



VIA ELECTRONIC SUBMISSION

August 15, 2022

Robert Waterman
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Control No. 1235-0015, Agency Information Collection Activities; Comment Request; Report of Construction Contractor's Wage Rates

Dear Mr. Waterman:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Labor in response to the above-referenced comment request published in the Federal Register on June 15, 2022, at 87 Federal Register 36152.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 68 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for private and government customers. Moreover, the vast majority of ABC's contractor members are classified as small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration's Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)¹ and industry workforce employment (more than 82% of the construction industry is employed by small businesses).² In fact, construction companies that employ fewer than 100 construction

¹ U.S. Census Bureau 2019 County Business Patterns: <https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePreview=true> and <https://www.census.gov/programs-surveys/cbp/data/tables.2019.html>.

² 2020 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2020), at Page 3, <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic-Profile-US.pdf>.

professionals compose 99% of construction firms in the United States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.³

In addition to small businesses that build private and public works projects, ABC also has large member companies that contract directly with federal, state and local governments to successfully build projects subject to government acquisition regulations and subcontract work to qualified small businesses that meet federal, state and local government small business contracting goals.⁴

ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

ABC's Response to the Proposed Changes

With this notice, the Department of Labor's Wage and Hour Division is proposing a number of changes to the WD-10 form. This form is completed by contractors to determine locally prevailing wages for purposes of the Davis-Bacon Act. The WHD's stated goal is to improve efficiency of the DBA survey process and increase contractor participation.

Unfortunately, the proposed changes do not address the underlying flaws in the wage survey process and are unlikely to significantly improve the efficiency or accuracy of DBA surveys. The WHD would continue to use an unscientific and unreliable methodology to calculate DBA prevailing wages. These methods produce Davis-Bacon rates disconnected from locally prevailing construction wages.

Representative Sampling Needed to Accurately Estimate Wages

Economic statistics—such as wage rates, unemployment or job creation—can be accurately calculated in one of two ways. First, they can be based on a census that reports data from every participant (often through administrative data or otherwise compulsory participation).⁵ If a universal census is not available, accurate estimates can only be calculated through statistically representative sampling. Given a representative sample, economists can apply statistical principles to extrapolate from survey responses to the overall economy. The Bureau

³ U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, Available at <https://thetruthaboutplas.com/wp-content/uploads/2021/07/Construction-firm-size-by-employment-2019-County-Business-Patterns-Updated-071321.xlsx>.

⁴ For example, ABC members won 57% of the \$128.73 billion in direct prime construction contracts exceeding \$25 million awarded by federal agencies during fiscal years 2009-2021.

⁵ For example, the department's regular reports on weekly and monthly UI claims are based on administrative data from the states. These reports do not suffer from sampling error, as they comprehensively report all UI claims filed in each state. Similarly, the BLS payroll survey is initially based on a survey of employers, but ultimately benchmarked against administrative data on employer payroll tax payments.

of Labor Statistics, for example, calculates the unemployment rate using representative sampling.⁶

Accurately extrapolating from an unrepresentative sample is impossible. Statistical laws do not apply to self-selected or otherwise unrepresentative samples. Self-selected surveys provide information only about those who responded to the survey; they cannot be used to make accurate inferences about nonrespondents. As Nobel Prize-winning economist James Heckman has explained, “Wage or earnings functions estimated on selected samples do not, in general, estimate population wage functions.”⁷ Any introductory statistics textbook makes the same point.⁸ Representative samples are necessary for accurate estimates.

The Government Accountability Office and the DOL Office of Inspector General have repeatedly criticized the DOL for estimating DBA wages with unrepresentative surveys.⁹ Instead of selecting a statistically representative sample of construction employees or employers, the WHD sends DBA surveys to every construction firm it can identify in a given region.¹⁰ The DOL sends follow-up mailings to firms that do not initially respond, then makes DBA determinations on the data provided by those firms that do.

In theory, if every firm responded, such a census of employers could accurately measure wages. However, response rates to these surveys are low and most firms do not participate. Those that do are not representative of the construction industry as a whole.

As a result, the DOL bases DBA determinations on neither a census nor a representative sample of employers, but a self-selected and unrepresentative sample. This methodology lacks statistical validity.

DBA Surveys Have Critically Low Response Rates

Office of Management and Budget agency guidance explains that high-response rates are essential for accurate surveys:

⁶ The unemployment rate is derived from answers to the Current Population Survey, which the BLS administers in conjunction with the Census Bureau. The Current Population Survey involves a survey of approximately 60,000 U.S. households each month, selected using statistical sampling techniques.

⁷ James Heckman, “Sample Selection Bias as a Specification Error,” *Econometrica*, Vol. 47, No. 1 (Jan. 1979), pp. 153–154.

⁸ See for example Cheryl Ann Willard, *Statistical Methods: An Introduction to Basic Statistical Concepts and Analysis* (Taylor & Francis, 2020). Pp. 3-4 or James McClave, Frank Dietrich, and Terry Sincich, *Statistics*, 7th Ed. (Upper Saddle Hill, N.J.: Prentice Hall, Inc., 1997), pp. 11–15, 131–136.

⁹ See, for example, U.S. Department of Labor, Office of Inspector General, *Concerns Persist with the Integrity of Davis–Bacon Act Prevailing Wage Determinations*, Audit 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>; U.S. Department of Labor, Office of Inspector General, *Inaccurate Data Were Frequently Used in Wage Determinations Made Under the Davis–Bacon Act*, Audit 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; and U.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>.

¹⁰ U.S. Government Accountability Office, *Davis–Bacon Act: Methodological Changes Needed to Improve Wage Survey*, pp. 57–58.

“A survey’s response rate is a valuable data quality and field performance indicator and is probably the most widely cited single number associated with the generalizability of a survey’s results. A high response rate increases the likelihood that the survey results reflect the views and characteristics of the target population. Conversely, a low response rate can be an indicator of potential nonresponse bias, which would be detrimental to the accuracy of the results.”¹¹

OMB guidance directs agencies to take additional steps to verify survey validity if they expect response rates to fall below 80%. The vast majority of federal statistical surveys exceed this threshold.¹² Unfortunately, the DOL’s DBA surveys do not even come close.

The GAO and the DOL OIG have long expressed concern that these low response rates undermine the DBA survey’s accuracy.¹³

In 2019 the DOL OIG reported that an analysis of seven DBA surveys showed that only 47% of eligible contractors responded to the WHD’s requests. An eighth survey was canceled after the WHD sent out 796 requests for wage data and received only 68 responses.¹⁴ The OIG further reported that, for half of DBA classifications, the department could not collect wage data from a single worker in the county the classification covered.¹⁵ WHD officials themselves admit that “achieving a sufficient level of participation from those authorized to provide wage data [is] their most significant challenge related to publishing prevailing wage rates.”¹⁶

DBA Survey Respondents Are Unrepresentative of the Overall Construction Workforce

Low response rates can create significant bias if those who respond systematically differ from those who do not, thereby creating an unrepresentative sample.¹⁷ This is exactly what happens with DBA surveys. Larger, unionized firms are systematically more likely to respond to DBA surveys than smaller and nonunion firms. As the GAO has explained:

¹¹ Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, *Questions and Answers When Designing Surveys for Information Collection*, Originally published January 2006, last modified October 2016, p. 56.

https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/pmc_survey_guidance_2006.pdf.

¹² *Ibid*, pp. 59-61.

¹³ See for example U.S. Government Accountability Office, *Davis–Bacon Act: Methodological Changes Needed to Improve Wage Survey*, pp. 19-29 and U.S. Department of Labor, Office of Inspector General, *Better Strategies are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates*, Report No. 04-19-001-15-001, pp. 8-15, March 29, 2019 at <https://www.oig.dol.gov/public/reports/oa/2019/04-19-001-15-001.pdf>.

¹⁴ U.S. Department of Labor, Office of Inspector General, *Better Strategies are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates*, pp. 8, 15.

¹⁵ *Ibid*, p. 11. DBA rates for these counties had to be derived from data on workers in other counties.

¹⁶ *Ibid*, p. 15.

¹⁷ OMB guidance explains that “survey estimates may be biased if those who choose to participate (respondents) differ substantially and systematically in some way from those who choose not to participate (nonrespondents). If these differences are related to critical information from the survey or the census, the results may be misleading or even erroneous.” Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, *Questions and Answers When Designing Surveys for Information Collection*, p. 56.

“[O]ur review identified persisting shortcomings in the representativeness of survey results ... Labor’s own procedures manual recognizes 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.”¹⁸

WHD staff have reported that smaller, nonunion employers avoid participating in the surveys because they believe the survey process favors larger, unionized firms.¹⁹ WHD officials have also acknowledged that larger firms may be more likely to respond to the DBA surveys because they have more resources (such as administrative staff) to complete the surveys than smaller companies do. Stakeholders further report the department’s survey form does not reflect nonunion industry practices, and nonunion contractors typically do not keep their data in a manner that facilitates completing the form. So nonunion contractors often throw the forms out rather than complete them.²⁰

According to a 2022 ABC survey, the vast majority of DBA and non-DBA ABC member contractors do not participate in DOL DBA wage surveys, illuminating the failure of WHD’s process to engage the full contractor community and obtain accurate wage data. Of note, 77% stated they don’t participate in DOL DBA wage surveys and cited a variety of reasons for their lack of participation²¹ consistent with the GAO findings from the broader construction industry.

Consequently, instead of a statistically representative sample, the DOL’s DBA surveys are a self-selected sample of predominantly larger, unionized construction firms. As a WHD official told the DOL OIG, under the DOL’s approach “only those who vote, count.”²² Since larger and unionized firms tend to pay higher wages than smaller, nonunion firms, the DBA survey systematically reports inaccurate rates that do not reflect actual prevailing wages.

Davis-Bacon Survey Respondents Are Disproportionately Unionized

The extent to which DBA surveys overrepresent union rates illustrates how statistically unrepresentative they are. The DOL’s BLS and the Census Bureau use statistically representative sampling techniques to administer the Current Population Survey. CPS data shows that construction unions represent fewer than 17% of blue-collar workers in the U.S. construction industry.

¹⁸ U.S. Government Accountability Office, *Davis–Bacon Act: Methodological Changes Needed to Improve Wage Survey*, pp. 19-20.

¹⁹ U.S. Department of Labor, Office of Inspector General, *Inaccurate Data Were Frequently Used in Wage Determinations Made Under the Davis–Bacon Act*, p. 19.

²⁰ U.S. Government Accountability Office, *Davis–Bacon Act: Methodological Changes Needed to Improve Wage Survey*, pp. 25-26.

²¹ E.g., Firms don’t see the need to participate in the surveys because they don’t perform DBA work; they are unaware of the surveys; the surveys are too complicated and time-consuming; firms don’t have enough personnel to fill them out; privacy concerns and the opinion that their response will not impact the outcome of the “rigged” wage determination system in their marketplace.

²² U.S. Department of Labor, Office of Inspector General, *Inaccurate Data Were Frequently Used in Wage Determinations Made Under the Davis–Bacon Act*, p. 19.

Under the DOL’s current methodology, the DOL uses union rates only if a majority of employees in a job classification in a local area make the identical union rate. With union representation at less than 17% nationwide, unions only rarely represent a majority of workers in local construction occupations. Indeed, ABC used CPS data to analyze the proportion of construction workers in the largest 47 metropolitan statistical areas in the United States. Union coverage did not reach 50% in a single MSA.^{23 24}

But despite unions representing just one-sixth of the construction workforce, the DOL’s DBA surveys report union rates prevail in most localities and job classifications. ABC obtained data on the DOL’s DBA wage determinations through a Freedom of Information Act request.²⁵ This data shows that, nationwide, 63% of published DBA county-level wage determinations are collectively bargained union rates.^{26 27} The remaining rates are a blended average of union and nonunion data collected in the survey. This proportion has changed little over the past decade.²⁸

These figures understate the extent that the DOL’s survey disproportionately reports union rates. The DOL is more likely to adopt blended average (hereafter “nonunion”) classifications in rural counties with smaller populations and union classifications in urban counties with higher populations. So, union classifications cover an even greater proportion of the construction workforce than their 63% share of county-level rate determinations.

For example, the data the department provided ABC showed that 42% of county job classifications in Nevada are union rates. However, union rates were significantly more prevalent in Clark County (which encompasses Las Vegas) and Washoe County (which

²³ ABC analyzed data from the January 2015 to March 2022 Current Population Survey, Merged Outgoing Rotation Group data. ABC examined union coverage (both members and agency fee payers) among workers in blue-collar occupations in the construction industry in metropolitan statistical areas for which at least 200 observations were available over this period. See Appendix for details.

²⁴ This finding does not rule out the possibility that unions make up a majority of a particular job classification (e.g., carpenters on heavy building projects) in some of these localities. But it does indicate that this occurs infrequently.

²⁵ ABC requested the data that informed a DOL OIG report on DBA wage determinations. See U.S. Department of Labor, Office of Inspector General, *Better Strategies are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates*, Report No. 04-19-001-15-001, March 29, 2019, at <https://www.oig.dol.gov/public/reports/oa/2019/04-19-001-15-001.pdf>.

²⁶ The OIG data showed that 64,850 out of 134,738 total DBA rate determinations reflect union rates. However, because the union determinations cover on average more counties than those based on survey averages, union rates make up nearly two-thirds of all DBA county-level determinations—482,592 out of 770,973.

²⁷ In correspondence with ABC, Acting WHD Administrator Jessica Looman and Associate Administrator Brandon Brown provided 2022 data from SAM.gov showing that 42% of DBA wage determinations are union rates (52,715 out of 124,174 rates). This proportion is very similar to the 2018 data used in the DOL OIG report (64,850 out of 134,738 rates, or approximately 48%). As discussed in the preceding footnote, this headline statistic obscures the fact that union rate determinations cover on average more counties than classifications based on survey averages. Using county-level determinations as the unit of observation shows most DBA determinations are based on union rates. Using county-level determinations is a more appropriate unit of observation here because it better accounts for some determinations applying to more workers than other determinations.

²⁸ U.S. Government Accountability Office, *Davis–Bacon Act: Methodological Changes Needed to Improve Wage Survey*, p. 20.

encompasses Reno).²⁹ Approximately 90% of the construction workers in Nevada work in these two counties. Weighting county job classifications by each county's share of Nevada construction employment raises the effective share of Davis-Bacon classifications to 63%.^{30 31} By contrast, BLS data shows that unions represent just 23.7% of blue-collar construction workers in Nevada. The DOL's DBA surveys are statistically unrepresentative of the construction workforce.³² They are consequently fundamentally unreliable.

Sample Sizes Are Too Small for Statistical Reliability

Low response rates create a second and distinct problem in DBA surveys: Their sample size is too small to be statistically reliable. Even if the DOL used representative sampling techniques, it could not make accurate wage generalizations from the small samples collected for most DBA classifications.

Statistical error increases as sample sizes decrease. For example, a poll of 500 Americans has a margin of error of approximately $\pm 4\%$ and a poll of 50 Americans has a margin of error of approximately $\pm 14\%$.³³ But if the sample size becomes too small, it becomes impossible to calculate a statistical margin of error. Standard statistical inference is based on the central limit theorem.³⁴ The central limit theorem only applies to samples of about 30 or more

²⁹ For example, 197 of the 294 job classifications covering Clark County were union rates. Clark County alone accounts for over 70% of construction employees in Nevada.

³⁰ See Appendix for details of this calculation.

³¹ Nevada also provides an illustrative example of how union determinations are more prevalent when county-classifications are used the unit of observation. The DOL IG data shows that there were 2,261 DBA rate determinations covering Nevada in 2018, and those determinations amounted to 2,727 county-determinations. So, while many determinations covered a single county, some did not. Union rates prevailed in 795 determinations (35%) and 1,133 county-determinations (42%).

³² Another anomaly in the department's DBA surveys illustrates how unrepresentative they are of the actual construction workforce. It is a well-known fact of labor markets in the United States (and most other industrialized economies) that average wages—both economywide and in specific occupations—are consistently higher than median wages. For example, the Bureau of Labor Statistics' May 2021 Occupational Employment and Wage Statistics survey shows that, nationally, average wages exceed median wages in 51 of 64 detailed construction occupations. Other U.S. datasets like the Current Population Survey show the same pattern.

Under the department's current methodology, the department uses the wage paid to a majority of workers in a local occupation. If no such wage majority exists, the department uses the average of survey responses as the prevailing wage. A wage received by a majority of the workforce is necessarily the median wage. So, if the department's surveys were representative of the construction workforce, prevailing wages calculated as the average of the survey sample would typically be higher than prevailing wages calculated as the majority/median response. Instead, the opposite occurs: Majority/median prevailing wages consistently exceed wages calculated as survey averages. This indicates that the department's surveys are highly unrepresentative of the construction workforce. Again, this primarily occurs because they overrepresent respondents from large, unionized firms whose compensation rates are not representative of the overall economy.

³³ These error margins are at the 95% confidence interval, meaning that the true population mean will fall within the sampled confidence interval 19 times out of 20.

³⁴ The central limit theorem 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.

observations.³⁵ A survey with fewer observations not only contains inaccuracies, but statisticians cannot estimate the likely magnitude of those inaccuracies.

The DOL's current standards call for basing DBA rates on data from a minimum of six workers from three contractors. In some cases, the DOL sets DBA rates using data from three workers from two contractors.³⁶ Overall, the GAO reports that the department sets 26% of its DBA rates on data from six or fewer workers and 75% on data from 28 or fewer workers.³⁷ The median job classification is based on data from 13 workers.³⁸ The central limit theorem does not apply to samples this small. No pollster would report results from a survey of six or 13 voters. The DOL cannot accurately estimate prevailing wages using such small samples, even if the samples were statistically representative.

DOL Does Not Use Standard Statistical Methods to Mitigate Nonresponse Bias

OMB guidance directs agencies to "consult with trained survey methodologists in designing their surveys to minimize nonresponse bias."³⁹ The DOL does not do this. GAO reports that:

"Rather than conducting a formal evaluation of the wage survey process and consulting with experts in survey design and methodology, a senior Labor official said the agency based changes on an informal review that drew on staff experiences. While our prior work has shown it is reasonable and desirable to obtain input from knowledgeable staff, technical guidance from experts is considered critical to ensure the validity and reliability of survey results.

Labor cannot determine whether its Davis-Bacon survey results are representative of prevailing wage rates because it does not currently calculate response rates or conduct a nonresponse analysis."⁴⁰

The DOL's failure to work with survey experts to design its DBA surveys shows. Survey experts have developed statistical methods to minimize the effects of nonresponse bias and improve survey accuracy. OMB expects agencies to use these statistical methods.⁴¹ Statistical agencies like the DOL's BLS surveys routinely use these standard techniques. The DOL's WHD DBA surveys do not. The DOL's DBA surveys depart from standard methods in several respects.

³⁵ McClave, Dietrich, and Sincich, *Statistics*, pp. 240–241.

³⁶ *Ibid*, p. 12.

³⁷ U.S. Government Accountability Office, *Davis–Bacon Act: Methodological Changes Needed to Improve Wage Survey*, p. 23.

³⁸ *Ibid*. Note that GAO found that 49% of classifications were based on data from 12 or fewer employees.

³⁹ Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, *Questions and Answers When Designing Surveys for Information Collection*, p. 56.

⁴⁰ U.S. Government Accountability Office, *Davis–Bacon Act: Methodological Changes Needed to Improve Wage Survey*, p. 19.

⁴¹ Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, *Questions and Answers When Designing Surveys for Information Collection*, pp. 7, 26, 58–59, 72.

First, survey experts work to make their surveys user-friendly and easy to complete, minimizing the burden on respondents. As discussed above (and further below), the DBA survey forms request information in a format that nonunion contractors typically do not use.

Second, statistical agencies weight survey responses. Weighting means adjusting the importance (or weight) given to respondents based on how likely they are to respond. So those groups who were more likely to respond count for less and vice versa. This happens on a regular basis in polling. For example, consider a state with an equal proportion of men and women. If a pollster surveyed that state and got a sample with 55% men and 45% women, the pollster would typically adjust the weight given to men's and women's responses so that both groups contributed equally to the final result. The BLS weights responses to its Occupational Employment and Wage Statistics so it does not over- or underrepresent large businesses.⁴² Failure to weight survey results can make surveys significantly less accurate.⁴³ However, the DOL does not weight its DBA surveys by key variables like firm size or union status.

Third, statistical agencies improve survey accuracy through imputation. This means substituting (or imputing) a missing response with a response from a similar respondent or respondents. For example, if a small construction firm does not return the OEWS survey, the BLS would randomly select another small construction firm that did respond and treat its response as the response of the missing firm.⁴⁴ This introduces some error into the survey, but much less error than ignoring the nonrespondent entirely.

Ignoring nonrespondents implicitly assumes their response is identical to the overall population average when that is typically not the case. Imputation mitigates this bias.

Continuing the example, smaller construction firms typically pay less than larger ones. Ignoring a small construction firm that did not respond would artificially inflate wage estimates by omitting out a respondent likely to have below-average wages. Imputing a missing small contractor's wages with wages paid by another small contractor corrects this bias.

The DOL's DBA survey does not impute responses from nonrespondents. Instead, the DOL sets extremely low minimum sample size standards (six employees across three different employers) and expands the geographic coverage of its survey until it collects at least that much data. Imputation would be a much better approach, as it would select responses from similar respondents rather than those who simply happen to be geographically adjacent.

⁴² U.S. Department of Labor, Bureau of Labor Statistics, BLS Handbook of Methods, *Occupational Employment and Wage Statistics: Calculation* <https://www.bls.gov/opub/hom/oews/calculation.htm>.

⁴³ For example, a major reason pollsters underestimated then-candidate Donald Trump's chances of winning the 2016 presidential election is because they did not weight respondents by educational attainment. Voters with bachelor's or professional degrees were both more likely to support Hillary Clinton and answer polls than working-class voters. Had pollsters weighted by educational attainment they would have seen that the surveys were oversampling Clinton supporters and the race was highly competitive. See Nate Cohn, "A 2016 Review: Why Key State Polls Were Wrong About Trump," *The New York Times*, May 31, 2017. <https://www.nytimes.com/2017/05/31/upshot/a-2016-review-why-key-state-polls-were-wrong-about-trump.html>.

⁴⁴ BLS imputes responses based on geography, industry and firm employment. See U.S. Department of Labor, Bureau of Labor Statistics, BLS Handbook of Methods, *Occupational Employment and Wage Statistics: Calculation* <https://www.bls.gov/opub/hom/oews/calculation.htm>.

DBA Rates Are Highly Inaccurate

The DOL calculates DBA rates using samples too small for statistical reliability and without implementing standard techniques to mitigate nonresponse bias. The GAO reports the DOL does not even track DBA survey nonresponses. This methodology is incapable of accurately estimating prevailing wages. Indeed, the DOL has not even made accuracy a goal for the program. As the DOL's OIG has explained, the "DBA wage determinations program lacked performance goals and measures for data quality and accuracy."⁴⁵

Unsurprisingly then, the DOL's DBA rates do not reflect actual prevailing wages. Numerous studies have documented that DBA rates diverge considerably from actual market wages, and on average exceed market wages. For example, a 2008 study by researchers at the Beacon Hill Institute at Suffolk University found that DBA wage rates vary considerably—both higher and lower—from market pay averages determined by the BLS, with DBA wage rates on average exceeding market rates by 22%.⁴⁶ A 2022 BHI study updating its 2008 study found that DBA wage rates were on average, 20.21% more than BLS average wages.⁴⁷

A comparison of DBA hourly wage rates with equivalent estimates from the BLS illustrates the inaccuracy of the DOL's DBA methodology. The BLS OEWS program uses statistically representative survey samples and techniques like imputation and weighting to mitigate nonresponse bias. DBA rates differ greatly from scientifically calculated BLS wage estimates.

BLS OEWS occupational wage estimates are in general not directly comparable to DBA rates because they cover different geographic regions and industries.⁴⁸ ⁴⁹ However, in some cases DBA and OEWS geographical and industrial coverage coincide. In these cases, DBA rates are directly comparable to BLS estimates produced by professional economists and statisticians. Two such cases are San Diego County, California, and the state of Hawaii.⁵⁰ The table below

⁴⁵ U.S. Department of Labor, Office of Inspector General, *Better Strategies are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates*, p.16.

⁴⁶ Sarah Glassman, Michael Head, David Tuerck and Paul Bachman, "The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages," *The Beacon Hill Institute*. February 2008.
<https://www.beaconhill.org/BHIStudies/PrevWage08/DavisBaconPrevWage080207Final.pdf>.

⁴⁷ William F. Burke, David Tuerck, "The Federal Davis-Bacon Act: Mismeasuring the Prevailing Wage," *The Beacon Hill Institute*, May 2022.

⁴⁸ OEWS data is calculated at the national, state and MSA levels, while DBA rates are generally calculated at the county, county group or "super group" levels. DBA county groupings do not generally align with MSA definitions.

⁴⁹ DBA rates are generally calculated separately across four different industrial sectors: residential construction, building (nonresidential), heavy industry and highway construction, though in some cases DBA rates are calculated jointly for multiple sectors. By contrast, the main BLS OEWS reports do not provide separate wage estimates for workers in different industries. BLS does present cross-industry research estimates of occupational wages at the state level, but not at the MSA level. This data can be found online at https://www.bls.gov/oes/current/oes_research_estimates.htm.

⁵⁰ For both San Diego, California and the state of Hawaii, the department's DBA determinations and OEWS wage estimates have identical geographic and industrial coverage. DBA estimates for San Diego cover only San Diego County. The OEWS provides estimates for the San Diego-Carlsbad metropolitan area—which also consists solely of San Diego county. The department's Hawaii DBA determination covers the entire state, and the OEWS also provides statewide estimates for Hawaii. The department's DBA rates for San Diego and Hawaii apply to all four

presents an “apples to apples” comparison of DBA and OEWS occupational wages in these jurisdictions.⁵¹

Comparison of Davis-Bacon Rates and Median Hourly Wages, San Diego and Hawaii⁵²				
Jurisdiction	Occupation	DBA Hourly Wage Rate	Median Hourly Wages (OEWS)	Percent Difference
San Diego	Cement Masons and Concrete Finishers	\$26.34 to \$30.07	\$27.80	8% to -5%
San Diego	Electricians	\$37.82 to \$54.36	\$29.64	83% to 28%
San Diego	Glaziers	\$45.55	\$23.52	94%
San Diego	Plasterers	\$45.77	\$28.78	59%
San Diego	Reinforcing Iron Workers	\$43.00	\$29.43	46%
San Diego	Roofers	\$37.75	\$29.58	28%
San Diego	Sheet Metal Workers	\$40.62	\$29.99	35%
San Diego	Drywall Installers	\$32.14 to \$42.80	\$29.84	43% to 8%
Hawaii	Carpenters	\$51.25	\$37.05	38%
Hawaii	Cement Masons	\$42.65	\$36.61	16%
Hawaii	Sheet Metal Workers	\$46.22	\$37.62	23%
Hawaii	Roofers	\$42.55	\$24.08	77%

construction types (residential, building, heavy and highway), while the main OEWS wage estimates for these areas also cover all industrial sectors.

⁵¹ The table presents OEWS median hourly wage rates, the appropriate comparison to DBA union rates. Under the current methodology, the department only uses union rates when they are paid to a majority of local workers in an occupation. If a majority of local workers are paid an identical rate, then that rate will mathematically be the median occupational rate of pay. In all occupations listed in the table the DBA rate was a collectively bargained union rate. In cases where DBA rates are an average constructed from a survey, then the appropriate comparator would be OEWS mean (or average) hourly wage.

⁵² U.S. Department of Labor, Bureau of Labor Statistics, May 2021 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, San Diego-Carlsbad, California, and May 2021 State Occupational Employment and Wage Estimates, Hawaii, available online at https://www.bls.gov/oes/current/oes_41740.htm#47-0000 and https://www.bls.gov/oes/current/oes_hi.htm#47-0000; and U.S. General Services Administration, Davis-Bacon Act Wage Determination #HI20220001, Modification 8 and# CA20220001, Modification 5, available online at <https://sam.gov/wage-determination/HI20220001/8> and <https://sam.gov/wage-determination/CA20220001/5>.

Hawaii	Plumbers and Pipefitters	\$49.38	\$35.38	40%
Hawaii	Glaziers	\$40.50	\$30.08	35%
Hawaii	Stonemasons	\$46.71	\$27.94	67%
Hawaii	Boilermakers	\$37.25	\$36.98	1%
Hawaii	Floor Layers	\$38.77	\$35.92	8%
Hawaii	Plasterers	\$44.21	\$29.94	48%
Hawaii	Tapers	\$43.85	\$48.12	-9%

As the table illustrates, DBA rates differ markedly from those produced by statistically valid surveys. DBA rates range from 9% below BLS OEWS estimates (tapers in Hawaii) to 94% above them (glaziers in San Diego). In a handful of cases DBA rates closely approximate BLS estimates (e.g., boilermakers in Hawaii, cement masons and concrete finishers in San Diego). However, DBA rates typically exceed BLS estimates considerably. For example, DBA rates for stone masons and plumbers in Hawaii are 67% and 40% above OEWS estimates, respectively, while rates for plasterers and sheet metal workers in San Diego are 59% and 35% above OEWS estimates, respectively.

Surveys of ABC members confirm these findings. According to a 2022 survey of ABC member contractors, 88% strongly or somewhat agree that DBA regulations inflate wages and fringe benefits above market rates and 74% strongly or somewhat disagree with the statement that DBA results in wage and benefit rates that reflect local area standards.

The DOL’s DBA wage determinations do not come close to reflecting locally prevailing wages. The DOL’s survey methodology is incapable of accurately estimating prevailing wages. It will only reflect locally prevailing wages by chance.

Additional Comments on the Proposed Changes to the WD-10 and New WD-10A

Because of the systemic flaws in DOL’s wage survey process, little purpose is served by commenting in detail on the DOL’s proposed changes to the WD-10 form itself or the new WD-10A. While the DOL apparently recognizes the need to simplify the WD-10 form in order to encourage contractors to submit responses, the cosmetic changes—such as removing the “peak week” requirement and rearranging the questions—do not solve any of the problems identified above.⁵³ The proposed new form WD-10 is nine pages long, and contractors are expected to fill one out for each project they have worked on in the previous year. Completion of the form will remain a daunting task for any contractor, but is particularly difficult for smaller firms who may not perform any work covered by the Act and have no incentive to comply.⁵⁴ The new preselected listing of classifications on the WD-10 tilts the balance even more towards a unionized set of job descriptions, many of which are foreign to the nonunion setting

⁵³ See www.dol.gov/sites/dolgov/files/WHD/davis-bacon/wd10/changesummary.pdf.

⁵⁴ Given that a primary objective of the WD-10 is collection of data on private construction projects (see 29 C.F.R. 1.3), it is surprising that the form and its instructions say little if anything to encourage nongovernment contractors to report their privately performed construction work.

and will confuse those nonunion contractors who might otherwise respond with their own job titles.

In further response to the department's "Review Focus," 87 Federal Register at 36153, ABC comments as follows:

The proposed collection of information is not necessary for the proper performance of the agency's functions, and indeed hinders such performance by deterring nonunion contractors from responding to wage surveys and by failing to address the scientific statistical requirements of a proper wage survey process. The information will have no practical utility.

The agency's estimate of the burden of the proposed collection of information is grossly understated. The department estimates total respondents at 3,641, but the actual number of construction contractors performing reportable work exceeds 680,000 employers employing more than 7 million employees⁵⁵. The fact that the department estimates only 3,641 contractors will respond to the information collection request is an indictment of the request itself.

Additionally, the estimated time for responding to the WD-10 form ignores that contractors perform multiple projects each year requiring many such forms to be filled out if the information request is to succeed. Also ignored by the department is the fact that proper completion of the form requires input from multiple resources within each company, i.e., project management, payroll management, and human resource management. Each of them must become engaged in the process and understand the purpose of the form and the proper instructions for filling it out, tasks which are not part of their normal job descriptions in many (if any) nonunion construction companies.

Conclusion

As the WHD considers changes to the WD-10 form and the overall DBA wage survey process, it cannot be ignored that these changes are taking place in the context of the agency's proposed rule to significantly expand and alter DBA regulations.⁵⁶

As ABC stated in detail in comments submitted on May 17,⁵⁷ this proposed regulation would unfortunately fail to update or modernize DBA regulations to address the significant flaws we have reiterated above. Instead, it reverses prior reforms, increases the likelihood of inaccuracies in the wage survey process, creates additional compliance burdens, and expands DBA regulations to cover additional industries and construction activities. At the same time as the WHD plans to increase the regulatory burden of DBA regulations, with this proposed update to the WD-10 form the agency fails to reform the wage survey process to ensure these regulations will result in accurate prevailing wages.

⁵⁵ <https://www.levelset.com/blog/us-construction-statistics-you-need-to-know/>.

⁵⁶ See 87 Fed. Reg. 15698: <https://www.federalregister.gov/documents/2022/03/18/2022-05346/updating-the-davis-bacon-and-related-acts-regulations>.

⁵⁷ <https://www.abc.org/Portals/1/NewsMedia/ABC%20Comments%20on%20Updating%20the%20Davis-Bacon%20and%20Related%20Acts%20NPRM%20-%2005.17.22.pdf?ver=2022-05-17-234901-040>.

ABC urges the WHD to address the serious problems outlined above. The proposed changes fail to address these issues and therefore will not meet the WHD's goals of enhancing the quality, utility and clarity of the wage information being collected.

Thank you for the opportunity to submit comments on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben Brubeck". The signature is written in a cursive, flowing style.

Ben Brubeck
Vice President of Regulatory, Labor and State Affairs