



VIA ELECTRONIC SUBMISSION

January 24, 2020

Amy DeBisschop
Director
Division of Regulations, Legislation, and Interpretations
Wage and Hour
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW
Washington, D.C. 20210

Re: Comments on Information Collections: Report of Construction Contractor's Wage Rates [Control Number 1235-0015]

Dear Ms. DeBisschop:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Labor's Wage and Hour Division in response to the above-referenced information collection request published in the *Federal Register* on Nov. 25, 2019, at 84 Fed. Reg. 64934.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 69 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 firms that perform work in the industrial and commercial sectors. Moreover, the vast majority of our contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry, which 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.

Comments on the Proposed Information Collection Request

The Department of Labor is requesting in accordance with the Paperwork Reduction Act of 1995 to extend Office of Management and Budget approval of the collection of information related to wage survey forms (known as form WD-10) under the Davis-Bacon and Related Acts. While ABC continues to advocate for full repeal of the Davis-Bacon Act, we also continue to recommend common-sense reforms to the law's related regulations. ABC's comments focus on the four questions presented by the DOL.

1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

The form WD-10 is a complicated, onerous and an unnecessary requirement that should be eliminated. It is particularly burdensome for small contractor members. ABC has repeatedly urged the department to make greater use of data that is already captured by the U.S. Bureau of Labor Statistics. BLS's data uses proven statistical sampling techniques to arrive at an accurate and market-driven approximation of prevailing wages throughout the country. There is no statutory obstacle to having BLS data serve as the source of prevailing wage rates and replace the antiquated, inefficient, inaccurate and costly Davis-Bacon wage survey process.¹

2) Enhance the quality, utility and clarity of the information to be collected.

The Davis-Bacon wage survey process is inherently flawed and fails to produce accurate results. It continues to vastly overstate the number of wage determinations in which union rates "prevail."

In recent years, union wage rates have been found prevailing in a substantial majority of classifications (based upon very small numbers of survey responses),² even though the percent of unionized workers in the U.S. construction industry measured by BLS has fluctuated between

¹ See testimony of Maurice Baskin at a hearing before the Subcommittee on Workforce Protections of the Committee on Education and the Workforce on "Promoting the Accuracy and Accountability of the Davis-Bacon Act," June 18, 2013, https://republicans-edlabor.house.gov/uploadedfiles/baskin_-_testimony.pdf.

² 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>, testimony of D. Thomas Mistick before the House Education and the Workforce Committee Subcommittee on Workforce Protections on *Examining the Department of Labor's Implementation of the Davis-Bacon Act*, April 14, 2011, at <https://edlabor.house.gov/imo/media/doc/documents/112/pdf/statements/Mistick04142011.pdf> and U.S. Department of Labor's Office of Inspector General, *Better Strategies are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates*, Report Number: 04-19-001-15-001, March 29, 2019, at <https://www.oig.dol.gov/public/reports/oa/2019/04-19-001-15-001.pdf>.

12.6% and 14.5% during the past decade.³ That outcome is statistically improbable to say the least. The DOL’s own inspector general audited a sample of the department’s WD-10s and “found errors in almost 100 percent of verified survey forms.”⁴ The numerous errors occurred “even in the face of revised WD-10s, WD-10 instructions, and online WD-10s.”⁵ Survey form errors included: reporting on incorrect peak weeks, wage rate misreporting, and incorrectly reporting job classifications.⁶

A 2011 U.S. Government Accountability Office report found that “most survey forms verified against payroll data had errors.” The report further 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.”⁷

ABC continues to find it problematic that the WHD’s survey process is not based on scientific statistical principles and relies on voluntary responses from private marketplace contractors, most of whom have no incentive to assist the department with its survey efforts. Under the DOL’s current rules, a survey can be published if it has a minimum of two companies with three workers’ wages from each.⁸

To enhance the quality of the information collected on the WD-10, DOL should use data already collected by the BLS⁹ for Davis-Bacon rate determinations. BLS has long relied on scientifically based statistical sampling to determine workforce wage and employment data, which the department relies on for every purpose except Davis-Bacon. Currently, the department uses BLS data (specifically the Occupational Employment Statistics survey) for the Service Contract Act and the Foreign Labor Certification program, which are both prevailing wage requirements.¹⁰

³ See U.S. Department of Labor, Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, Table 3. Union affiliation of employed wage and salary workers by occupation and industry*. Accessed Jan. 23, 2020. <https://www.bls.gov/webapps/legacy/cpslutab3.htm>.

⁴ See page 6 of U.S. Government Accountability Office, *Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey*, April 6, 2011, <http://www.gao.gov/new.items/d11152.pdf>, see page 10 of 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, <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf>.

⁵ See page 10 of 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, <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf>.

⁶ *Id* at pages 10-12.

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

⁸ “Labor Department Can Create Jobs by Calculating Davis-Bacon Rates More Accurately,” James Sherk, January 21, 2017, <http://www.heritage.org/jobs-and-labor/report/labor-department-can-create-jobs-calculating-davis-bacon-rates-more>, page 4.

⁹ See discussion of calculating Davis-Bacon wage rates via the BLS in the Heritage Foundation report by James Sherk: “Labor Department Can Create Jobs By Calculating Davis-Bacon Rates More Accurately,” January 21, 2017, at <https://www.heritage.org/jobs-and-labor/report/labor-department-can-create-jobs-calculating-davis-bacon-rates-more>.

¹⁰ Sherk, “Labor Department Can Create Jobs by Calculating Davis-Bacon Rates More Accurately,” page 16.

BLS already has in place two separate surveys that are done on an annual basis to estimate occupational wages: the Occupational Employment Statistics survey, which estimates local wage rates, and the National Compensation Survey, which estimates benefits at the national level.¹¹ By combining the results from these two surveys, the DOL could effectively create more representative and accurate wage rates. Economists at BLS have already created a model to combine the two sets of wage data, and a similar methodology could be used to determine Davis-Bacon wage rates.¹²

Despite ABC's common-sense recommendations, as well as repeated criticisms from GAO¹³ and the DOL's own Office of Inspector General,¹⁴ the department has implemented few, if any, meaningful reforms in its administration of the Davis-Bacon Act since the early years of the Reagan administration. As a result, the information that contractors are called upon to submit on the current WD-10 continues to be erroneous and burdensome.

3) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

The department inaccurately estimates that it will take approximately 20 minutes for an employer to complete form WD-10.¹⁵ The department's estimate fails to take into consideration that a vast majority of construction contractors, including merit shop contractors, are small businesses. Based on ABC contractors' experiences, it can often take 20 minutes just to read and understand how to fill out the form WD-10, and after reviewing the form, contractors often determine that collecting and inputting the information is too much of a time burden, so they opt not to participate. Thus, as previously explained, the current collection process leads to the survey producing statistically unrepresentative samples.

¹¹ Sherk, "Labor Department Can Create Jobs by Calculating Davis-Bacon Rates More Accurately," page 14.

¹² Sherk, "Labor Department Can Create Jobs by Calculating Davis-Bacon Rates More Accurately," page 16.

¹³ 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> (April 13, 2011).

¹⁴ 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; 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) and U.S. Department of Labor's Office of Inspector General, *Better Strategies are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates*, Report Number: 04-19-001-15-001, March 29, 2019, at <https://www.oig.dol.gov/public/reports/oa/2019/04-19-001-15-001.pdf>.

¹⁵ 84 Fed. Reg. at 64935.

Additionally, GAO found that “contractors have little or no incentive to participate in the Davis-Bacon wage survey” as it is currently administered.¹⁶ Contractors that are busy running a business have no time or resources to fill out reports to the government, especially if they are not engaged in government work. Furthermore, they do not trust the government to keep the sensitive wage data confidential and are justifiably worried about being targeted for DOL audits and inspections.¹⁷

4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

As discussed above, this information is currently collected by BLS; therefore, DOL should transfer the responsibility for conducting Davis-Bacon wage surveys to BLS and utilize the data already being collected by BLS and other reliable government sources.

Conclusion

While ABC continues to advocate for full repeal of the Davis-Bacon Act, we ask the agency to consider these common-sense reforms, which directly affect the information that contractors are required to submit on the WD-10.

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

Respectfully Submitted,



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¹⁶ Government Accountability Office, *Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey*, April 6, 2011, <http://www.gao.gov/new.items/d11152.pdf>.

¹⁷ See testimony of Maurice Baskin at a hearing before the Subcommittee on Workforce Protections of the Committee on Education and the Workforce, “Promoting the Accuracy and Accountability of the Davis-Bacon Act,” June 18, 2013, https://republicans-edlabor.house.gov/uploadedfiles/baskin_-_testimony.pdf.