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Testimony

Before the Subcommittee on Workforce
Protections, Committee on Education and
the Workforce, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Thursday, April 14, 2011

DAVIS-BACON ACT

**Methodological Expertise
Critical for Improving
Survey Quality**

Statement of Andrew Sherrill, Director
Education, Workforce, and Income Security



G A O

Accountability * Integrity * Reliability

Chairman Walberg, Ranking Member Woolsey, and Members of the Subcommittee:

I am pleased to be here today to discuss the Department of Labor's (Labor) procedures for determining prevailing wage rates under the Davis-Bacon Act.¹ Davis-Bacon wages must be paid to workers on certain federally funded construction projects, and their vulnerability to the use of inaccurate data has long been an issue for Congress, employers, and workers. More recently, the passage of the American Recovery and Reinvestment Act of 2009,² focused attention on the need for accurate and timely wage determinations, with more than \$300 billion estimated to provide substantial funding for, among other things, federally funded building and infrastructure work potentially subject to Davis-Bacon wage rates.³ In the 1990s, we issued two reports that found process changes were needed to increase confidence that wage rates were based on accurate data.⁴ A third report found that changes then planned by Labor, if successfully implemented, had the potential to improve the wage determination process.⁵ However, in 2004, Labor's Office of Inspector General (OIG) found that wage data errors and the timeliness of surveys

¹Pub. L. No. 71-798, 46 Stat. 1494 (1931), as amended; codified at 40 U.S.C. § 3141 et. seq. A prevailing wage rate is the wage that Labor determines to be prevailing for the corresponding class of laborers or 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.

²Pub. L. No. 111-5, 123 Stat. 115.

³The Congressional Budget Office estimated in early 2009 that the combined spending and tax provisions of the American Recovery and Reinvestment Act of 2009 would cost \$787 billion from 2009 through 2019. In April 2009, the Congressional Research Service estimated the budget authority for Division A of the act to be more than \$300 billion for the same time period. Division A consists primarily of discretionary spending with some exceptions and includes federally funded building and infrastructure work.

⁴See GAO, *Davis-Bacon Act: Labor Now Verifies Wage Data, but Verification Process Needs Improvement*, GAO/HEHS-99-21 (Washington, D.C.: Jan. 11, 1999) and *Davis-Bacon Act: Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data*, GAO/HEHS-96-130 (Washington, D.C.: May 31, 1996).

⁵See GAO, *Davis-Bacon Act: Labor's Actions Have Potential to Improve Wage Determinations*, GAO/HEHS-99-97 (Washington, D.C.: May 28, 1999).

used to gather wage information from contractors and others, continued to be issues.⁶

Today I will discuss (1) the extent to which Labor has addressed concerns regarding the quality of the Davis-Bacon wage determination process and (2) additional issues identified by stakeholders regarding the wage determination process. My remarks are based on our recently issued report, titled *Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey*.⁷ To evaluate the extent to which Labor has addressed concerns regarding the quality of the wage determination process, we interviewed Labor officials, reviewed relevant federal laws and regulations, and compared agency documents on current survey practices with guidance on data quality and survey design from the Office of Management and Budget (OMB) and Labor.⁸ We conducted site visits to three of Labor's five regional offices that process Davis-Bacon wage surveys, as well as to the Construction Industry Research and Policy Center (CIRPC), a Labor survey contractor.⁹ We compared 12 surveys performed under Labor's new processes against its revised timelines to assess whether the surveys were on schedule. We also analyzed the results of four surveys published in 2009 or 2010 and reviewed their verification reports prepared by Labor's contracted auditor.¹⁰ Further, we analyzed currently published wage rates to determine their age and the proportion

⁶Department of Labor, Office of Inspector General, *Concerns Persist with the Integrity of Davis-Bacon Prevailing Wage Determinations*, 04-04-003-04-420 (Washington, D.C., Mar. 30, 2004).

⁷See GAO, *Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey*, [GAO-11-152](#) (Washington, D.C.: Mar. 22, 2011).

⁸See Office of Management and Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies* (effective date Jan. 3, 2002). For additional OMB guidance on agency surveys see also Office of Management and Budget, *Standards and Guidelines for Statistical Surveys* (September 2006) and *Questions and Answers When Designing Surveys for Information Collections* (January 2006). For Labor guidance, see Department of Labor, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor* (Oct. 1, 2002).

⁹We conducted site visits to the following Labor regional offices: Northeast region (Philadelphia, Pennsylvania), Southeast region (Atlanta, Georgia), and Southwest region (Dallas, Texas). The other two regional offices are the Midwest region (Chicago, Illinois) and the West region (San Francisco, California).

¹⁰The four surveys were Florida 2005, Maryland 2005, Tennessee 2006, and West Texas Metropolitan 2006.

of union-prevailing to nonunion-prevailing rates.¹¹ To assess what additional issues were concerns for stakeholders, we conducted approximately 30 interviews with contractors and representatives from academia, contractor associations, and unions, and performed a content analysis of their responses. A more detailed explanation of our methodology is available in Appendix I of our full report.

This testimony is based on work performed between September 2009 and March 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, we found that recent efforts to improve the Davis-Bacon wage survey have not yet addressed key issues with survey quality, such as the representativeness and sufficiency of survey data collected. Labor has made some data collection and processing changes; however, we found some surveys initiated under these changes were behind Labor's processing schedule. Stakeholders said contractors may not participate in the survey because they do not understand its purpose or do not believe the resultant prevailing wages are fully accurate. In addition, they said addressing a lack of transparency in how the published wage rates are set could result in a better understanding of the process and greater participation in the survey. We suggest Congress consider amending its requirement that Labor issue wage rates by civil subdivision to allow more flexibility. To improve the quality and timeliness of the Davis-Bacon wage surveys, we recommend Labor obtain objective expert advice on its survey design and methodology. We also recommend Labor take steps to improve the transparency of its wage determinations.

Background

The Davis-Bacon Act was enacted in 1931, in part, to protect communities and workers from the economic disruption caused by contractors hiring lower-wage workers from outside their local area, thus obtaining federal construction contracts by underbidding competitors who pay local wage rates. Labor administers the act through its Wage and Hour Division, which conducts voluntary surveys of construction contractors and

¹¹We reviewed the wage rates that were published as of November 12, 2010.

interested third parties¹² on both federal and nonfederal projects to obtain wages paid to workers in each construction job by locality.¹³ It then uses the data submitted on these survey forms to determine locally prevailing wage and fringe benefit rates for its four construction types: building, heavy, highway, and residential.¹⁴

To determine a prevailing wage for a specific job classification, Labor considers sufficient information to be the receipt of wage data on at least three workers from two different employers in its designated survey area. Then, in accordance with its regulations, Labor calculates the prevailing wage by determining if the same wage rate is paid to the majority (more than 50 percent) of workers employed in a specific job classification on similar projects in the area.¹⁵ If the same rate is not paid to the majority of workers in a job classification, the prevailing wage is the average wage rate weighted by the number of employees for which that rate was reported. In cases where the prevailing wage is also a collectively bargained, or union, rate, the rate is determined to be “union-prevailing.” To issue a wage determination—a compilation of prevailing wage rates for multiple job classifications in a given area—Labor must, according to its procedures, also have sufficient data to determine prevailing wages for at least 50 percent of key job classifications. Key job classifications are those determined necessary for one or more of the four construction types.¹⁶

By statute, Labor must issue wage determinations based on similar projects in the “civil subdivision of the state” in which the federal work is

¹²Interested third parties include contractor associations; labor unions; federal, state, and local agencies; and members of Congress.

¹³Labor conducts statewide surveys except in large states, such as California and Texas.

¹⁴Highway construction includes the construction, alteration, or repair of roads, streets, highways, runways, parking areas, and other similar projects that are not associated with building or heavy construction. Residential construction includes single-family homes and apartment buildings that are not more than four stories. If a structure that houses people is more than four stories or if it houses machinery, equipment, or supplies it is considered building construction. Heavy construction generally includes any project that does not fall into the other three categories—for example, dam and sewer projects.

¹⁵29 C.F.R. § 1.2(a)(1).

¹⁶Key job classifications across all four construction types include bricklayer, boilermaker, carpenter, cement mason, electrician, heat and frost insulator/asbestos worker/pipe insulator, iron worker, laborer-common, painter, pipefitter, plumber, power equipment operator, roofer, sheet metal worker, tile setter, and truck driver.

to be performed.¹⁷ Labor’s regulations state the civil subdivision will be the county, unless there are insufficient wage data.¹⁸ When data from a county are insufficient to issue a wage rate for a job classification, a group of counties is created. When data are still insufficient, Labor includes data from contiguous counties, combined in “groups” or “supergroups” of counties, until sufficient data are available to meet threshold guidelines to make a prevailing wage determination. Expansion to include other counties, if necessary, may continue until data from all counties in the state are combined. Counties are combined based on whether they are metropolitan or rural, and cannot be mixed.

Recent Efforts to Improve Data Collection and Processing Have Not Yet Addressed Key Issues with Survey Quality

Labor has taken several steps over the last few years to address issues with its Davis-Bacon wage surveys. For example, it finished 22 open surveys that had accumulated since the agency started conducting statewide surveys in 2002. Officials said completing these surveys will allow them to focus on more recent surveys. Labor also changed how it collects and processes information for its four construction types by surveying some construction types separately rather than simultaneously, using other available sources of wage data, adjusting survey time frames, and processing survey data as it is received rather than waiting until a survey closes. For highway surveys, Labor officials said they began using certified payrolls as the primary data source because certified payrolls provide accurate and reliable wage information and eliminate the need for Labor to verify wage data reported in surveys. Labor officials estimated these changes will reduce the processing time for highway surveys by more than 80 percent, or from about 42 months to 8 months. For building and heavy surveys, Labor began a five-survey pilot in 2009, adjusting survey time frames—with shorter time frames for areas in which there are many active projects—to allow Labor to better manage the quantity of data received. In addition, Labor officials said their regional office staff have begun processing survey data as they are received rather than waiting until a survey closes, which, they said, will improve timeliness and accuracy because survey respondents will be better able to recall submitted information when contacted by regional office staff for clarification and verification. Labor expects these changes to reduce the time needed to process building and heavy surveys by approximately 54 percent, or from about 37 months to 17 months.

¹⁷40 U.S.C. § 3142(b).

¹⁸29 C.F.R. § 1.7(a).

However, while it is too early to fully assess the effects of Labor’s 2009 actions, our review found that changes to data collection and processing may not achieve expected results. We were able to analyze the timeliness of 12 of the 16 surveys conducted under Labor’s new processes at the time of our review.¹⁹ Of those 12 surveys—8 highway and 4 building and heavy—which we assessed against Labor’s revised timelines, we found 10 behind schedule, 1 on schedule, and 1 not started as of September 10, 2010.²⁰ A challenge to survey timeliness is the fact that Labor conducts a “universe” or “census” survey of all active construction projects within a designated time frame and geographic area. As a result, the number of returned survey forms and the time required for the regional offices to process the data can vary widely. For example, for 14 surveys conducted prior to Labor’s 2009 changes, the number of forms returned per survey ranged from less than 2,000 to more than 8,000, and the average processing time per survey for data clarification and analysis ranged from 10 months to more than 40. Moreover, Labor cannot entirely control when it receives survey forms. Some regional office officials said the bulk of the forms are returned on the last day of a survey limiting officials’ ability to gain time by processing forms while the survey is ongoing as planned under the 2009 changes. To address these challenges, OMB guidance suggests agencies consider the cost and benefits of conducting a sample survey (versus a census survey) because it can often ensure data quality in a more efficient and economical way.²¹

The fact that Labor is behind schedule on surveys begun under the new processes may affect its ability to update the many published nonunion-prevailing wage rates which are several years old. Labor’s fiscal year 2010 performance goal was for 90 percent of published wage rates for building, heavy, and highway construction types to be no more than 3 years old. Our

¹⁹We were unable to analyze four surveys because of unclear dates in Labor’s data.

²⁰The highway surveys were Florida 2009, New Mexico 2009, North Carolina 2009, Oklahoma 2009, South Carolina 2009, Louisiana 2010, Nebraska 2010, and New Hampshire 2010. The building and heavy surveys were Montana 2009, North Carolina 2009, West Virginia 2009, and Wyoming 2009.

²¹While a census survey attempts to collect data from the entire population, a sample survey collects data from a subset or sample of the population. When the sample is selected by a probability sampling method such that each member of the population has a known chance of being selected and that information is used with proper estimation techniques, the results are generalizable to the entire population with a known level of confidence in the precision of the estimates. Further, by reducing the data collection effort, more can be done to assure other aspects of data quality.

analysis found that 61 percent of published rates for these construction types were 3 years old or less.²² However, this figure can be somewhat misleading because of the difference in how union- and nonunion-prevailing wage rates are updated. Union-prevailing rates account for almost two-thirds of the more than 650,000 published building, heavy, and highway rates and, according to Labor's policy, can be updated when there is a new collective bargaining agreement without Labor conducting a new survey. We found almost 75 percent of those rates were 3 years old or less. However, 36 percent of the nonunion-prevailing wage rates were 3 years old or less and almost 46 percent were 10 or more years old. These rates are not updated until Labor conducts a new survey. Several of the union and contractor association representatives we interviewed said the age of the Davis-Bacon nonunion-prevailing rates means they often do not reflect actual prevailing wages, which can make it difficult for contractors to successfully bid on federal projects.

Beyond concerns with processes and timelines, we also found that critical problems with Labor's wage survey methodology continue to hinder its survey quality. OMB guidance states that agencies need to consider the potential impact of response rate and nonresponse on the quality of information obtained through a survey. A low response rate may mean the results are misleading or inaccurate if those who respond differ substantially and systematically from those who do not respond. However, Labor cannot determine whether its Davis-Bacon survey results are representative of prevailing wages because it has not calculated survey response rates since 2002, and, other than a second letter automatically sent to nonrespondents, does not currently have a program to systematically follow up with or analyze nonrespondents. While a senior Labor official said the agency is taking steps to again calculate response rates, these changes have not been fully implemented and it is unclear if they will result in improved survey quality.

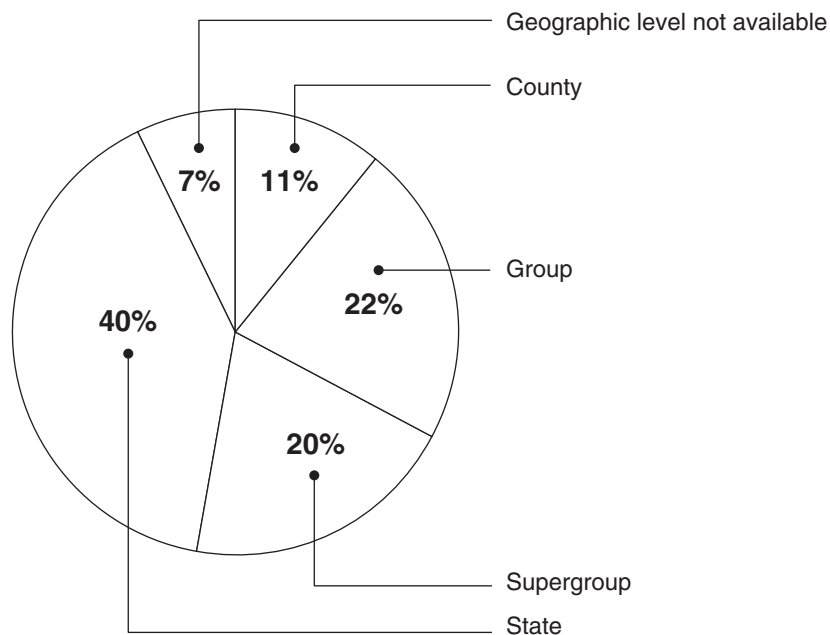
The utility of issuing wage determinations at the county level is also questionable. Labor's regulations state the county will normally be the civil subdivision for which a prevailing wage is determined;²³ however, Labor is often unable to issue wage rates for job classifications at the county level because it does not collect enough data to meet its current sufficiency standard of wage information on at least three workers from two

²²As of November 12, 2010.

²³29 C.F.R. § 1.7(a).

employers. In the results from the four surveys we reviewed, Labor issued about 11 percent of wage rates for key job classifications using data from a single county (see fig. 1).^{24, 25}

Figure 1: Percentage of Key Job Classification Wage Rates Issued at Each Geographic Level, for Four Surveys Reviewed



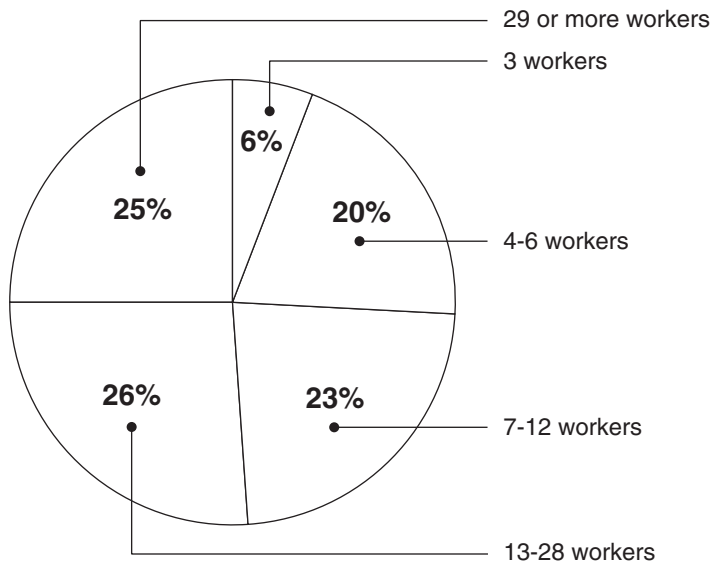
Source: GAO analysis of Labor data from Florida, Maryland, Tennessee, and West Texas Metropolitan surveys published in either 2009 or 2010.

Moreover, in 1997, Labor’s OIG reported that issuing rates by county may cause wage decisions to be based on an inadequate number of responses. In the four surveys we reviewed, more than one-quarter of the wage rates were based on data reported for six or fewer workers (see fig. 2).

²⁴We analyzed wage rates for key job classifications because wage rates for nonkey job classifications can only be issued at the county or group level, but not at the supergroup or state level.

²⁵Regional office officials said they may combine rates from counties with the exact same wage and fringe benefit data in their final wage compilation report, the WD-22. However, the rates being combined may have been calculated at different geographic levels—for example, one county’s rates may have been calculated at the group level while another county’s rates may have been calculated at the supergroup level. The geographic level at which rates for combined counties were calculated is not reported on the WD-22; therefore, we reported the percentage of these rates separately.

Figure 2: Percentage of Key Job Classification Wage Rates Issued Based on Number of Workers, for Four Surveys Reviewed



Source: GAO analysis of Labor data from Florida, Maryland, Tennessee, and West Texas Metropolitan surveys published in either 2009 or 2010.

The statutory requirement to issue Davis-Bacon wages based on similar projects in the “civil subdivision of the state” limits Labor’s options to address inadequate data because it cannot use data from other sources if those data draw from geographic areas, such as metropolitan statistical areas, which are not the same as civil subdivisions. Officials from CIRPC, Labor’s survey contractor, said one way to improve accuracy is to survey areas other than counties because counties are arbitrary geographic divisions whereas other geographic groupings, such as the economic areas used by the Bureau of Economic Analysis, are based on regional markets that frequently cross county and state lines.²⁶ Some stakeholders said the focus on county-level wage rates results in the publication of illogical rates—for example, a contractor paving a road that crossed a county line had to pay workers different wage rates based on which side of the line they worked.

²⁶The Bureau of Economic Analysis is an agency within the Department of Commerce. It collects source data, conducts research and analysis, develops and implements estimation methodologies, and disseminates economic statistics to the public.

Little Incentive to Participate and Lack of Transparency Remain Key Issues for Stakeholders

In our interviews with stakeholders, concerns about the survey process and accuracy of the published wage determinations were cited as disincentives to participate. Contractors may lack the necessary resources, may not understand the purpose of the survey, or may not see the point in responding because they believe the prevailing wages issued by Labor are inaccurate, stakeholders told us. Officials we interviewed in Labor regional offices echoed many of these same concerns about contractor participation.

While 19 of the 27 contractors and interested parties we interviewed said the survey form was generally easy to understand, some identified challenges with completing specific sections, such as how to apply the correct job classification.²⁷ Labor officials said they did not pretest the current survey form with respondents, and our review of reports by Labor's contracted auditor for four published surveys found most survey forms, which are verified against payroll data, had errors in areas such as number of employees and hourly and fringe benefit rates.²⁸ Labor officials said they have plans to address portions of the form that confuse respondents, but could not provide specifics on how they intend to solicit input from respondents—a step recommended by OMB to reduce error.

Fifteen stakeholders we interviewed said there is a lack of transparency in wage determinations because key information is not available or hard to find. Both contractor associations and union officials said improving transparency in how the published wage rates are set could enhance understanding of the process and result in greater participation in the survey. A senior Labor official said the agency is considering posting information used to determine wage rates online.

Finally, while the pre-survey briefing is one of Labor's primary outreach efforts to inform stakeholders about upcoming surveys, awareness of these briefings was mixed. In three states that were surveyed for building and heavy construction in 2009 or 2010—Arizona, North Carolina, and West Virginia—all the union representatives we interviewed said they

²⁷We did not ask the representatives from academia about the form because they generally would not be asked to fill it out as a survey respondent.

²⁸The four surveys we reviewed—Florida 2005, Maryland 2005, Tennessee 2006, and West Texas Metropolitan 2006—were conducted prior to new survey processes being implemented. No verification reports for surveys conducted under the new processes were available in time for our review.

were aware of the pre-survey briefing and representatives from four of the six state contractor associations we interviewed said they were aware a briefing had been conducted. However, in Florida and New York—last surveyed in 2005 and 2006 respectively—none of the 12 contractors we interviewed were aware that a briefing had been conducted prior to the survey. Seven of 27 stakeholders indicated that alternative approaches, such as webinars or audioconferences, might be helpful ways to reach additional contractors.²⁹

Conclusions and Recommendations

While Labor has made some changes to improve the wage determination process, further steps are needed to address longstanding issues with the quality of wage determinations and enhance their transparency. In our report, we suggested that Congress consider amending its requirement that Labor issue wage rates by civil subdivision to provide the agency with more flexibility. To improve the quality and timeliness of the wage surveys, we recommended that Labor enlist an independent statistical organization to evaluate and provide objective advice on the survey, including its methods and design; the potential for conducting a sample survey instead of a census survey; the collection, processing, tracking and analysis of data; and the promotion of survey awareness. We also recommended that Labor take steps to improve the transparency of its wage determinations, which could encourage greater participation in its survey. After reviewing the draft report, Labor agreed with our recommendation to improve transparency, but said obtaining expert survey advice may be premature, given current and planned changes. We believe a time of change is exactly when the agency should obtain expert advice to ensure their efforts improve the quality of the wage determination process. A complete discussion of our recommendations, Labor's comments, and our response are provided in our report.

Chairman Walberg, Ranking Member Woolsey, and Members of the Subcommittee, this concludes my prepared remarks. I would be happy to answer any questions you may have.

²⁹We did not ask the representatives from academia about pre-survey briefings because they would generally not be one of the groups Labor would notify about an upcoming survey.

GAO Contact and Staff Acknowledgments

For further information regarding this statement, please contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony include Gretta L. Goodwin (Assistant Director), Amy Anderson, Brenna Guarneros, Susan Aschoff, Walter Vance, Ronald Fecso (Chief Statistician), Melinda Cordero, Mimi Nguyen, and Alexander Galuten.

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