying potential duplication and resolving duplication is an important step as well as a time-consuming one. ASDS, via the RoboAnalyst feature, provides some tools to assist in the contractor de-duplication process.[53-55]

◆ There are other issues that the analysts must also resolve in the data clarification and verification processes, which can also be flagged for the analyst's attention by the RoboAnalyst software. These include:

- Conflicting WD-10 information
- Project type assignment by the contractor conflicting with the description of work
- Missing/ incomplete data
- Area practice definitions of work performed
- Implausible wage levels

If data on a WD-10 has any of these issues, it must be clarified, and if it cannot be clarified it is omitted from the final wage analysis. If the information was submitted by a third party, such as a labor union (who typically have detailed records on their members work for purposes of administering their pension plans), the verification of the response should be made with the contractor reported, not the entity which submitted the information on the contractor's behalf. [58-68]

In cases where a WD-10 can be tracked back to an original Dodge Report, review of the details in the report can sometimes resolve questions regarding the category of work done.

◆ The issue requiring the most consideration by the wage analysts is the resolution of area practices. In any area where collective bargaining agreements are the prevailing method of contracting, the issue is more easily addressed as the local unions can provide clarification in many cases. In cases where 51% or more of the work reported in the surveys is submitted with an identical wage rate (to the exact cent) for a particular trade, that rate is determined to be the prevailing wage, as long as there were at least 2 contractors and 3 workers paid that wage. Other submissions for the same trade at other rates are not considered in the final wage determination.

However, even in cases where unions are prevalent, discrepancies may still exist between unions as to exactly what work one jurisdiction covers versus another. In cases where there is not a single identified prevailing wage, a weighted average of the submitted wages for that trade is deemed the prevailing wage.

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Davis-Bacon Process Evaluation

McGraw-Hill Construction

- ◆ Resolution of area practice definitions can be quite time-consuming, perhaps comprising the single most difficult aspect of the process. No clear guidelines were apparent during our review on how to make consistent judgments in these situations, which affect the entire outcome of the wage determination process. While this component of the process will always require extensive human judgment, there is much room for assistance in helping the regional analysts handle this component of the process.
 - ◆ Once the regional analysts have completed their analysis in ASDS the system creates a wage determination based in the data compiled. At this point the information needed to complete the determination is transferred to the WDGS (Wage Determination Generating System) where it is accessed by the DC staff for review. The link between the ASDS and WDGS system is not yet working. [66-77]
 - ◆ From the data compiled, a sample of high-impact firms are selected for audits to verify the accuracy of the data submitted on their WD-10s. The CPA firm of Harper, Rains, Stokes and Knight has been contracted with by DOL to perform onsite audits of payroll records. Cooperation to permit their audit is voluntary on the part of the contractor. Any data that is found to be incorrect during the audit is changed in the ASDS system and the wage determination must be recalculated. [78-80]
 - ◆ Once the DC staff accepts the proposed determination from the regional office, the final wage determination is printed in the Federal Register and released on various government websites, the Department of Labor's web site www.dol.gov/esa/programs/dbra/results.htm, the interagency wage determinations on-line site - www.wdol.gov, and the GPO's site www.access.gpo.gov/davisbacon/. [81-85]
 - ◆ For trades and localities determined to have been under collective bargaining agreements (CBAs), the schedule of CBA pre-determined rate increases is recorded so that, at the time of the next increase, the union is contacted for the new rates, which are then incorporated into an updated wage determination. [86]
- For non-CBA trades/localities, no automatic wage adjustments are made. These rates will remain the same until the next wage determination for that area is undertaken and published, or the minimum wage changes to exceed the lowest prevailing wage

DRAFT**Recommendations:**

- 1) Hire an individual to manage the overall WHD Davis Bacon wage survey program. This individual needs to be a strong leader with proven technology project management experience. Repeated comments were made from within DOL, from other agencies, and from contractors that the application of technology needs to be better understood by WHD personnel and needs to be embraced in many aspects of the operation. This individual should have demonstrated experience in team building a geographically dispersed organization. In addition, an individual who has managed outside contractors on a system-wide re-engineering project would be a real asset.
- 2) Redesign WD-10 forms and mailing documents with direct input from the Bureau of the Census National Processing Center. Cost savings can be realized with a redesign and simplification of the format can result in an improvement in usable response. The OMB form certification expires in February 2005, so now is an ideal time to start working on the next version. Data requirements should be determined up front, then presented to Census for them to design the form and concomitant mailing documents.
- 3) Focus on the "must-haves" not the "nice to haves" in setting system priorities. Better database cleanup (clarification) tools are needed and an improved record ID system is a necessity. Hold off on items such as telephony, color maps for propagation of data views, etc. until the base system is in better working order. The primary objective should be to significantly increase the system speed and response time to improve the overall productivity of the field offices.
- 4) Better "transparency" is needed as to what is going on in the DBA survey and wage determination processes. This transparency must be communicated to internal staff and stakeholders on a regular basis and in an effective manner. Currently, scheduled dates for various activities are regularly missed with little/no explanation. As a result, these deadlines and published dates are no longer viewed as real within WHD or by other agencies and stakeholders. Improved outreach campaigns and a major effort to upgrade the WHD website, will both contribute to better information flow and improved confidence from all sectors that improvements are being made.
- 5) Develop metrics for all aspects of the DBA wage determinations operations (after initial presentation of our findings in April, we have been advised that a pilot program to develop metrics is underway).
 - a) Measure and monitor volumes of outgoing letters and outbound WD-10's and develop frequency distribution patterns based on date mailed to aid in forecasting work flow at the regional office level.
 - b) Measure and monitor incoming volumes of WD-10's and subcontractor forms by source (union, non-union, internet, mail, standard form vs. non-standard form, etc.).
 - c) Measure, monitor and track WD-10's processed at the analyst and survey levels. This will provide for tighter and more effective management of the survey process and improve overall quality levels.

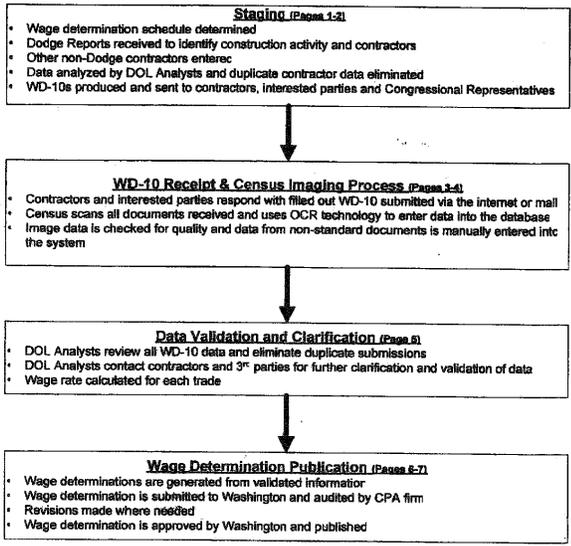
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- 6) ASDS documentation states that annual anticipated volumes would be 500,000 WD-10 forms. This level of processing is inconsistent with the likely throughput capacity of current actual analyst resources staffing.
 - 7) Many third party contributors (particularly trade unions) habitually submit large quantities of WD-10's and subcontractor sheets on, or near, the very last day of the survey submittal period. In order to maintain overall survey deadlines, this last minute data is often accepted with little, or no, clarification. New policies and processes need to be developed to guard against this potentiality.
 - 8) Too much emphasis is placed on small projects. While the DBA mandates that projects of all value classes be surveyed, it is a statement of fact that the larger projects have a greater impact on the final wage determination than do small and medium sized projects. New policies and procedures need development to encourage early submittal of information on these large projects to ensure adequate coverage in the selected survey area.
 - 9) Investigate expanded use of mini-surveys to predetermine CBA areas that will not require a full survey effort.
 - 10) One and two family house data from Dodge is not currently being used for surveys. Consider use and develop applicable policies and procedures to address this void.
 - 11) A sense of urgency must be created at all levels of management and systems development. The current technology project is extremely costly and is providing limited improvements to the old process. More importantly, it seems to be a self-perpetuating project, with little sense as to why it is urgently needed by the WHD DBA field and headquarters staff.
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Process Diagram
Overview

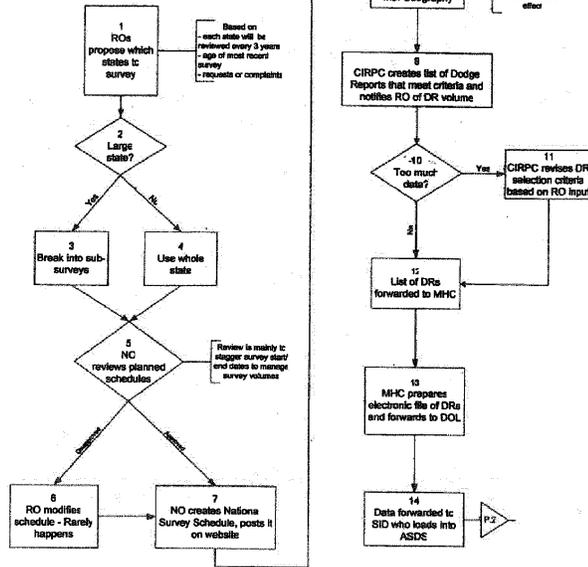
DOL Davis-Bacon Survey Methodology
High-level Overview of Wage
Determination Process



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Survey Staging/Scheduling

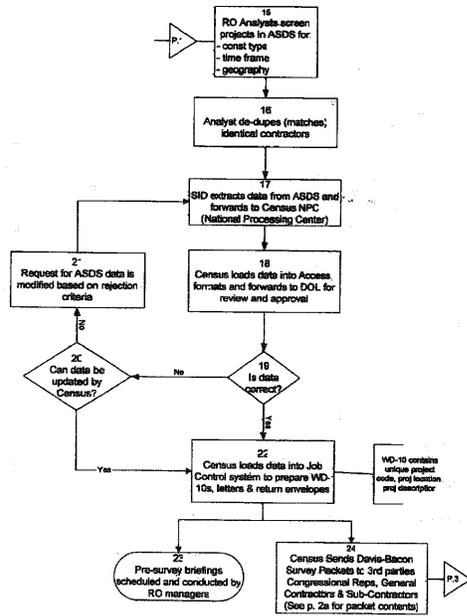
DOL Davis-Bacon Survey Methodology
Staging Process: Schedule
Determination and Construction Project
Selection



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Preliminary Data Review and Survey Briefings

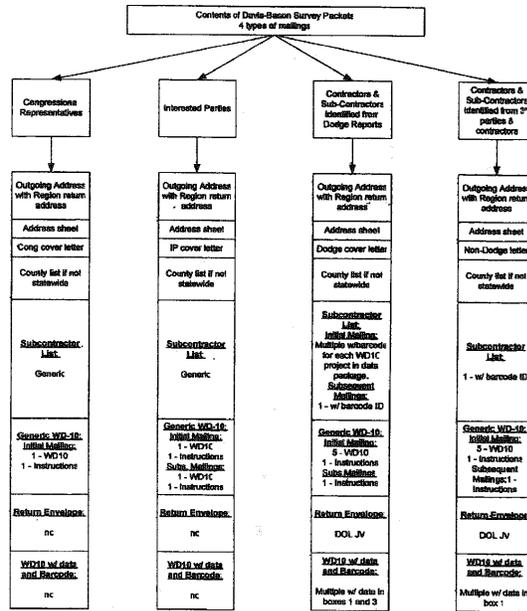
DOL Davis-Bacon Survey Methodology Staging Process: Data Review and Interested Party Notification Process



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Printing – Package Contents

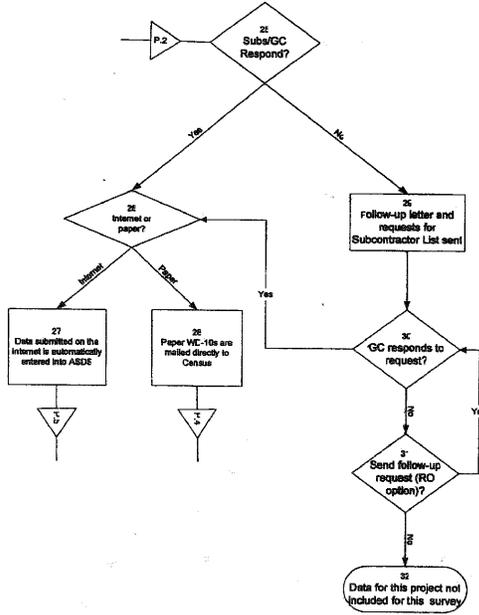
DOL Davis-Bacon Survey Methodology :
Census Operations (printing and inserting)



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Receipt of Completed Surveys

DOL Davis-Bacon Survey Methodology
WD-10 Receipt Process

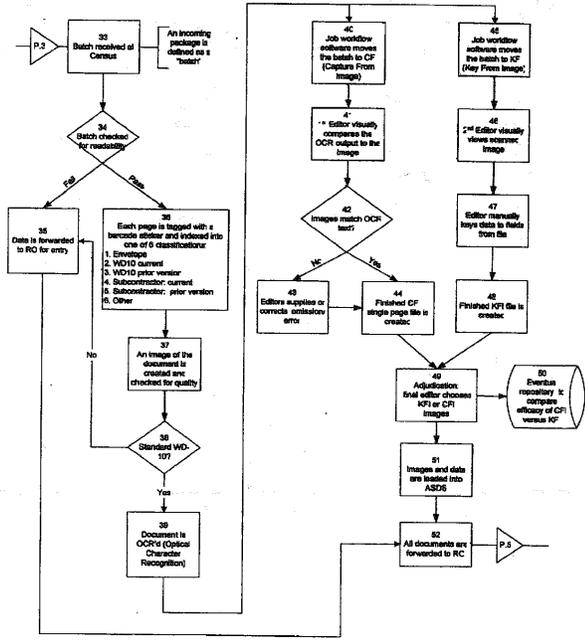


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Data Entry - Document Imaging

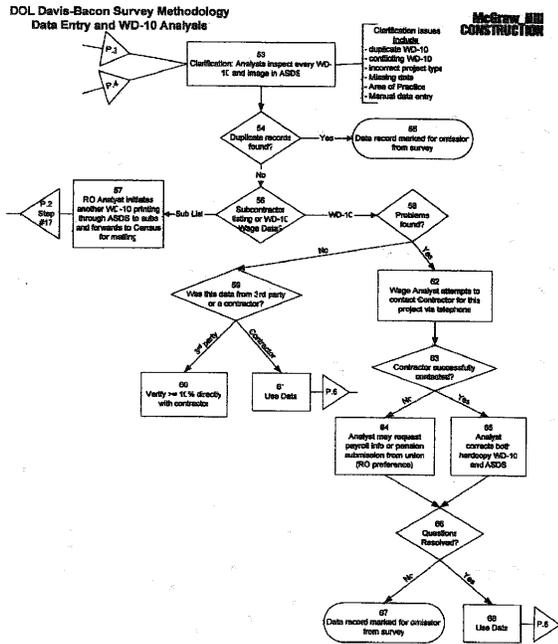
DOL Davis-Bacon Survey Methodology :
Census Operations (Incoming and Imaging)

McGraw Hill
CONSTRUCTION



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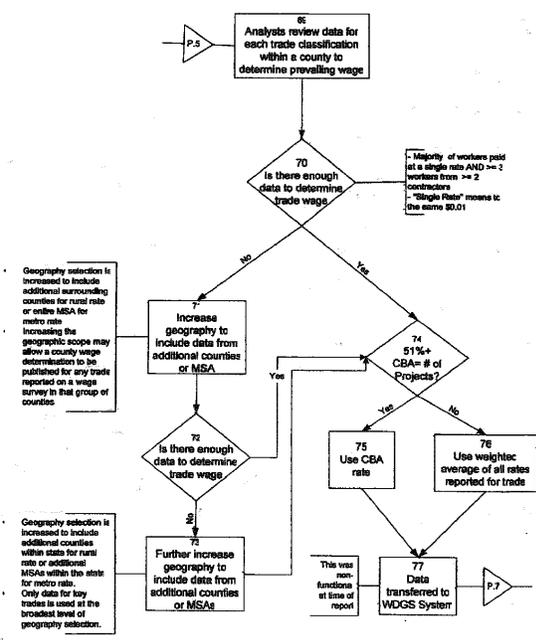
Data Entry – Analysis and Verification



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Calculation of Prevailing Wage

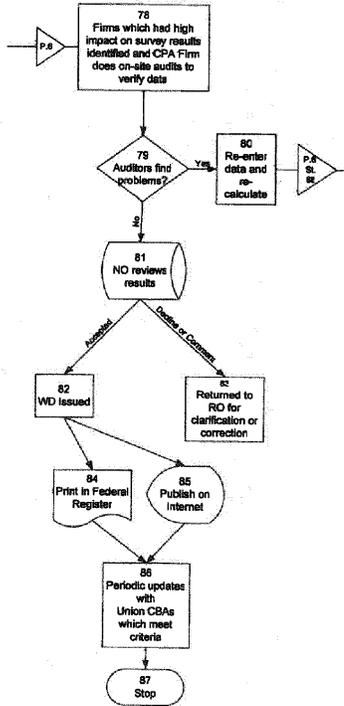
DOL Davis-Bacon Survey Methodology
Prevailing Wage Determination



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Audit/Approval/Publication of Wages

DOL Davis-Bacon Survey Methodology
Prevailing Wage Audit, Approval and
Publication



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Davis-Bacon Process Evaluation

McGraw-Hill Construction

Process Diagram – Glossary of TermsDOL Davis-Bacon Survey Methodology
GlossaryMcGraw Hill
CONSTRUCTION**Glossary**

ASDS -	Automated Survey Determination System
CBA -	Collective Bargaining Agreement
CIRPC -	Construction Industry Research and Policy Center
DR -	Dodge Report
MHC -	McGraw-Hill Construction
MSA -	Metropolitan Statistical Area
NO -	Dept. of Labor National Office in Washington, DC
NPC -	Bureau of Census National Processing Center
RO -	Dept. of Labor Regional Offices
WDGS -	Wage Determination Generation System

July 29, 2004

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[Additional submission of Mr. Eisenbrey follows:]

May 4, 2011.

Hon. TIMOTHY WALBERG, *Chairman*,
Subcommittee on Workforce Protections, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN WALBERG: The Economic Policy Institute submits this supplemental statement to correct the hearing record and respond to serious errors in testimony submitted by James Sherk of the Heritage Foundation. Dr. Sherk's testimony grossly misrepresents the relationship between wages paid under the Davis-Bacon Act and what Dr. Sherk misleadingly calls "the market wage"—local construction wage rates published by the Bureau of Labor Statistics in its Occupational Employment Statistics (OES). In his written testimony, Dr. Sherk, a Senior Policy Analyst in Labor Economics at the Heritage Foundation, claimed that Davis-Bacon rates are generally set "well above market wages," so high that they will increase

the government's construction costs by more than \$10 billion this year.¹ As we will show, this claim is false.

Dr. Sherk contends that, "The Wage and Hour Division uses unscientific methods and unrepresentative data to estimate prevailing wages. Unsurprisingly, Davis-Bacon rates typically bear little relation to actual prevailing wages. * * * Davis-Bacon rates vary wildly from actual market pay."²

To support his contention, Dr. Sherk's testimony includes a table which compares, for selected cities and counties, the wage obtained from the OES with what Sherk labels the "Davis-Bacon" rate. The "Davis-Bacon" rates in his table are usually considerably different from the OES rate, and are more often above the OES rate than below the OES rate.

In fact, there is no reason to expect the rates to be the same because they measure different things. The Davis-Bacon rates are segmented among four types of construction and construction labor markets, they are collected from different geographic areas than the OES and at different times, and they typically collect information on much more detailed occupational breakdowns than the OES. As currently constructed, the OES is both significantly different and quite incapable of meeting the statutory requirements that the Davis-Bacon surveys have been designed to meet. The OES is not an appropriate benchmark for comparison and should not be idealized as the true "market rate."

In any event, the wild variation and the upward bias Dr. Sherk found in his Davis-Bacon rates are the product of Sherk's own invention and do not accurately represent the relationship between either the "market rate" or the OES and wage determinations under the Act. In truth, they are caricatures that result from misuses of the data: selecting only the Davis-Bacon rates for building construction while excluding the typically lower rates for residential construction, using different time periods for the Davis-Bacon and OES rates, and misunderstanding the difference between an occupational survey and a wage determination.

Failure to Include Residential Rates

To support his claim that Davis-Bacon rates are generally too high, Sherk reports an hourly Davis-Bacon rate for electricians in Jackson, MI of \$38.57. This is the published Davis-Bacon rate for building and heavy construction in Jackson County and is far above the OES estimate of the hourly rate for electricians of \$27.14. However, the Davis-Bacon residential construction rate for Jackson County is only \$22.79. If we take as a rule of thumb that about half of construction workers are employed in residential work, the average hourly wage of electricians is \$30.68, about 13% above the OES hourly wage, rather than the 42% Sherk reports. Inclusion of residential rates for the other trades Sherk sampled—carpenters and plumbers—actually eliminates the upward bias Sherk identified. The estimated difference between the Davis-Bacon and OES hourly wage changes from one in which the Davis-Bacon rate is substantially above to one in which it is somewhat below the OES rate.

Reviewing Sherk's table of "Davis-Bacon and Market Determined Rates for various cities,"³ we added information on the residential rate by trade for the county, averaged this rate with the building rate provided in Sherk's testimony, and calculated the difference between the OES and the more appropriately averaged building and residential rates. The differences between the OES and Davis-Bacon rates are generally smaller than those reported by Sherk, and we find that the OES rate is above the averaged Davis-Bacon rate more often than not.

Comparing Davis-Bacon Rates from 2010 and 2011 to OES Rates from May 2009

Dr. Sherk's second mistake is in comparing Davis-Bacon wage determinations which were in effect in 2011 with OES data from May 2009. When Davis-Bacon rates which were in effect in May 2009 are used, the apparent differences between the Davis-Bacon and OES rates are substantially narrower.

The Davis-Bacon wage determinations for Alameda and Contra-Costa Counties cited in the Heritage study went into effect between June 2010 and January 2011, between a year and a year and a half after the OES rates. The determinations for Sonoma County used in the Heritage study were closer in time to the OES rates for electricians (June 2009) and plumbers (August 2009) but the carpenter rate dated from July 2010, more than a year after the period covered by the OES data. Using this non-comparable data, and neglecting to adjust for residential rates, the

¹James Sherk, "Examining the Department of Labor's Implementation of the Davis-Bacon Act," Testimony before the Education and Workforce Committee, U.S. House of Representatives, April 14, 2011, page 1.

²Sherk testimony, page 7.

Heritage study reported differences between Davis-Bacon rates and OES rates of between 27.5% and 86%.

The difference between the Davis-Bacon determination and the OES rate is considerably smaller when the Davis-Bacon rate which was in effect in May 2009 is used. As shown in Table 2, the second set of columns, the comparable rate for carpenters in all three counties was \$34.75, not \$37.75 as reported in the Heritage report. The rates for electricians in Sonoma County were \$42.33 for non-residential and \$33.25 for residential electricians, rather than \$44.00 and \$36.11 as reported by Heritage. The correct rates for plumbers in Sonoma were \$45.90 and \$40.80 rather than \$55.25 and \$51.11. Parallel reductions occur for electricians and plumbers in Contra Costa and Alameda counties.

Using the appropriate Davis-Bacon rates considerably narrows the difference between the OES and Davis-Bacon. For example, Heritage reports that the Davis-Bacon rate was 40.1% above OES hourly wages for Sonoma carpenters, 54.1% for electricians and a remarkable 86% for plumbers. Averaging in the lower residential rates, and using the Davis-Bacon rates which were in effect in May 2009, the differences were a far more modest 29.3% for carpenters, 16.5% for electricians and 45.9% for plumbers.

We have not checked to see whether the rest of the time periods used in Dr. Sherk's comparisons are equally inappropriate, but we suggest that the committee do so before citing any of Dr. Sherk's calculations.

Failure to Adjust Davis-Bacon Rates for the Use of Apprentices

To put Dr. Sherk's third mistake into the simplest terms, he does not take into account that the surveyed Davis Bacon rate does not include apprentice rates and will therefore be higher than the average rates actually paid on a project.

Davis-Bacon rates are determinations of the hourly rate paid to journey level trades workers. They differ from wage survey data in that lower legally permissible rates, such as those paid to workers in certified apprenticeship programs, are not incorporated into the determinations. For example, under the apprenticeship adjustment allowed by the Davis-Bacon Act, apprentices in certified four-year carpentry apprenticeship programs will typically be paid 60% of the journey rate in their first year, 70% in their second year, 80% in their third year, and 90% in their fourth year in their program. While these lower rates are captured by OES data, Davis-Bacon wage determinations do not reflect the lower rates of apprentices.

How would adjusting the Davis-Bacon wage determinations for the presence of apprentices affect the apparent differential between the Davis-Bacon and OES rates? This will vary with the number of apprentices in the construction labor force in an area and the length of the apprenticeship program, and the reduction in journey level wages. Carpentry apprenticeship programs usually take four years, plumbers' and electricians' take at least five years. We examined the effect of allowing for apprenticeship rates in Sonoma, Alameda and Contra Costa counties assuming that programs take four years and that wages start at 60% of the journey wage in the first year of the program and rise by ten percentage points annually.⁴ If 10% of the workers in a trade are enrolled in four-year apprenticeship programs, the adjusted Davis-Bacon wage would be 97.5% of the Davis-Bacon journey level determination.

Adjusting for the lower rates paid apprentices reduces the Davis-Bacon rate by between 83 cents and \$1.10 per hour. As a result, the Davis-Bacon rate for carpenters is between 17 and 26% above the OES rate, the electrician rate is between 14 and 21 percent above the OES rate, and the plumbing rate is between 21 and 42% above the OES rate. These differences are far smaller than the 27.5% to 86% differences reported by Dr. Sherk.⁵

⁴These are conservative assumptions as the apprenticeship programs for electricians and carpenters last at least five years. Further, the proportion of apprentices in the labor force may well be greater than 10%: the Northern California Brotherhood of Carpenters reports that apprentices comprise 20% of the workforce in their region.

⁵Another issue, one which is more difficult to examine, is whether the definition of an occupation used in Davis-Bacon surveys is comparable to that used in OES surveys. The Davis-Bacon rate is the rate paid to a journey level worker, a worker who is broadly trained in an occupation. OES definitions of construction occupations are broader, and may include less skilled workers, than the standards used for Davis-Bacon definitions. For example, the OES definition of a carpenter's work—"Construct, erect, install, or repair structures and fixtures made of wood, such as concrete forms; building frameworks, including partitions, joists, studding, and rafters; and wood stairways, window and door frames, and hardwood floors. May also install cabinets, siding, drywall and batt or roll insulation. Includes brattice builders who build doors or brattices (ventilation walls or partitions) in underground passageways."—would allow a worker who was trained in a relatively narrow set of skills, such as installation of concrete forms, to be classified

Continued

Looking again at Sherk's first example, and taking into account the lower wage rates for apprentices, the OES-Davis-Bacon comparison for Jackson County is vastly different from how it was portrayed in the Heritage Foundation testimony. Rather than the Davis-Bacon rate for carpenters being 13.9% more than the OES rate, it is 3% less (\$20.39 vs. \$20.98). Rather than being 42% higher than the OES rate, the Davis-Bacon rate for electricians is only 10% more (\$29.91 vs. \$27.14). And rather than the plumbers/pipefitters rate being 16.2% higher than the OES rate, as Dr. Sherk claimed, it is actually 4% lower (\$27.17 vs. \$28.23).

Conclusion

After correcting for Dr. Sherk's many errors, and in particular for his failure to include the Davis-Bacon residential rate in his comparison, it becomes evident that Davis-Bacon rates are not remarkably different from the OES rates, let alone an idealized market rate. There are significant differences in a few areas, but overall the Davis-Bacon wage determinations Dr. Sherk selected tend to be lower than the OES rates once the appropriate corrections are made. The savings Dr. Sherk purports to estimate from more accurate Davis-Bacon wage determinations are fictitious.

Please let us know if you have any questions about this analysis. And thank you again for the opportunity to testify before the subcommittee on this important matter.

Sincerely,

ROSS EISENBREY, *Vice President,*
Economic Policy Institute.

DALE BELMAN, *Professor,*
School of Labor and Industrial Relations, Michigan State University.

[Questions submitted for the record and their responses follow:]

Questions for the Record Submitted by Ms. Woolsey

QUESTION FOR DR. ANDREW SHERRILL, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Critics of the Davis-Bacon prevailing wage survey process rely a statement on page 20 of GAO Report 11-152 that "about 63 percent [of the Davis-Bacon prevailing wage rates published by the Department of Labor as of November 12, 2010] were union-prevailing, in contrast, about 14 percent of construction workers nationwide were represented by unions in 2010, according to BLS figures, as support for their contention that it is "far from representative" (written testimony of James Sherk, Senior Policy Analyst in Labor Economics with the Heritage Foundation) and fails to determine "true 'prevailing' wages and instead has repeatedly issued wage determinations that are vastly inflated above true market rates seen on private sector construction projects" (written testimony of D. Thomas Mistick appearing on behalf of the Associated Builders and Contractors, Inc.), accordingly please describe in sufficient detail so that it can easily and promptly be retrieved the source of information that supports the above-referenced statement on page 20 of GAO Report 11-152; and explain in detail how GAO determined that "about 63 percent [of DOL's published Davis-Bacon prevailing wage rates] were union-prevailing?"

QUESTION FOR MR. THOMAS M. MARKEY, DEPUTY ADMINISTRATOR, OFFICE OF PROGRAM OPERATIONS, WAGE AND HOUR DIVISION, U.S. DEPARTMENT OF LABOR

Mr. John Fraser, Acting Administrator, Wage and Hour Division of the Department of Labor testified in a hearing on July 30, 1997 held jointly by the Subcommittee on Workforce Protections and the Subcommittee on Oversight and Investigations of the House Education and the Workforce Committee that only about 29 percent of the Davis-Bacon prevailing wage determinations issued by DOL were based on collectively-bargained "union" wage rates while 48 percent were based on "non-union" wage rates (weighted averages), and 23 percent included a mixture of "union" wage rates and "non-union" wage rates; (1) please state whether the relative percentage of "union," non-union," and "mixed" Davis-Bacon prevailing wage determinations has changed since Mr. Fraser testified in 1997 and, if so, please describe the current portion of Davis-Bacon prevailing wage determinations that are "union," non-union," and "mixed;" (2) please describe in sufficient detail so that it can easily

as a carpenter. In contrast, such a narrowly trained worker is less likely to be classified as a carpenter under the Davis-Bacon definition.

and promptly be retrieved the source of information that supports your answer to the prior request; and (3) please explain in detail how you determined the answer to question (1).

Response From Mr. Markey to Questions Submitted for the Record

Question: Mr. John Fraser, Acting Administrator, Wage and Hour Division of the Department of Labor, testified in a hearing on July 30, 1997, held jointly by the Subcommittee on Workforce Protections and the Subcommittee on Oversight and Investigations of the House Education and the Workforce Committee that only about 29 percent of the Davis-Bacon prevailing wage determinations issued by DOL were based on collectively-bargained "union" wage rates while 48 percent were based on "non-union" wage rates (weighted averages), and 23 percent included a mixture of "union" wage rates and "non-union" wage rates; (1) please state whether the relative percentage of "union," "non-union," and "mixed" Davis-Bacon prevailing wage determinations has changed since Mr. Fraser testified in 1997, and if so, please describe the current portion of Davis-Bacon prevailing wage determinations that are "union," "non-union" and "mixed;" (2) please describe in sufficient detail so that it can easily and promptly be retrieved the source of information that supports your answer to the prior request; and (3) please explain in detail how you determined the answer to question (1).

Response: The relative percentage of union, non-union, and mixed Davis-Bacon prevailing wage determinations has changed since 1997. Union vs. non-union rates vary considerably based on the type of construction, and new wage determinations often reflect a different distribution of union, non-union, and mixed wage classifications than was reflected on the wage determinations they replace.

A breakdown by wage determination shows a different picture in 2011 than in 1997. Only 5% of the total building wage determinations are 100% union wage determinations, 4% are 100% non-union, and 91% are mixed (union and non-union) wage determinations. For residential construction, 3% are union, 50% are non-union, and 47% are mixed wage determinations. For highway construction, 17% are union, 44% are non-union, and 39% are mixed wage determinations. Lastly, for heavy construction, 12% are union, 20% are non-union, and 68% are mixed wage determinations.

At the hearing it was stated that the Government Accountability Office's report indicated that 63% of all Davis-Bacon and Related Act wage rates were the collective bargaining agreement (CBA) rate. It appears that the 63% figure was derived by counting every wage rate for each different classification (occupation) for each type of construction (building, heavy, highway, and residential). As explained below, this methodology results in a somewhat misleading statistic.

A predominantly union wage determination will contain many more classifications and rates than a non-union wage determination because CBA classifications are more narrowly defined, with work performed broken down into finer categories and each with a separate rate. There may be as many as 6 to 8 different rates for a union crane operator and the same could apply to other classifications, particularly the heavy equipment operator and truck driver classifications. For example, the Hawaii wage determination is a CBA/union wage determination that applies to building, heavy, highway, and residential construction. There are 120 union classifications and rates on the Hawaii wage determination, and each rate is counted separately for each construction type and for each county covered by the wage determination.

Conversely, for predominantly non-union wage determinations such as those applicable to Crenshaw County, Alabama, there are 23 non-union rates and 6 union rates for building construction, for heavy construction there are 12 non-union and 5 union rates (all 5 rates are for varying sizes of a crane), for highway construction there are 45 non-union rates, and for residential construction there are 17 non-union rates.

Additionally it is noted that the surveys for building construction usually result in considerably more classifications than the other types of construction. This is probably due to the required number of crafts necessary on a building construction site. Even though 91% of building wage determinations are mixed, mostly union rates are more likely to prevail in building construction as opposed to the other three construction types, each of which requires considerably fewer classifications.

The Wage Determination Generation System (WDGS) enables the generation of publishable wage determinations and generates reports and details of wage determinations. The Wage Determinations OnLine (WDOL) website (www.wdol.gov) provides a single location for the public to view and obtain appropriate Davis-Bacon

wage determinations. Both WDGS and WDOL were used to view and calculate the percentage distribution of union, non-union, and mixed wage determinations provided in this response.

Response From Mr. Sherrill to Questions Submitted for the Record

Question for the Record: Critics of the Davis-Bacon prevailing wage survey process rely on a statement on page 20 of GAO report 11-152 that “about 63 percent [of the Davis-Bacon prevailing wage rates published by the Department of Labor as of November 12, 2010] were union-prevailing; in contrast, about 14 percent of construction workers nationwide were represented by unions in 2010, according to BLS figures,” as support for their contention that it is “far from representative” (written testimony of James Sherk, Senior Policy Analyst in Labor Economics with the Heritage Foundation) and fails to determine “true ‘prevailing’ wages and instead has repeatedly issued wage determinations that are vastly inflated above true market rates seen on private sector construction projects” (written testimony of D. Thomas Mistik appearing on behalf of the Associated Builders and Contractors, Inc.). Accordingly, please describe in sufficient detail so that it can easily and promptly be retrieved, the source of information that supports the above-referenced statement on page 20 of GAO Report 11-152, and explain in detail how GAO determined that “about 63 percent [of DOL’s published Davis-Bacon prevailing wage rates] were union-prevailing?”

GAO Response: To analyze the percentage of union-and nonunion-prevailing Davis-Bacon wage rates we used data from Labor’s Wage Determination Generation System (WDGS). Labor uses the WDGS to create, modify, and issue wage determinations based on data collected through the WD-10 survey forms. The dataset we received, which included separate files for union-prevailing and nonunion-prevailing wage rates, represented published prevailing wage rates as of November 12, 2010. We combined the files and then calculated the percentage each type of rate represented of published rates. Our results showed that 63 percent of the published wage rates were union-prevailing while 37 percent were nonunion-prevailing. To verify our findings, we shared the results of our analysis with Labor officials, who conducted the same analysis with similar results.

The source of the 14 percent figure we cited is Bureau of Labor Statistics, Economic News Release: Union Members—2010, “Table 3. Union affiliation of employed wage and salary workers by occupation and industry” (Jan. 21, 2011).

[Additional submission of Mr. Sherk follows:]

Washington, DC.

Hon. TIMOTHY WALBERG, *Chairman,*
Subcommittee on Workforce Protections, Room 418 Cannon House Office Building,
U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN WALBERG: The Davis-Bacon Act (DBA) requires contractors on federally financed construction projects to pay at least the locally prevailing wage to their employees. These minimum Davis-Bacon rates are calculated by the Wage and Hour Division of the Department of Labor. The Government Accountability Office (GAO) has identified serious flaws in how the Department of Labor calculates Davis-Bacon rates. The GAO report shows that the Labor Department does not use a scientifically representative sample and bases wage rates on very few observations—in some cases, as few as three workers.¹

Last month, your committee held a hearing to examine this report. At that time, I testified that these errors render DBA wage estimates inaccurate and scientifically meaningless.² I compared Davis-Bacon wage determinations with estimates of market pay calculated by the Bureau of Labor Statistics’ Occupational Employment Statistics (OES) survey. I explained that Davis-Bacon rates typically exceed market pay and that correcting the flaws in the DBA determinations would result in considerable savings for taxpayers.

Writing for the Economic Policy Institute (EPI), Ross Eisenbrey and Dr. Dale Belman responded to this testimony with a supplemental statement submitted to your office.³ They argued that I made “serious errors” and that my testimony “grossly misrepresents” the relationship between DBA and market wages. In particular, the EPI strongly objects to comparing DBA rates and OES construction wages.

I am submitting this letter as supplemental testimony to respond to the EPI’s accusations and correct the record. The EPI makes four principal arguments: (1) OES data are incapable of meeting the statutory requirements for DBA prevailing wages

and are not an appropriate benchmark for market wages; (2) my analysis fails to include DBA residential rates; (3) my analysis compares more recent DBA rates to older OES rates; and (4) I fail to adjust for the use of apprentices on the job. Adjusting for these factors, EPI contends that DBA rates are similar to OES figures.

These arguments are either completely inaccurate or highly misleading. As I will show, Davis-Bacon rates do in fact considerably exceed market pay. Congress could achieve considerable savings by either repealing the act or requiring the Department of Labor to use scientific methods to calculate DBA rates.

Appropriateness of OES Figures for Prevailing Wage Determinations

The EPI objects to comparing DBA rates with OES wage estimates. They write that:

As currently constructed, the OES is both significantly different and quite incapable of meeting the statutory requirements that the Davis-Bacon surveys have been designed to meet. The OES is not an appropriate benchmark for comparison and should not be idealized as the true “market rate.”⁴

The Department of Labor disagrees. The Bureau of Labor Statistics conducts the OES survey primarily so that Labor can enforce prevailing wage statutes. The Service Contract Act requires federal service contractors to pay their workers existing market wages. The Foreign Labor Certification program requires employers of high-skill immigrants to pay at least market wages. The Labor Department uses OES figures to enforce these programs.

This is because the OES survey contains none of the flaws the GAO identified in DBA determinations. Unlike DBA determinations, the OES uses scientific representative sampling techniques and makes appropriate adjustments for non-response. The survey has a very large sample size, and the BLS updates it annually. The OES is the most reliable occupational wage data that the federal government produces.

As I acknowledged in my testimony, the OES cannot—by itself—meet the statutory requirements for DBA enforcement. The DBA covers both wages and benefits, but OES does not include data on employee benefits. However, OES figures meet the statutory requirements for setting DBA wages and serve as an appropriate benchmark for market wages. In a letter to Congress explaining its decision not to use OES figures, the Clinton Administration nonetheless expressly acknowledged this fact.⁵

Davis-Bacon Act Covers Little Residential Housing

The EPI also objects to the specific comparisons between Davis-Bacon and OES/market wages that I made in my testimony. Their main objection is that I compared DBA “building” rates with OES figures that include both nonresidential and residential workers. They argue that an average of DBA “building” and “residential” rates is much closer to OES wages than the “building” wages are.⁶ They argue that improving the accuracy of DBA determinations would therefore result in relatively little saving for taxpayers.

This argument is highly misleading. The EPI correctly points out that DBA residential wage rates can be significantly lower than building or heavy construction rates. These residential determinations are riddled with the same inaccuracies and methodological flaws the GAO identified in the building determinations. That they differ markedly from each other is not surprising.

However, the Davis-Bacon Act covers little residential housing. Less than 8 percent of direct federal construction spending goes to residential projects.⁷ An even smaller portion of state and local government construction spending—government some of which the federal subsidizes and is covered by the DBA—goes to residential projects.⁸ Most federally funded construction projects build government buildings or infrastructure. Lower DBA residential rates do little to reduce federal costs.⁹ The relevant comparison is the difference between market wages and DBA rates on projects the government actually pays for.

Cross Industry and Nonresidential Building Rates Similar

Contrary to the EPI’s assertions, nonresidential building rates do not differ significantly from the overall construction rates. Looking only at them would not change the finding that DBA rates substantially exceed market wages.

The OES survey collects wage rates by occupation and by detailed industry. These detailed industries include residential building, nonresidential building, heavy civil and engineering construction, and specialty trade contractors. Unfortunately, the OES does not publicly release these industry-level wages for Metropolitan Statistical Areas. The MSA-level data only report occupational wages across all industries.

I used cross-industry MSA data in my testimony to compare local Davis-Bacon and OES rates. Although national OES rates for just nonresidential building con-

struction do differ from the cross-industry figures, they do not differ greatly. For example, nationwide, plumbers and pipefitters earn an average hourly wage of \$24.10. In the nonresidential building sector, they earn \$25.42 an hour.

Table 1 shows national hourly wages for several construction occupations. The first line reports the overall cross-industry wage—the local-level figures I reported in my testimony. The next two lines report the wages for residential and nonresidential building construction. Nonresidential building wages are usually somewhat higher than the cross-industry construction wages. However, the difference is modest: only about 5 percent.¹⁰

The flawed DBA methodology significantly inflates the cost of taxpayer-funded construction projects. Using nonresidential building rates instead of the cross-industry figures does not change this finding.

TABLE 1.—HOURLY WAGES BY CONSTRUCTION SECTOR

Occupation/Industry	Average Hourly Wage
Carpenters:	
All Construction Industries	\$21.19
Residential Building Construction	\$19.72
Nonresidential Building Construction	\$23.19
Cement masons and concrete finishers:	
All Construction Industries	\$19.00
Residential Building Construction	\$19.47
Nonresidential Building Construction	\$20.08
Drywall and ceiling tile installers:	
All Construction Industries	\$19.79
Residential Building Construction	\$19.12
Nonresidential Building Construction	\$20.73
Electricians:	
All Construction Industries	\$24.25
Residential Building Construction	\$21.65
Nonresidential Building Construction	\$24.07
Plumbers, pipefitters, and steamfitters:	
All Construction Industries	\$24.10
Residential Building Construction	\$22.66
Nonresidential Building Construction	\$25.42

Source: Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, "May 2010 National Industry-Specific Occupational Employment and Wage Estimates" at <http://www.bls.gov/oes/current/oesrci.htm#23>

Timeliness of Comparisons

The EPI further objects to "comparing Davis-Bacon wage determinations which were in effect in 2011 with OES data from May 2009." They argue that "[w]hen Davis-Bacon rates which were in effect in May 2009 are used, the apparent differences between the Davis-Bacon rates and OES rates are substantially lower."¹¹

This argument is completely mistaken. I reported the most recent Davis-Bacon and OES rates at the time of the hearing.¹² This is the appropriate comparison. Neither survey is, of course, immediately up-to-date. No agency can conduct a survey instantaneously. However, OES survey data are processed more rapidly and updated more frequently than Davis-Bacon determinations. This—along with its scientifically valid methodology—is one of the principal reasons to prefer OES figures.

The Bureau of Labor Statistics updates OES figures each May with data from the previous year. Consequently, the OES always reports figures from the previous 12 to 24 months. DBA surveys are much less current. The Labor Department currently takes three years to process DBA survey results. The Labor Department wants to reduce that time to 17 months, but—as the GAO reported—it is not close to meeting this goal.¹³

Once it releases determinations, the Labor Department can take years, even decades, to update them.¹⁴ For example, the Davis-Bacon building rates in Kent County, Michigan, date to 1987.¹⁵ The residential survey for Hillsdale, Michigan, has not been updated since 1979.¹⁶

The EPI suggests comparing OES surveys conducted in 2009 and released in May 2010 with Davis-Bacon surveys primarily conducted before 2006 and released by May 2009. This comparison makes little sense and reveals nothing about the accuracy of either survey.

The EPI’s suggested comparison also reveals nothing about taxpayer savings from using BLS data. If Labor used OES figures, it would use the most recent data available. These are the correct figures to compare to current Davis-Bacon rates.

Helpers and Apprentices

The EPI finally complains that I do “not take into account that the surveyed Davis Bacon rate does not include apprentice rates and will therefore be higher than the average rates actually paid on a project.”¹⁷ This charge reflects a misunderstanding of how the OES classifies low-skill construction workers.

OES occupation categories follow the Standard Occupational Classification (SOC) system. As the EPI explains, construction unions use a formal apprenticeship system, and apprentices earn lower wages as they develop their skills. Merit shop (non-union) construction firms typically use craft training programs and also pay entry-level construction workers lower wages.

The SOC classifies these less-skilled workers separately. The OES reports the wages of “helper” workers separately from the rates for fully experienced employees. Table 2 displays the difference in these wages for several occupations. Helpers typically earn about 40 percent less than experienced workers.

TABLE 2.—WAGES FOR HELPER AND REGULAR CONSTRUCTION WORKERS

	Hourly Wage Rates	
	Helpers	Regular
Carpenters	\$12.93	\$21.19
Electricians	\$13.23	\$24.25
Pipelayers, plumbers, pipefitters, and steamfitters	\$13.18	\$24.10

Source: Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, “May 2010 National Industry-Specific Occupational Employment and Wage Estimates” at <http://www.bls.gov/oes/current/oesrsci.htm#23>

In my testimony, I compared the journey-level DBA rates with the OES rates for fully experienced employees. The EPI objects that this does not include apprentices’ lower wages. My figures do not include helpers’ lower wages either. I reported an apples-to-apples comparison of the rates paid to fully experienced employees using Davis-Bacon rates and OES data.

The EPI suggests comparing the OES rate for experienced workers to a weighted average of apprentice and journey-level DBA rates. This would deflate DBA rates to account for low-skill workers without similarly adjusting OES figures. This would present an inaccurate and misleading comparison.

Conclusion

The flawed Davis-Bacon determination methodology reports wage rates that differ significantly from those actually paid to construction workers. The EPI’s arguments to the contrary do not withstand scrutiny. The Occupational Employment Statistics survey uses a scientifically representative sample, is updated far more frequently than Davis-Bacon rates, and is an appropriate benchmark for market wages. Looking at non-residential building wages instead of the cross-industry wages only slightly changes the national averages. Comparing an average of apprentice and journey-level wages to the rates paid to experienced non-union construction workers would be misleading.

The committee should also note what the Economic Policy Institute did not say. Not once did Mr. Eisenbrey and Dr. Belman defend the existing Davis-Bacon methodology as scientific or accurate. They kept silent because the methodology is indefensible. No professional economist could suggest using a self-selected sample to estimate wages or drawing statistical inference from a sample of five workers. They did not dispute the main point I made to the committee: The Labor Department uses a deeply flawed methodology to determine Davis-Bacon rates.

This flawed methodology leads to Davis-Bacon rates that significantly exceed market pay. The savings from more accurate DBA wage determinations are real and substantial. Congress should seriously examine requiring the Labor Department to use scientific methods to estimate Davis-Bacon wages.

Thank you again for the opportunity to testify about this important matter.

JAMES SHERK,

Senior Policy Analyst in Labor Economics, the Heritage Foundation.

ENDNOTES

¹U.S. Government Accountability Office, Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey, GAO-11-152, March 2011, at <http://www.gao.gov/new.items/d11152.pdf>.

²James Sherk, “Examining the Department of Labor’s Implementation of the Davis-Bacon Act,” testimony before the Committee on Education and the Workforce, United States House of Representatives, April 14, 2011, at <http://www.heritage.org/research/testimony/2011/04/examining-the-department-of-labors-implementation-of-the-davis-bacon-act>.

³Ross Eisenbrey and Dale Belman, “Supplemental Testimony: The Department of Labor’s Implementation of the Davis-Bacon Act,” Economic Policy Institute, May 4, 2011, at <http://www.epi.org/analysis-and-opinion/entry/supplemental-testimony-the-department-of-labors-implementation-of-the-davis/>. Ross Eisenbrey is Vice President of the Economic Policy Institute; Dr. Belman teaches at Michigan State University.

⁴Ibid., p. 2.

⁵BLS’s Occupational Employment Statistics (OES) survey is a feasible/viable approach for wage rates in that it produces: wage rate estimates by occupation for individual Metropolitan Statistical Areas (MSAs) and for nonmetropolitan areas; and, data by SIC code which can be differentiated between building, residential, and heavy/highway general contractors.” Letter from Bernard Anderson, Assistant Secretary for Employment Standards, to Senator Arlen Specter and Senator Tom Harkin, January 17, 2001.

⁶Eisenbrey and Belman, “Supplemental Testimony: The Department of Labor’s Implementation of the Davis-Bacon Act,” p. 2.

⁷U.S. Census Bureau, “Federal Construction,” at <http://www.census.gov/const/www/fedpage.html>. Figures seasonally adjusted.

⁸U.S. Census Bureau, “State and Local Construction,” at <http://www.census.gov/const/www/statepage.html>. Figures seasonally adjusted. Just 2.7 percent of state and local construction spending in 2010 was on residential projects.

⁹Additionally, since DBA determinations are minimum rates, lower rates do not necessarily imply lower construction costs. The government would need enough market power in a locality to drive wages below market rates for an inaccurately low DBA determination to reduce costs.

¹⁰The results in particular localities will differ—above and below—from this national figure. By definition, this does not affect the average national Davis-Bacon premium.

¹¹Eisenbrey and Belman, “Supplemental Testimony: The Department of Labor’s Implementation of the Davis-Bacon Act,” p. 2.

¹²Since then, the BLS released the May 2010 occupational wage estimates.

¹³U.S. Government Accountability Office, Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey, pp. 12–18.

¹⁴One component of DBA surveys is regularly kept up-to-date: union wage determinations. The Labor Department updates union-prevailing DBA rates without conducting a new survey when unions negotiate a new collective bargaining agreement. Since union wages are typically higher than non-union wages, this raises DBA rates. However, the flawed DBA survey reports that union wages prevail in almost two-thirds of sampled jurisdictions. Actual union density stands at 13 percent in the construction industry, and union wages prevail in only a handful of urban areas. This misreporting of the prevalence of union wages introduces a further inaccuracy into the flawed Davis-Bacon determinations.

¹⁵U.S. Government Printing Office, Davis-Bacon Wage Determinations by State, General Decision MI20100006, at <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=Davis-Bacon&docid=MI20100006>.

¹⁶U.S. Government Printing Office, Davis-Bacon Wage Determinations by State, General Decision MI20100043, at <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=Davis-Bacon&docid=MI20100043>.

¹⁷Eisenbrey and Belman, “Supplemental Testimony: The Department of Labor’s Implementation of the Davis-Bacon Act,” p. 3.

[Whereupon, at 11:42 p.m., the subcommittee was adjourned.]

