

U.S. Department of Labor

Office of Inspector General
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MAR 30 2004

MEMORANDUM FOR: VICTORIA LIPNIC
Assistant Secretary for
Employment Standards

Elliot P. Lewis

FROM: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: Concerns Persist With the Integrity of Davis-
Bacon Prevailing Wage Determinations
Audit Report No. 04-04-003-04-420

The attached subject final report is submitted for your resolution action. We request a response to this report within 60 days.

It is your responsibility to promptly transmit the attached report to program officials for resolution.

If you have any questions concerning this report, please contact Michael K. Yarbrough, Regional Inspector General for Audit, in Atlanta, Georgia at (404) 562-2341.

Attachment

Office of Inspector General

**U.S. Department of Labor
Office of Audit**

**CONCERNS PERSIST WITH
THE INTEGRITY OF
DAVIS-BACON ACT PREVAILING
WAGE DETERMINATIONS**

Report Number: 04-04-003-04-420
Date Issued: March 30, 2004

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ACRONYMS

ASDS	Automated Survey Data System
BLS	Bureau of Labor Statistics
CATI	Computer Assisted Telephone Information
CFR	Code of Federal Regulations
CBA	Collective Bargaining Agreement
CRA	Construction Resources Analysis
D-B	Davis-Bacon Act
DOL	U.S. Department of Labor
ESA	Employment Standards Administration
FY	Fiscal Year
GAO	General Accounting Office
MSA	Metropolitan Statistical Area
NCS	National Compensation Survey
OES	Occupational Employment Statistics
OIG	Office of the Inspector General
OMB	Office of Management and Budget
PART	Program Assessment Ratings Tool of OMB
SCA	McNamara-O'Hara Service Contract Act
UI	Unemployment Insurance
U.S.	United States
U.S.C.	United States Code
WDGS	Wage Determination Generation System
WH	Wage and Hour Division

EXECUTIVE SUMMARY

In 1995, the discovery of fraudulent data in certain prevailing wage surveys conducted under the provisions of the Davis-Bacon (D-B) Act, triggered members of Congress to request that the Office of Inspector General (OIG) and the General Accounting Office (GAO) review the accuracy of data used in prevailing wage determinations and the adequacy of survey procedures. OIG found data used in the decisions were frequently inaccurate, and both OIG and GAO identified data inaccuracies and weaknesses in wage determination procedures and made a variety of recommendations for corrective action.

We have audited progress the U.S. Department of Labor (DOL), Employment Standards Administration (ESA), Wage and Hour Division (WH) has made in addressing past OIG and GAO concerns and recommendations for improving the timeliness and reliability of prevailing wage determinations. While infusion of \$22 million of reengineering funds, since FY 1997, has resulted in limited improvements in how wage surveys are processed, problems identified in past audits with the data and WH procedures continue. Wage and fringe benefit data supplied WH and used in its surveys continue to have inaccuracies and may be biased. Further, prevailing wage decisions developed from the data are not timely.

Inaccurate Survey Data, Potential Bias, and Untimely Decisions are Continuing Concerns

We revisited the issues of data inaccuracies, survey bias and delays in issuing wage decisions that were cited in earlier audits conducted by OIG and GAO, and determined measures WH has taken to alleviate the problems that were identified. All three issues continue to be major issues that affect the validity and usefulness of D-B wage surveys.

Errors in the Wage Data Continue. Earlier audits discovered a high frequency of errors in data WH used to calculate prevailing wage rates. The problem is still evident. A contractor who completed onsite reviews of documentation supporting a portion of wage reports voluntarily submitted by employers and third parties found one or more errors existed in 100 percent of the wage reports they reviewed. Error rates were high even after WH's prolonged efforts to edit and clarify and complete the data.

Wage Data May be Biased. A past audit observed that the methods used by WH to obtain survey data allowed bias to be introduced into wage surveys. Statistical sampling of employers was not done. Only data from employers and third parties who volunteered to participate in the surveys were considered. Consequently, data that could have influenced survey results may have been omitted. Also, employers and third parties who may have had a stake in the outcome of wage decisions were afforded an opportunity to submit erroneous data that may have influenced the survey results. In following up, we found that WH's

methodology has not changed, and we remain concerned regarding whether the survey results are representative and unbiased.

Timeliness of Decisions is Still an Issue. A prior audit revealed large gaps in time between surveys, and exceptionally long times needed to complete and publish surveys. In following up, we found there are still long periods, both between surveys and the time it takes to complete them. Over 84 percent of the surveys we reviewed (199 of 236) took more than 1.5 years to complete and 21 percent (49) were in process over 3 years before being published. Consequently, many of the published wage determinations are old. We noted WH has only recently begun establishing performance standards for the timely execution and processing of wage surveys.

WH Reengineering Approaches Have Not Resolved Past Concerns

With the boost of \$3.75 million of additional funds provided annually for D-B improvement, WH took a two-track approach to correcting the problems of wage survey relevancy. One was to pilot test the use of the Bureau of Labor Statistics (BLS) to conduct D-B surveys in the context of BLS' existing survey functions. The other track focused on improving WH's existing survey operations.

WH Concluded that BLS Surveys Were Not Viable Alternatives. OIG previously recommended that WH consider using existing BLS wage surveys to develop its prevailing wage determinations. After funding pilot projects using BLS, WH concluded that BLS could not be used for D-B. BLS is a DOL agency that uses statistically valid means of conducting national wage surveys. WH believed BLS surveys insufficiently covered job benefits, geographical scope, construction types, occupational breakdowns, or prevailing rates. While obstacles to using BLS surveys exist, we do not believe they are insurmountable.

Reengineering Efforts Have Focused on Enhancements to WH's Survey Methodology. The majority of funding WH received from Congress to reengineer its D-B survey processes has been spent modifying the survey methodology it has historically used. WH procured new computer hardware and software for ESA and D-B. Other computer-related enhancements included use of computerized programs to identify errors at the point of data entry. A Computer Assisted Telephone Information (CATI) System was to help WH staff contact survey respondents to clarify data.

Several of the initiatives are still planned, under development or were unsuccessfully implemented and have been restarted. For example, the CATI system had been planned for August 2002 but was still not installed and working over a year later.

Broadened Wage Surveys Have Experienced Great Difficulties. A past audit found the existing county-by-county survey procedures required such volumes of survey work that timely decisions were not possible. OIG recommended WH could enlarge its areas of coverage without failing its mandate of protecting “local rates of pay.”

In FY 2002, WH began completing several statewide surveys across all construction categories. However, the new procedure is still coupled with the old survey methodology and seeks to narrow the wage publications for an area to a unit as small as a county, where possible. The huge volume of survey data generated by the project that must be processed has stymied the effort. WH had planned 17 new wage surveys for FY 2003, 15 of which were to be statewide; however, WH started none during the year because of the data glut, exacerbated by delays in new systems implementation.

WH Has Contracted With A Consulting Firm to Assist in Reengineering. In September 2003, some 7 years into the reengineering process, WH contracted with a private consulting firm, McGraw-Hill Corporation, to have the firm assess their status and direction in improving the D-B program. The firm’s assistance is also being sought to help WH respond to the Program Assessment Ratings Tool (PART) assessment required by the Office of Management and Budget (OMB). This endeavor has been funded through modification to an existing contract WH had with McGraw-Hill. McGraw-Hill was already providing Dodge Reports that assist WH in identifying prime Federal construction contractors for prevailing wage surveys.

Recommendation

WH continues to struggle with developing effective means of eliminating errors in data and ensuring wage decisions are issued in a timely manner. OIG again concludes that the current wage determination process should be replaced with a statistically valid methodology. Therefore, we recommend the Assistant Secretary for the Employment Standards Administration promote changes to the *Davis-Bacon Act* that allow reliable and objective sources of data, such as offered by BLS surveys, to be used in prevailing wage determinations.

Agency Response to the Draft Audit Report

ESA stated it is not convinced that the audit report is supported by data or analysis relevant to a statutory provision, and the report provided insufficient guidance on appropriate changes to statutory provisions. Furthermore, ESA stated that while OIG recommended the use of defensible methodologies in wage surveys, such as using BLS surveys, and acknowledged obstacles to using the surveys, OIG did not identify those obstacles or provide sufficient guidance on how ESA could overcome the unspecified obstacles.

ESA acknowledged that it might be useful to reexamine conclusions reached by the prior administration and again explore with BLS the possibility of using BLS data. Although ESA does not share OIG's concerns about the universe versus sample survey approach, ESA is willing to reevaluate the feasibility of conducting Davis-Bacon surveys using a statistical sampling methodology. Furthermore, ESA concurs that a change to the methodology should involve the use of BLS data and should not overlay an entirely new sample survey conducted by Wage and Hour.

ESA also addressed audit report recommendations pertaining to data inaccuracies, bias, and timeliness, and is taking steps to address them. The response, in its entirety, is in Appendix B of this report.

OIG Conclusion

We continue to conclude that the solution to the issues of accuracy, representativeness and timeliness of wage decisions is to change the fundamental methodology WH uses to complete its surveys.

BACKGROUND AND PRINCIPAL CRITERIA

Past Concerns

In 1995, fraudulent data were found in certain surveys completed for WH and used to establish minimum “prevailing” wage rates contractors working on Federally funded contracts are required to pay their workers, under provisions of the Davis-Bacon Act (D-B). The discovery triggered concerns among members of Congress for the integrity of prevailing wage decisions that were based on the survey data, and requests for the Office of Inspector General (OIG) and the General Accounting Office (GAO) to audit the accuracy of the data and the sufficiency of WH’s survey procedures. OIG found data used in the decisions were frequently inaccurate, and both OIG and GAO identified weaknesses in wage determination procedures and made a variety of recommendations for corrective action. WH has acted on many of the recommendations but results have not been sufficient.

The previous audits disclosed significant problems, particularly regarding accuracy and timeliness of wage data. In response to the problems cited, Congress began a yearly appropriation of about \$3.75 million to WH since FY 1997 for the express purpose of developing and implementing D-B wage survey/determination system improvements. From FYs 1997 through 2003, WH had spent over \$22 million in additional funds for D-B improvement.

D-B Provisions

D-B (40 United States Code (U.S.C.) 276) is depression-era legislation, passed in 1931, as a reaction to the perception that Federally-funded construction workers’ wages in certain localities were being undercut by lower wages paid to workers imported from outside the area. Essentially, the prevailing wage determined for each craft became a minimum wage in that locality for Federal construction. Congress extended prevailing wage provisions to approximately 60 other Federal laws whose programs assist construction projects through grants, loans, loan guarantees, insurance, and direct financing. These statutes are known as “Davis-Bacon Related Acts.”

Federal regulations governing program administration are at 29 Code of Federal Regulation (CFR) Parts 1, 3, 5, and 7. WH divides construction into four categories and determines craft persons’ wages separately for each. The construction categories are: commercial building, residential, highway, and heavy (a catchall term for other construction such as water treatment and sewage plants, dam building, dredging, etc.)

WH determines local prevailing wages through surveys of information provided by construction contractors and third parties concerning work in the area of consideration. WH

provides the means for construction contractors and third parties to submit wages on Form WD-10 paid to various craft persons. Since 1964, job benefits have also been included. The participating entities submit the information voluntarily. WH tries to avoid surveying Federally funded building and residential construction already subject to D-B, but this cannot always be done due to lack of sufficient survey data.

OBJECTIVES, SCOPE AND METHODOLOGY

The primary objective of our audit was to follow up on key concerns and recommendations contained in prior OIG and GAO audit reports. The previous reports on which our followup was based are:

- “Davis-Bacon Act: Process Changes Could Raise Confidence that Wage Rates Are Based on Accurate Data,” issued by GAO on May 31, 1996, report number GAO/HEHS-96-130.
- “Inaccurate Data Were Frequently Used in Wage Determinations Made Under the Davis-Bacon Act,” issued by OIG on March 10, 1997, report number 04-97-013-04-420.
- “Davis-Bacon Act: Labor Now Verifies Wage Data, but Verification Process Needs Improvement,” issued by GAO in January 1999, report number GAO/HEHS-99-21.
- “Davis-Bacon Act: Labor’s Actions Have Potential to Improve Wage Determinations,” issued by GAO in May 1999, report number GAO/HEHS-99-97.

Key findings and recommendations included in each of these documents are identified in the Appendix of this report.

We reviewed wage surveys issued from October 1, 1997 through September 30, 2003. We extended our procedures to include any new information obtained until the end of fieldwork in December 2003. WH signed a contract with McGraw-Hill Corporation for D-B consulting assistance in early September 2003. Consequently, we reviewed this contract and discussed the scope of the contract with McGraw-Hill.

We interviewed key WH and other ESA staff, as necessary to satisfy our audit objectives. We also interviewed staff in the Atlanta Regional Office of WH. We followed up on each of the most significant findings and recommendations made in the reports listed above. We also compiled information provided by WH concerning expenditures for D-B improvement made from FY 1997, when they were initially provided to ESA, through FY 2003. We have not audited the expenditure data presented in this report and do not express an opinion concerning their accuracy, completeness or the fairness with which they are presented.

In order to assess if the accuracy of wage survey data had improved, we obtained reports of data verification reviews done by the public accounting firm who contracted with WH to do onsite payroll reviews of wage and fringe benefit data submitted to WH (Form WD-10s) for

use in prevailing wage determinations. We selected the accounting firm's verification reports that spanned most of the time period the procedure was in effect.

Additionally, we obtained wage survey data from the WH D-B internet website in order to determine what geographical areas were planned for survey in FY 2003, had been surveyed, for what time periods surveyed, and the elapsed time between end of survey periods and actual dates of prevailing wage publications.

We conducted our audit at the national office of ESA, located at the Frances Perkins Labor Building in Washington, D.C. Our audit was conducted in accordance with *Government Auditing Standards* for performance audits. Fieldwork began in July 2003 and continued into December 2003.

RESULTS OF AUDIT

Inaccurate Survey Data, Potential Bias, and Untimely Decisions are Continuing Concerns

We revisited the issues of data accuracy, potential bias, and untimely decisions that were cited in earlier audits conducted by OIG and GAO and determined actions WH had taken to address these problems. We believe that all three of these issues continue to be major concerns affecting the validity and usefulness of D-B wage surveys.

Errors in the Wage Data Continue. WH has implemented independent verification procedures to address problems with errors in data supplied by contractors and third parties (WD-10 Forms) that are used in its wage determination calculations. However, neither independent verification procedures nor other of WH efforts to reengineer its activities have resolved systemic problems with WH's survey methodology.

OIG's March 1997 audit report on D-B disclosed that wage and benefits survey data were frequently inaccurate. The materiality of the errors could not be fully determined, but errors were frequent and resulted in significant differences in some of the individual wage determinations included in our review. Errors identified in our audit resulted in inaccuracies in published wage determinations that ranged from overstatements for some crafts of \$1.08 per hour to understatements of \$1.29 per hour. Of greatest concern was that OIG found significant inaccuracies in 65 percent of the comparisons of the WD-10 to actual payroll data examined while on site at the employer location. OIG also found the wage determinations may have been biased, as prevailing wage rates were computed from only data voluntarily reported by participating employers or third parties.

Errors resulted from a variety of causes including contractors' confusion over what was requested in WH's survey instrument (WD-10 Forms), carelessness and use of estimates and approximations. Both OIG and GAO recommended WH better scrutinize data provided by employers and third parties. OIG recommended some level of onsite inspection of the information submitted, as an interim step, until a better methodology for conducting surveys could be developed.

Since receiving increased annual appropriations for D-B improvements, beginning in FY 1997, WH has used a public accounting firm to provide independent data verification through payroll reviews of samples of construction contractor and third party submissions. Initially, WH had the firm complete reviews of randomly selected WD-10s, and expanded verification to all WD-10s submitted by the participating contractor. However, the methodology was time-consuming, costly, and contributed to delays in getting wage decisions issued. In addition, many high-impact WD-10s were being omitted from the verification procedure.

In response to a 1999 GAO report, the procedure was refined. Random selection of contractors was discontinued in favor of judgmental selection. WH obtained the assistance of the Construction Resources Analysis (CRA) of the University of Tennessee in developing a model for selecting contractors for review.¹ Selection is based upon the WD-10s that are deemed to have the greatest effect on the results of surveys. Actual pay and benefits are compared to the WD-10s submitted by contractors and third parties. WH believes the revised selection procedure has improved the accuracy of wage determinations and has reduced the time and expense of verification.

WH has made the firm’s independent verification a permanent fixture in the survey process. Independent verification procedures are identifying errors in the data, as WH intended. However, it is not apparent that the procedure has allowed WH to make significant progress in obtaining and publishing more accurate wage information. We reviewed 20 verification reports done by the public accounting firm under contract with WH to conduct data verification. We studied 10 reports with survey periods that ended before October 1, 1998 (before reengineering funds could have had an impact on accuracy), and 10 reports with later survey periods ending after September 30, 1998 (after which reengineering funds should have had an impact on the accuracy of data). As shown in **Figure 1**, error rates were higher in the later surveys.

Figure 1

Construction Contractors and WD-10s With Reporting Errors In 20 Old and New Verification Reports Sampled						
Survey Period	Contractors			WD-10s		
	Number		Percent.	Number		Percent.
	Reviewed	With Errors		Reviewed	With Errors	
Before 10/1/98	71	71	100%	421	406	96%
After 9/30/98	52	52	100%	261	257	98%

The accounting firm cited similar errors in both periods above, with percentages of WD-10s with errors actually increasing in the latter period. The errors were numerous, even in the face of revised WD-10s, WD-10 instructions, and online WD-10s. Further, the errors occurred even after time-consuming efforts of WH analysts to clean up the data.

Some broad areas of reporting mistakes were as follows:

¹ CRA, has since been renamed the Construction Industry Research and Policy Center and also conducts some wage surveys under contract with WH.

- Peak Week Errors: Reporting entities frequently reported on incorrect peak weeks. The peak week is defined as the week in which the most persons were used in a particular craft during the survey period. Naturally the peak week could differ for each craft reviewed. However, some entities reported the same peak week for every craft. Others chose peak weeks in which a craft was insufficiently represented. Incorrect peak weeks often resulted in reporting of wage and benefit errors. According to a spokesperson, WH has tried methods other than peak weeks but received negative feedback from contractors. (According to the public accounting firm, WH has since instructed them to no longer verify that the peak week was correctly determined.)
- Craft Person Miscounts: Another frequent reporting error was in the number of persons representing a craft. Entities often reported the number of persons in various craft too high and too low. Miscounts could have a significant effect on WH's weighted average calculations and on determining if a certain wage level was in a majority for that craft.
- Wage Rate Misreporting: Some entities reported one wage rate for a craft, when two or more wage rates existed for the same craft. Some entities even reported one wage rate for the entire project workforce. Occasionally, entities reported only the highest journeyman wage rate for a craft. Other entities reported only union scale wages, rather than the actual wages paid. Wage estimates were also reported instead of actual amounts.
- Job Classifications Incorrectly Reported: Even though WH provided instructions to exclude apprentices and other trainees, entities sometimes reported their wages anyway. Nonworking foremen's wages were also included in violation of WH's guidelines. Conversely, working foremen's wages were sometimes excluded improperly. Skilled laborers were reported as unskilled; and unskilled laborers were reported as skilled. Some persons who only delivered building materials were included in the surveys. Other workers were included, although their work was performed offsite, thus not meeting WH's guidelines for inclusion.
- Job Benefits Rife with Errors: Job benefits have been cited as a reason WH has rejected the Bureau of Labor Statistics' (BLS) Occupational Employment Statistics (OES) surveys as a means of replacing its existing survey methodology. Entities had difficulty in converting the value of job benefits to hourly rates. Some job benefits were merged with the wage rates reported. Certain types of benefits were overlooked, or benefits were left off the report altogether. Job benefits reported by

the unions sometimes did not match the benefits actually paid by the contractors. As with wages, benefits were often estimated.

- Projects, Union Agreements, Subcontractor Misreporting: Wages and benefits were reported on incorrect construction projects, more than one project, or reported outside the proper survey time period. Reports were submitted on incorrect union agreements. Project dollar amounts were frequently wrong. Some projects were misclassified as to the category of construction used by WH (building, residential, highway, or heavy). Prime contractors reported on the wages and benefits of subcontractors, whereas WH requested each subcontractor to report its own survey information.
- Reason for Incorrect Survey Information Often Unknown: Employer documentation sought by the firm in verification of wages and benefits was often missing or unavailable. Sometimes key personnel who were responsible for the WD-10s had quit, were retired, or otherwise could not be contacted. Some records had not been kept. Often, neither the public accountants nor the firm could explain why errors were reported on the WD-10.

While it was not within our scope to determine the impact of errors, our 1997 report showed significant incidences of error. The impact on wage decisions could not be readily determined since the public accountants only reviewed a sample of contractors in surveys, and OIG examined only a small sample of verification reports. The apparently high error rates for information reviewed before and after reengineering funds were available can be explained by the nature of the information that is being collected and WH's survey methodology. Each wage survey is distinct, often with a unique array of construction projects and contractors. Consequently, correcting the accuracy of data in one survey, may not lead to improved accuracy in others.

Wage Data May be Biased. The refinements WH has made are primarily enhancements to the old survey methodology that caused us concern in our 1997 report. The verification procedure results in the correction of errors, but only for the surveys reviewed.

Further, verification of the data does not address a long-standing OIG worry that WH's survey methodology may introduce bias into the resulting wage decisions. WH continues to rely only on information volunteered by employers and third parties, some of whom could have an interest in influencing the outcome of WH's prevailing wage determinations. This was the apparent motivation for the fraud that was discovered in the 1995 incident, previously discussed.

The data can also be skewed because only those employers who have adequate personnel or accounting staff may choose to complete the WD-10s. Other employers may not participate because they choose to avoid any involvement with the Government. In addition, higher participation of either union-affiliated or open shop contractors could bias data in favor of their scale of wages and benefits.

Timeliness of Decisions is Still an Issue. General survey wage rates published by WH often required extensive time before publication, rendering the validity of “prevailing” D-B wages rates questionable. In our 1997 report, we indicated the time gap between a craft’s peak week and WH’s publication date for that craft may have been too long for the data to be reliable. The gap was sometimes 3 years. In contrast, if collective bargaining agreements (CBAs) were used due to union wages prevailing in an area, the CBAs were usually updated in a timely manner. This resulted in published wage data in union-dominated areas being up-to-date, whereas published wage data in areas covered by general wage surveys were not.

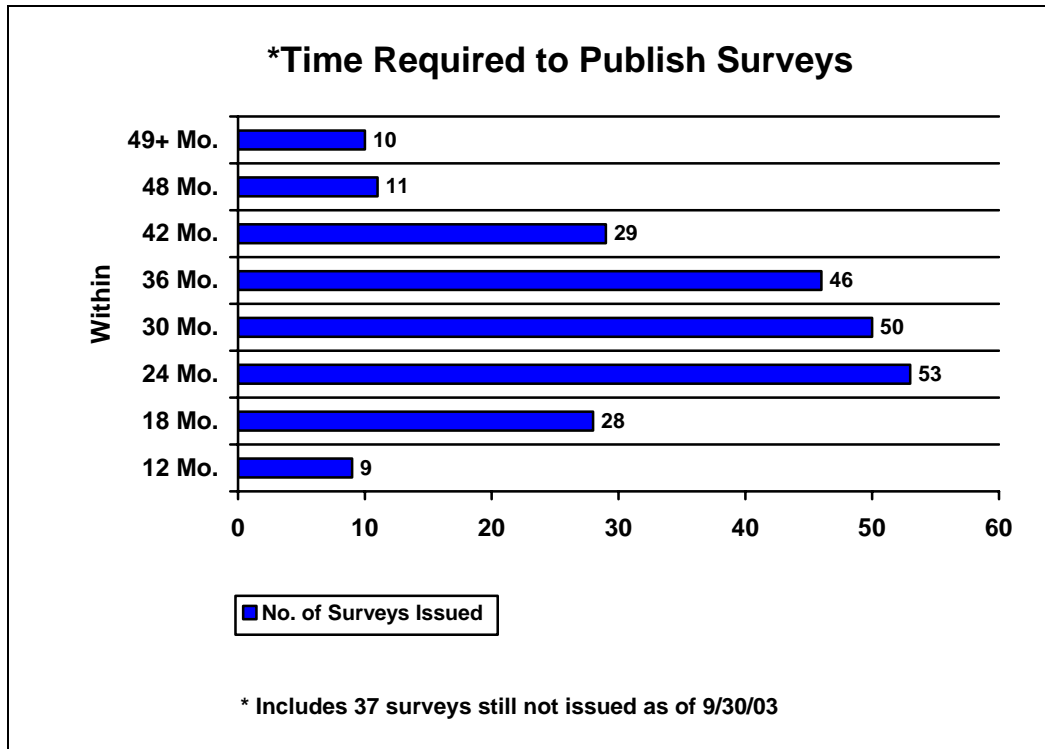
Little has changed in survey timeliness since our 1997 report. CBAs continue frequent updates, whereas the time that lapses between wage surveys in a given local area are often much longer. Some survey results were still in force over long periods, one as much as 7 years, because they had not been updated by new surveys. This chasm between surveys, in addition to the frequently extended time to publish survey results, can make long waits for relevant wage publications.

To measure the time required to conduct, review, and publish a survey, we analyzed data taken from the D-B website. We reviewed 236 surveys in WH’s database, for which the survey period’s ending date was between December 31, 1994 and March 31, 2002. Of the 236 surveys, 37 surveys were in the “data completion” phase and 199 had been published. Almost without exception, the time that lapsed between the ending date of the period being surveyed and conclusion of WH’s data collection effort (referred to as the “data cutoff” date) was reasonable. This period averaged only about 6 months. In only three incidences, did this stage require more than 1 year.

However, the amount of time required from the date data was cutoff until publication of a decision was substantial. We determined that no surveys were published within 6 months of the survey period ending date. Nine surveys were issued within 12 months, and 28 more surveys were published within 18 months. However, 199 surveys (84 percent) extended beyond the 1.5-year mark with a range from 18 to 81 months (6.7 years). The 6.7-year survey is still unpublished; one published survey required 66 months (5.4 years); and 10 surveys had gone more than 48 months (4 years), as of September 30, 2003. Time that had lapsed from the end of the survey period to publication date, or as of September 30, 2003 (if the survey had not yet been published), averaged 2.3 years.

Figure 2 illustrates time lapses for the surveys we reviewed.

Figure 2



During the “data completion” stage following survey data cutoff, wage specialists clarify, edit, and generally correct the data submitted, enter the data into the computerized wage survey system, and have the data verified by the firm. The regional analysts make a final review and analysis after verification before transmitting the survey data to WH’s national office. These steps are time-consuming because of the volume of data that must be processed and the amount of clarifications and corrections necessary. The firm found many data errors even after the painstaking reviews and corrections done by the regional analysts.

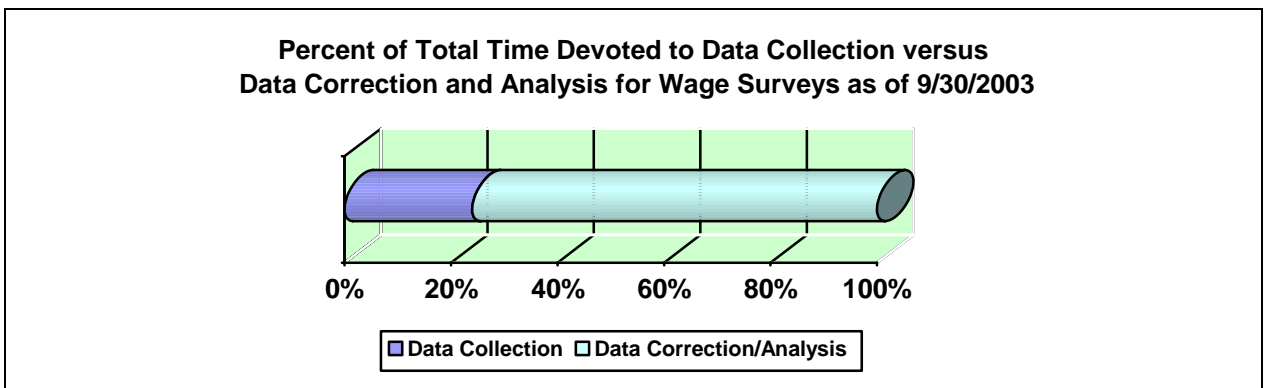
We reviewed five surveys with timeliness issues to determine in more detail what caused the delays at various stages of the process.

- No reason was offered regarding why a Vermont statewide building survey required 41 months (3.4 years) to publish, other than that the verification contractor did not release the survey for nearly 2.5 years.

- A 33-county Indiana survey took 40 months (3.3 years). The contractor doing verification had this survey for review for about 10 months. According to a WH official, the contractor had many surveys loaded upon them at once. In addition, the random sample selection methodology they were required to apply, at the time, may have extended the time necessary to complete verification.
- A survey of five counties in New York required 38 months (3.1 years) to publish because the WH analyst had nine other surveys to enter into the computerized system at the same time. According to WH, the accounting firm had this survey for review for almost 15 months.
- A 19-county survey in Kentucky took 49 months (4 years) to publish, from date the survey period ended, because the WH analyst was said to have been inexperienced, and the survey was pushed aside in favor of another priority.
- No explanation was provided for a statewide Idaho survey that has been in process for 2.75 years and, as of September 30, 2003, had still not been published.

The average time WH took to collect data and to review, edit and publish decisions on the 236 surveys we reviewed is presented in **Figure 3**. This graphic illustrates the timeliness problems occur primarily in reviewing the data following the data cutoff date. The ratio of time required to review and prepare data to the time used in data collection was over 5 to 1.

Figure 3



As previously mentioned, the chart includes the 37 cases that had not been published as of September 30, 2003. They are shown to provide a complete picture of the survey database. These unpublished cases have already consumed more than 1 year of review and analysis

time. Consequently, the time lapses we have calculated provide conservative measures of the time lapses.

Although not a past OIG audit concern, we noted that WH had not established performance measures for timely execution and processing of wage surveys. Timeliness standards are now under consideration, mainly in response to preparing for the OMB Program Assessment Ratings Tool (PART). The performance review exercise required by OMB caused WH to direct attention to the idea of timeliness standards. WH proposed timeliness standards measured in weeks for seven of nine stages of a survey.

WH's suggested standards were as follows:

<u>Activity</u>	<u>Standard in Weeks</u>
1. Dodge reports ordered by regions	1
2. Survey notification letters mailed to all parties	2
3. Data collection by Regions	24
4. Review clarification by regions	*
5. Onsite verification of data by public accountants	*
6. Review of verification report by regions	4
7. Proposed rates sent to national office by regions	4
8. Review of survey and publication by National Office	8
9. Updates made to wage determinations by National Office	4

Our review indicates that much of the timeliness problems lie in activities 4 and 5 above. However, WH was not prepared to provide suggested weeks for the two activities. Standards for the activities noted with an asterisk would depend on the size of the survey, according to a WH spokesperson. The activities above total 47 weeks, exclusive of the items for which no standard has been assigned.

WH's Reengineering Approaches Have Not Resolved Past Concerns

With the boost of \$3.75 million of additional funds provided annually for D-B improvement, WH took a two-track approach to correcting the problems of wage survey relevancy. One was to pilot test the use of BLS to conduct D-B surveys in the context of BLS' existing survey functions. The other track focused on improving WH's existing survey operations.

WH Concluded that BLS Surveys Were Not Viable Alternatives. In order to counteract problems with the accuracy, timeliness and validity of wage surveys, our 1997 report recommended that WH consider completing onsite payroll reviews of wage data on employers who had been statistically selected for participation. If this was not feasible, OIG

recommended WH contract with BLS, a DOL agency that uses statistical means to obtain wage information from employers. We believed the use of BLS surveys would also provide a statistically valid means of establishing wage rates and help WH avoid the bias inherent in its survey methodology.

Although it contracted for verification procedures, WH did not pursue its own onsite payroll review as a survey methodology. WH believed problems with timeliness would be exacerbated and the expense of onsite reviews prohibitive. WH did test the use of BLS as a fellow DOL contracting agency to conduct the surveys. BLS conducts two major surveys which include in their scope the wages and/or job benefits of construction workers: the OES survey and the National Compensation Survey (NCS).

BLS already provides WH the statistical data for wage determinations under the *Service Contract Act of 1965 (SCA)*. *SCA* is similar to D-B, but applies to service employees in jobs with contracts funded by the Federal Government, rather than construction workers. WH must determine what the local prevailing wages are for the occupations needed in each contract and enforce compliance with the same.

After funding several pilot projects using BLS during fiscal years 1997 through 2000, WH concluded that BLS could not be used for D-B. Among the reasons cited were absence of job benefit information in certain of BLS' surveys, differences in geographic areas covered by the BLS surveys and those required by WH, differences in how BLS and WH calculate "wages" and concern that some crafts were not covered in BLS surveys. The OES separates industry groups, including construction; but the four construction categories utilized by WH are not clearly defined; and OES does not cover job benefits. The NCS includes job benefits, but pilot projects showed that NCS did not have sufficient geographical coverage for D-B. Most importantly may be that BLS surveys by Metropolitan Statistical Areas (MSAs) and nonMSAs, whereas the *Davis-Bacon Act* calls for wage determinations at the local, civil subdivision level, such as cities, counties, etc., within a state.

We evaluated the objections WH presented above concerning BLS' surveys applied to D-B. Since OES and NCS together cover both construction jobs and benefits, the two could meet D-B requirements if NCS expanded both its geographical coverage and the extent of construction crafts surveyed, a task that could be done with a shift in funds from WH to BLS. The fact that BLS surveys result in wage averages rather than wage majorities should be of little concern. WH already uses a "weighted average" in the absence of a clear wage majority for a craft.

Regarding classification of construction categories, a compromise could be reached between WH and BLS, since BLS already separates industry groups. We believe that comparison of construction projects "of a character similar" could be met with relatively minor adjustments

to BLS current classifications. WH has acknowledged that clear separation of their four construction categories cannot always be made.

To use BLS to survey D-B construction, a D-B law change would be necessary regarding the definition of a local area. D-B's definition of a local civil subdivision would need to be changed to accommodate BLS' focus on surveys of MSAs and nonMSAs. D-B was enacted during a time when the family automobile was more of a political campaign promise than a reality. Persons often commute large distances to work today with little regard to small community or even to state boundaries. MSAs are defined by these commuting patterns. BLS' survey results of these larger areas should be sufficient for D-B in these modern times.

Reengineering Efforts Have Focused on Enhancements to WH's Survey Methodology.

With the exception of funds provided to BLS for pilot projects, the various uses WH has made of \$22 million in D-B improvement funds received since FY 1997 have been for enhancements to the old survey methodology. The approaches taken by WH included independent data verification, contracting out certain labor-intensive activities, computerizing more functions, and upgrading computer technologies. General areas on which improvement funds were used are as follows:

- acquiring new computer hardware and software for the benefit of D-B and, concurrently, for other WH/ESA programs and operations;
- offering electronic access and submission of the wage survey forms by construction companies and third parties;
- contracting with the Bureau of Census to leverage its expertise and capacity in automating the printing and mailing of paper-based survey forms. The automation was intended to reduce duplicate mailings and burden to survey respondents by pre-populating survey forms with any existing wage data;
- attempting to scan WD-10 hardcopy data into the computerized wage determination system. Initial attempts of a contractor failed to deliver this timely; however WH currently plans to use the U.S. Census for this activity as well;
- employing computerized applications that intend to improve the verification and analysis of information returned on the wage surveys;
- using a CATI system to help WH staff contact survey respondents to clarify data returned on the survey form;

- redesigning the wage determination database to centralize survey data on a dedicated server; and
- initiating a D-B wage determination web site that provides citizens, businesses, and other governments access to completed, ongoing, and planned wage surveys and actual D-B wage determinations. The site also has a frequently asked questions section, plus instructions and assistance to complete the survey form.

A summary of expenditures for D-B reengineering efforts, by cost category and year of appropriation, at September 30, 2003, was obtained from WH and is shown in **Figure 4**. WH intends to increase the participation of construction companies and third parties in the survey process, but believes these increases may require additional resources in order to respond adequately to the increased data volume.

GAO determined that WH was redesigning the WD-10, the form used by contractors and third parties to supply wage and benefits information for each construction craft utilized.² OIG had disclosed in its 1997 report that contractors were often confused and misunderstood how to complete the WD-10.

**Categories of Davis-Bacon Reengineering Expenditures
By Year of Appropriation*
At September 30, 2003**

Category	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Equipment	\$2,187,467	\$68,613	\$49,625	\$33,569	\$485,460	\$56,370		\$2,881,104
Print/Mail		\$43,777	\$30,405	\$173,710		\$486,184		\$734,076
Imaging					\$364,799	\$21,743		\$386,542
Verification	\$512,389	\$500,000	\$639,300	\$698,635	\$521,782			\$2,872,106
System Mgt.	\$117,513	\$316,500	\$232,550	\$434,272	\$78,708	\$152,478	\$221,082	\$1,553,103
Reengineering	\$620,595	\$1,022,319	\$1,039,000	\$996,878	\$1,823,194	\$1,396,082	\$1,013,563	\$7,911,631
Maintenance				\$158,300	\$145,110	\$192,495	\$146,936	\$642,841
Shared Cost				\$233,620	\$297,043	\$383,169	\$296,634	\$1,210,466
BLS Pilots	\$313,950	\$1,628,700	\$1,776,000	\$194,000				\$3,912,650
Travel		\$15,000				\$34,257		\$49,257
TOTAL	\$3,751,974	\$3,594,909	\$3,766,880	\$2,922,984	\$3,716,096	\$2,722,778	\$1,678,215	\$22,153,776

Figure 4

**Each column shows funds ultimately spent out of that fiscal year's appropriation. Some of the actual expenditures may have occurred in the year or two following the appropriated year. Therefore, FY'02 and FY'03 appropriations are still in process of being spent. For example, data verification was still utilizing FY'01 appropriated funds during FY'02 and FY'03. Source: Unaudited data provided by WH*

We determined that WH had redesigned the WD-10 in an attempt to make it less confusing to users. Instructions for completing the form were enhanced. Some users had embraced the

² Davis-Bacon Act: *Labor's Actions Have Potential to Improve Wage Determinations* (GAO/HEHS-99-97), May 1999

online WD-10 readily, while others were resistant, mainly due to comfort with old ways and discomfort with computer and/or Internet technology.

GAO reported that WH had enacted computerized programs to assist wage analysts in identifying errors at the point of data entry.³ The computer edit checks would detect errors of obvious inconsistency, omission, and incompatibility with other data entered. The system would also standardize the way wage analysts reviewed data across WH regions. A WH representative indicated that the systems were not perfected but do provide help to regional wage analysts in identifying errors.

A computer assisted telephone system to help WH staff contact survey respondents had been planned for August 2002. The system was to facilitate data followup and verification, a process WH believes consumes large amounts of time in the wage survey process. However, over 1 year later, at the end of September 2003, the system had not yet been started.

WH assured us that the plans for this system were still on the table. This would be a future innovation in the use of D-B improvement funds. The continuing complexities of installing and operating new computerized systems had caused WH to fall behind on CATI, as with many other of its plans.

Broadened Wage Surveys Have Experienced Great Difficulties. One significant alteration to WH's previous survey methodology is recent attempts to reduce workload and improve the timeliness of decisions by broadening the geographic areas covered by its surveys. Unfortunately, the initiative has created a logjam of data that has delayed issuing decisions.

As reported in OIG's March 1997 report on D-B, WH typically conducted wage surveys on small geographical areas, covered only one construction category, and sought to narrow the wage publications down to an individual county, if possible. WH stipulates the county as the primary unit for establishing prevailing wage decisions, based upon language in D-B and program regulations that indicates the "area" for determination of wage rates is to be the civil subdivision in which the work is being performed. WH views its primary objective as protecting local rates of pay.

However, under WH's existing survey methodology, the huge amount of survey work needed to cover the Nation in all four construction categories did not allow timely issuance of decisions. OIG recommended WH could enlarge its areas of coverage and not frustrate its mandate of protecting "local rates of pay." For example, if insignificant differences in wage rates exist, say among rural counties, county-by-county surveys waste resources.

³ *Ibid*

Beginning mainly in FY 2002, WH had begun some statewide wage surveys in which all four construction categories were conducted simultaneously in one large survey effort. However, WH wed the new procedure with the old methodology and still narrowed the wage publications for an area to a unit as small as a county, if possible. WH had programmed its computerized wage survey systems to widen the scope of coverage beyond the county unit until they had at least WH's required minimum number of contractors and individuals representing a craft in that particular construction category.

This action, although taken 5 years after our 1997 report, represents a major change in strategy. Currently, WH has 28 statewide surveys in the "data completion stage," although only 13 of these include all four construction categories.

While we believe the concept is viable, the way in which it has been implemented has resulted in a deluge of data that must be corrected, refined, adjusted, keyed or scanned into the computerized system, analyzed, and verified. WH's first attempt in this mode for the State of Oregon became so cumbersome and time-consuming that WH aborted the survey. Another early attempt for the State of Colorado finally resulted in publication of decisions. They were issued over 3 years after the end of the survey period.

WH planned 17 new wage surveys for FY 2003, 15 of which were to be statewide, in all 4 construction categories. In fact, WH started none of the 17 during the fiscal year, due to the excess of data, continuing changes in computer technology, staff retirements, and training of new, inexperienced staff.

Further, WH had no open surveys in the data-gathering process. Surveys in data completion and analysis, whose data cutoff dates all preceded FY 2003, numbered 37. Of the five published surveys, only Delaware was statewide, all four construction categories.

Figure 5 illustrates the number of surveys planned and actually started in FY 2003 and **Figure 5a** shows the number of surveys in open data collection, in editing and review, and the number published in FY 2003.

Figure 5

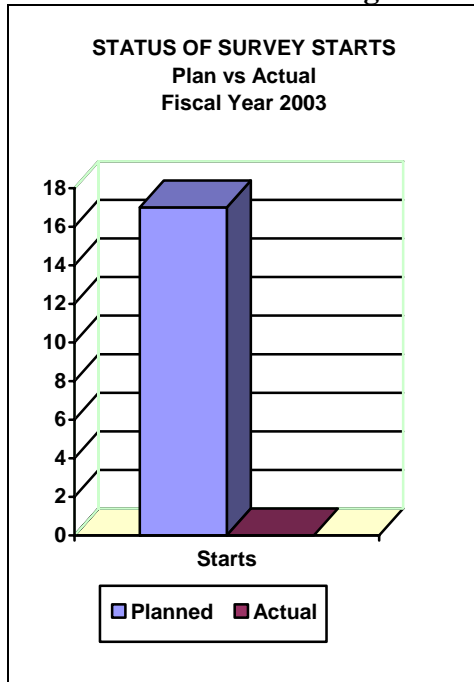
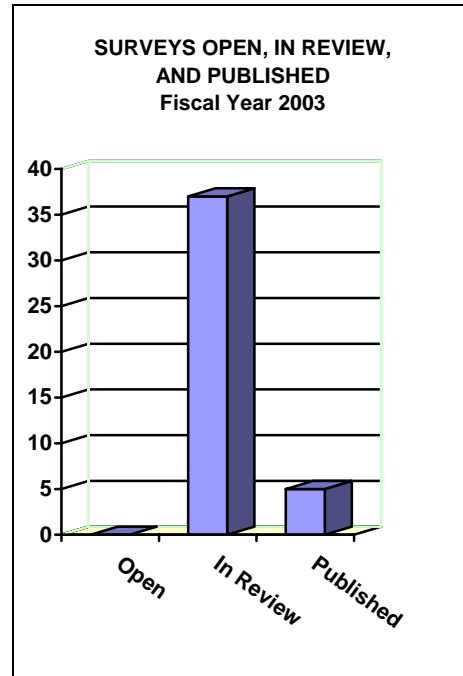


Figure 5a



A WH official acknowledged the agency’s goal of covering the whole nation every 3 years has proven to be unattainable in the short term. The information above confirms this statement. The whole survey planning process lost credibility, as a whole year of new survey starts was postponed, and all existing cases that had not been published lingered over 1 year in the various stages occurring after data cutoff.

Since the weight of this increased workload fell heavily upon the regional specialists, WH attempted to relieve the burden by contracting such labor-intensive activities as printing and mailing of wage survey requests and computer scanning of hard copy survey data received. These tasks were contracted out to the U.S. Census Bureau. Printing and mailings of survey requests were already underway, whereas Census was only now being requested to do data scanning. (An earlier contractor was dropped due to lack of progress in this endeavor.) The initiation of the automated, online WD-10 also relieved regional specialists from manual data entry. However, many contractors and third parties continue to use hard copy WD-10s.

While not included as a prior OIG or GAO recommendation, we noted the last manual published by WH for D-B wage determination process was the “Davis-Bacon Construction Wage Determinations Manual of Operations,” dated April 1986. WH has undergone many

changes in D-B administration in the 17 years since the manual was last published. WH indicates work on the update was delayed.

The current manual states that its purpose is to “increase ESA’s efficiency in administering the Davis-Bacon Act.” The manual also presents its fundamental objective: “. . . to prescribe guidelines, standards and techniques which will enhance the program’s ability to issue timely and accurate prevailing wage determinations.”

WH indicated its target date for publication of the revised manual is now set for calendar year 2004.

WH Has Contracted With A Consulting Firm to Assist in Reengineering. In September 2003, some 7 years into the reengineering process, WH contracted with McGraw-Hill Corporation for assistance in assessing WH’s actions and plans to improve D-B and to help WH meet the requirements of OMB’s PART. The contract for \$165,400, signed on September 3, 2003, was approved as an “incorporation of additional work” for McGraw-Hill, which already provided the Dodge Reports under contract.

WH was soon to be undergoing OMB’s PART, a periodic assessment of Federal agencies. WH needed an independent performance assessment as a part of the PART review. According to the contract, and from statements by a WH official, McGraw-Hill was to evaluate D-B improvements, determine if WH’s efforts to improve D-B produced more accurate and timely prevailing wage determinations, and identify potential opportunities for more improvements.

The contract would extend for 180 days from their “kickoff meeting” and required a draft report from McGraw-Hill no later than 140 days. A final report was due within 160 days of the kickoff meeting.

RECOMMENDATIONS

Over 70 years after D-B's enactment, WH still struggles with administering an effective prevailing wage determination program. WH has not sufficiently resolved findings and recommendations reported by OIG and GAO. The credibility of wage determinations remains questionable, because of concerns over data on which they are based. Delays in publishing wage decisions call their relevance into question.

The independent verification of survey data indicates that many significant errors continue to be made by both contractors and third parties. Huge spans of time still stretch between wage surveys for many areas, planned survey starts are delayed, and the survey process often still takes far too long to complete. Timeliness performance standards for processing surveys are only in the formative stage after years of administering the program. All these factors raise serious questions as to how reliable are D-B wage determinations for use in Federally-funded construction.

The time and expense associated with independent data verification by the firm could be eliminated if BLS did D-B surveys. Independent verification was recommended by OIG earlier only as an interim measure until a better methodology was developed to complete D-B surveys.

We continue to believe the solution to problems with the accuracy, representativeness and timeliness of wage decision that have plagued WH is to change the fundamental methodology it uses to complete its surveys. Consequently, we recommend the Assistant Secretary for 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.

EMPLOYMENT STANDARDS ADMINISTRATION'S RESPONSE TO THE DRAFT AUDIT REPORT

ESA responded that they are not convinced that the report is supported by data or analysis relevant to a statutory provision. ESA indicated that the report provided insufficient guidance on appropriate changes to statutory provisions. Furthermore, ESA stated that while OIG recommended the use of defensible methodologies in wage surveys, such as those done by BLS, and acknowledged obstacles to using such methodologies, OIG did not identify those obstacles nor provide sufficient guidance addressing how ESA could overcome the unspecified obstacles. ESA reiterated that using BLS survey data is not feasible in meeting statutory requirements in part due to the surveys not including fringe benefits. ESA cited the

cost of obtaining fringe benefits data and concerns with the completeness of the wage when classified by occupation and type of construction.

ESA explained that these obstacles led to their decision to improve the current wage survey process rather than utilize the BLS surveys. Nonetheless, ESA acknowledged that it might be useful to reexamine conclusions reached by the prior administration and again explore with BLS the possibility of using BLS data. Although ESA does not share OIG's concerns about the universe versus sample survey approach, ESA is willing to reevaluate the feasibility of conducting Davis-Bacon surveys using a statistical sampling methodology. Furthermore, ESA concurs that a change to the sampling methodology should involve the use of BLS data and should not overlay an entirely new sample survey conducted by Wage and Hour.

ESA also addressed the report recommendations related to our continuing concerns on data inaccuracies, bias, and timeliness.

Data Inaccuracies. ESA addressed the continuation of errors in wage data. While ESA pointed out that many of the wage errors identified in our earlier audit were within the margin of error, they shared our concern regarding the accuracy of data and remained committed to making the data used in Davis-Bacon determinations as accurate as possible. ESA explained that its current on-site verification efforts now target those data submissions having the greatest impact upon wage determination results.

Bias. ESA asserted that continued efforts are being made to involve all parties and encourage participation by all segments of the construction industry. ESA noted that following years of extensive on-site verification, no evidence of fraud or intentional misreporting was found.

Timeliness. ESA stated that timeliness continues to be a critical concern with WH and that progress is being made to address the issue. ESA contended that a full evaluation of this issue was premature since all of the infrastructure improvements had not been fully implemented. ESA further explained that with many large infrastructure projects it is difficult to measure incremental improvements because the entire system is integrated and the full benefit of individual improvements cannot be fully realized until all aspects of the project are completed. According to ESA, WH will be establishing baselines and developing measures of timeliness in an effort to ensure attention to the issue.

ESA concluded that they fully believe that the system changes being pursued for the D-B wage survey program have the potential to improve wage determinations.

OIG's CONCLUSION ON EMPLOYMENT STANDARDS ADMINISTRATION'S RESPONSE TO THE DRAFT AUDIT REPORT

In general, ESA questioned several aspects of the OIG audit report, but is undertaking a number of positive changes to address many OIG recommendations. We continue to maintain that the solution to the problems with accuracy, representativeness, and timeliness of wage decisions is to change the fundamental methodology WH uses to complete its surveys.

Regarding the “unspecified obstacles” to using BLS surveys, the OIG was referring to the obstacles addressed in the results of the pilot project submitted by WH. It is not the responsibility of the OIG to offer detailed recommendations to WH about how and where it should research sources that may be more applicable/suitable to obtaining accurate wage data for D-B. It is the responsibility of WH to conduct such research and make a determination based on its conclusions. Such research may confirm the need for changes to the Davis-Bacon Act.

ESA indicated the report lacks guidance on appropriate changes to the law. The law specifies that fringe benefits are to be considered in determining prevailing wages. We believe this is problematic due to the high error rate associated with fringe benefit data collected through the current survey process. Further, a statistical approach, such as that offered by BLS, would improve reliability by controlling for bias that may exist in data provided by participating contractors and third parties, who might have a personal stake in the outcome.

OIG continues to recommend that DOL promote changes to the Davis-Bacon Act that would allow reliable and objective sources of data, such as BLS surveys, in making prevailing wage determinations. Both the law and regulations at 29 CFR 1.2(b) refer to protecting "local rates of pay," meaning a "city, town, village or other civil subdivision." However, BLS surveys are conducted on the basis of Metropolitan Statistical Areas (MSAs), which are not civil subdivisions. The law could be revised to define the area of coverage as whatever geographic delineation best reflects the labor market for a particular locale. ESA acknowledged they routinely use broader areas when sufficient data are not available on a county-by-county basis.

Notwithstanding additional legislation, WH should explore other methodologies that would improve the timeliness and accuracy, and mitigate potential bias, that exist with the current methods of performing wage determinations.

Prior OIG and GAO Findings and Recommendations

Summarized below are four recent reports of Labor’s Office of Inspector General and the General Accounting Office on the Davis-Bacon prevailing wage determination program. The findings, concerns and recommendations we believed are the most relevant to the wage determination process are those we followed up on in this audit.

Davis-Bacon Act: Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data, GAO/HEHS-96-130, May 1996

Findings or Concerns

- Labor’s decisions are based only on wage and benefit data voluntarily submitted by employers and third parties, such as unions or trade groups, on construction projects.
- Although Labor has a process in place to determine prevailing wage rates, GAO found that it contains internal control weaknesses that contribute to the lack of confidence in the resulting wage determinations. These weaknesses include:
 - Inadequate verification of wage and fringe benefit data,
 - Limited computer capabilities, and an appeals process that may be difficult for interested parties to access, and
 - Lack of awareness of the appeals process may limit its effectiveness.

Recommendations

- Request that a sample of participating employers to submit appropriate documentation on their data submissions or to conduct a limited number of onsite inspection reviews of employer wage data, and
- Inform employers, unions, and other interested parties of their rights to request summary information on a wage determination and of the agency’s procedures for initiating an appeal of a wage determination.

APPENDIX A

Inaccurate Data Were Frequently Used in Wage Determinations Made Under the Davis-Bacon Act, DOL/OIG Report No. 04-97-013-04-420, March 10, 1997

Findings or Concerns:

- Significant errors were identified in 15 percent of the Davis-Bacon wage survey forms (WD-10s) submitted. Eighty-four percent of the errors were attributed to contractors and third parties; 16 percent were the fault of WH processing. Material errors resulted in wage decisions needing revision in five states.
- WH's methods for Davis-Bacon surveys need reevaluation. Concerns included:
 - Use of only voluntarily submitted wage data from employers and third parties,
 - Decisions sometimes based on data for a small number of individuals in a craft,
 - Disparities in the age of data used to establish craft rates. Some crafts are periodically updated due to collective bargaining agreements, while nonunion rates may not be updated for years.
 - Small geographic areas covered by surveys, which result in workloads that will not allow for sufficient and timely coverage, and which contribute to usage of small numbers of individuals on which wage decisions are based.
 - "Peak week" calculations, which may not provide for representative decisions.

Recommendations

- Select contractors for participation using statistical or other independent means.
- Obtain necessary data directly from contractors' records through onsite collection, thus eliminating the need for third party reporting. If mail surveys are used for statistically selected employers, onsite reviews to verify submissions on at least a sample basis should be built into the process.
- Obtain assistance from the Commissioner of the Department's Bureau of Labor Statistics in reviewing procedures used in the Davis-Bacon wage determination process and recommending legislative, regulatory or administrative changes as needed in the survey methodology.
- Verify a sample of contractor-submitted data, as an interim procedure, and initiate appropriate enforcement actions against persons making false reports.

Davis-Bacon Act: Labor Now Verifies Wage Data, but Verification Process Needs Improvement, GAO/HEHS-99-21, January 1999

Findings or Concerns

- Labor's telephone verification procedures differ depending on whether the data are applied by contractors or third parties.
- Labor verifies a different percentage of wage data forms submitted by third parties than that for data forms submitted by contractors.
- Labor asks for supporting documentation only from contractors and not from third parties.
- Verification efforts, although needed, will have limited impact on accuracy of prevailing wage rate determinations and will increase the time required to issue them.
- Verification samples, using random sampling, are not large enough to ensure impact on accuracy of wage determinations.
- Sample selections size for wage data verification will have little to no impact on accuracy of wage determinations when using a random sampling.
- Onsite verification has added time to the wage determination process, increasing the likelihood that data used will be outdated.

Recommendations

- Increase the use of telephone verification, while decreasing onsite verification audits, and increase efforts to obtain payroll documentation from all selected submitters.
- Change the procedures used to select wage data for verification to include only judgmentally-selected contractors with potentially higher impact on wage decisions.
- Revise verification procedures to take more appropriate action when documentation cannot readily be obtained from a contractor.

Davis-Bacon Act: Labor's Actions Have Potential to Improve Wage Determinations, GAO/HEHS-99-97, May 1999

Findings or Concerns

- Need to achieve more accurate and timely wage determination
- Wage determination process must promote greater survey participation, improve the accuracy of data submission and increase efficiency of data collection and analysis.
- WH was redesigning the current wage determination process to conduct statewide surveys for all 4 construction types.
- The use of alternative databases, such as UI, may not result in sufficient data that would adequately represent the current universe.
- Using BLS' OES data as the basis for wage determinations presents WH with a number of operational issues about setting wage rates.

Recommendations

The report recounts WH's reengineering efforts; recommendations were not offered.

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: 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

APPENDIX B

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.¹ 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.

¹ 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 ± \$.77; Painters ± \$.94; Plumbers ± \$1.18. Washington, DC: Brickmasons ± \$1.04; Carpenters ± \$.43; Electricians ± \$.76, Painters ± \$.45; Plumbers ± \$.80; Reinforcing Iron Workers ± \$3.73. The 95% confidence interval would be even greater.