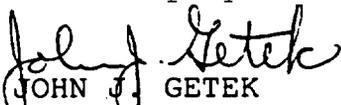




MAR 10 1997

MEMORANDUM FOR : BERNARD ANDERSON
Assistant Secretary
for Employment Standards

FROM: 
JOHN J. GETEK
Assistant Inspector General
for Audit

SUBJECT: Inaccurate Data Were Frequently
Used in Wage Determinations Made
Under the Davis-Bacon Act
Final Report No. 04-97-013-04-420

The attached report discusses our audit of the accuracy of data the Wage and Hour Division (WH) used during Calendar Year 1995 in making prevailing wage determinations under the Davis-Bacon Act.

We did not find evidence of fraud in the data we sampled and believe that WH staff did a creditable job of administering the wage survey process. However, much of the information obtained by WH for its surveys is inaccurate. We sampled survey forms (WD-10s) both employers and third parties had sent WH. A comparison of the data on the WD-10s with employers' payroll records revealed that nearly two of three WD-10s contained significant errors. The report also discusses several other weaknesses in WH's survey methodology that contribute to errors and may also cause bias in the survey results.

Fundamental changes are needed in WH's survey process. We have recommended revisions to WH's methodology that provide for independent selection of employers for survey and onsite collection of the data. In addition, we have recommended WH make use of the Bureau of Labor Statistics' (BLS) expertise in reviewing, redesigning, modifying and testing changes to the wage survey system.

We would appreciate receiving your response to our audit findings and recommendations within 60 days. If you have any questions, please contact Robert Wallace, Regional Inspector General for Audit, at (404) 562-2341.

Attachment

Office of Inspector General

U.S. Department of Labor
Office of Audit

**INACCURATE DATA WERE
FREQUENTLY USED IN
WAGE DETERMINATIONS
MADE UNDER THE
DAVIS-BACON ACT**

Report Number: 04-97-013-04420
Date Issued: MAR 10 1997

Important Information for the Reader

Data we examined in drawing our conclusions were based upon samples that were both randomly and judgmentally selected. Consequently, rates of occurrences and other information derived from the samples cannot be statistically projected to all activities for the period of our audit. Nonetheless, we are confident that the data presented are adequate to support conclusions we have reached.

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ACRONYMS

BLS	-	Bureau of Labor Statistics
CBA	-	Collective Bargaining Agreement
CFR	-	Code of Federal Regulations
CRA	-	Construction Resources Analysis
Labor	-	U.S. Department of Labor
ESA	-	Employment Standards Administration
FY	-	Fiscal Year
GAO	-	General Accounting Office
HVAC	-	Heating, Ventilating and Air Conditioning
OES	-	Occupational Employment Statistics
OIG	-	Office of Inspector General
UI	-	Unemployment Insurance
U.S.C.	-	United States Code
WD-10	-	Report of Construction Contractor's Wage Rates
WD-22a	-	Project Wage Summary
WD-22	-	Wage Compilation
WH	-	Wage and Hour Division

EXECUTIVE SUMMARY

In 1995, allegations were made that fraudulent wage data were submitted to the Wage and Hour Division (WH) and used in making a Davis-Bacon Act (Davis-Bacon) prevailing wage determination. The Office of Inspector General (OIG) audited a sample of data related to calendar year 1995 wage decisions and concluded that WH's staff generally did a creditable job of reviewing the data they received and correcting or eliminating responses which were not appropriate to the surveys.

However, much of the data we examined was inaccurate. We concluded that WH is vulnerable to inaccuracies in the data because it relies on employers¹ and third parties to compile and submit much of the payroll information used in the surveys. Errors made by employers and third parties are difficult to detect through "desk" reviews, confirmations or other procedures WH uses to substantiate the data. Consequently, errors often went undetected. Also, other weaknesses in WH's survey methodology may cause bias in the survey results.

Background

Davis-Bacon requires that each contractor and subcontractor involved in construction, alteration or repair of Federal works pay its employees no less than "locally prevailing" wages and fringe benefits. The U.S. Department of Labor (Labor) is responsible for determining the prevailing wage and benefit rates for particular geographic areas. Labor's Employment Standards Administration (ESA), Wage and Hour Division establishes prevailing rates through data voluntarily provided by employers and third parties, which include union and trade associations. As the Congressional Budget Office estimates that \$42 billion was spent in Federal construction during fiscal year 1996, the total dollar effect of the program is substantial.

It has been alleged that fraudulent data were reported to WH and used in a 1995 Oklahoma City wage decision. Inaccuracies in the data were found which caused WH to redetermine the rates for the geographic area affected. The allegations also triggered a continuing criminal investigation by the Department of Justice, and a request from a member of Congress that the Inspector General review the reliability of the data WH uses.

¹Unless further distinction was necessary, we have used the term "employers" to include both construction contractors and their subcontractors throughout this report.

Evidence of Fraudulent Data Was Not Found, But Survey Data Were Frequently Inaccurate

We examined a sample of 837 responses from employers and third parties provided WH. The responses involved seven WH surveys that resulted in wage decisions published during calendar year 1995. We determined if WH's staff had properly reviewed and accurately used the data in prevailing wage and fringe benefit calculations.

Also, we sent 360 employer confirmations to determine if the data WH received had, in fact, been submitted by the employers and if the employers believed the data were accurate. Finally, we examined employers' payroll records relating to 110 WD-10s, to determine if the data employers had compiled and submitted to WH were accurate.

We found no evidence to conclude that inaccurate data were intentionally false or deliberately submitted in error to WH, however, much of the data was inaccurate. Overall, we found 211 significant exceptions involving nearly 15 percent of the survey instruments (WD-10 forms).

Exceptions were discovered through each of our audit procedures. However, errors found through payroll examinations are of greatest concern. Significant exceptions were found in 65 percent of all payroll examinations we completed. Further, inaccuracies in data reported by employers and third parties accounted for 84 percent (177 of the 211) of the exceptions. The remaining 16 percent (34 exceptions) were attributed to errors in WHYS compilation of the data.

Material errors in WD-10s resulted in wage decisions needing revision in five states. Among these decisions, wages or fringe benefits for certain crafts were overstated by as much as \$1.08 per hour and understated by as much as \$1.29 per hour.

Some errors were caused by employers or third parties who misunderstood the instructions on the survey instruments WH sent them. Other errors resulted from data reported on the same project by more than one party. However, many errors were the result of carelessness or approximations reported to WH.

WH's Methodology for Davis-Bacon Surveys Needs to be Reevaluated

The frequency of exceptions found in the data causes us concern for the methodology WH uses to collect data and compute prevailing wage rates.

We discussed WH's methodology with staff from the Bureau of Labor Statistics (BLS). Methods used by WH differ markedly from those BLS employs. BLS relies on the consent of employers to participate in many of its surveys. However, BLS independently selects, collects and assembles the data from employers' payroll records. Also, BLS currently conducts surveys for ESA to assist in administering provisions of the Service Contract Act² which may have some application to collection of Davis-Bacon data.

We also identified other issues involving WH's survey methodology, provisions of the Davis-Bacon legislation and Labor's regulations that either contributed to the exceptions we found or bring the representativeness of the wage decisions into question. They include:

- Use of only data that has been compiled and voluntarily submitted by employers and third parties from requests WH mails.
- Decisions which are sometimes based on data for a very small number of individuals in a craft.
- Disparities in the age of the data used to establish craft rates. Among decisions and within the same decision, wage rates for some crafts are periodically updated through application of changes in union bargaining agreements, while nonunion rates may not be updated for years.
- Small geographic areas covered by WH's surveys. A county is often defined as the area to which a survey applies. Too small a geographic area covered by wage decisions contributes to WHYS workload and may cause wage decisions to be based on an inadequate number of responses.
- Conventions used in establishing wage decisions. WH defines "prevailing wage" as the wage rate paid more than 50 percent of employees during the "peak week" in which the largest number of individuals was employed in that

²The Service Contract Act of 1965 contains provisions for determining prevailing wages similar to the Davis-Bacon Act but relates to contractors that provide the Federal Government with goods and services.

craft. Other measures and longer time frames may provide a more representative decision.

RECOMMENDATIONS

The high proportion of erroneous data submitted to WH poses a threat to the reliability of prevailing wage decisions. Moreover, the strictly voluntary nature of the survey process itself can produce bias in the composition and number of respondents. As a result, the data captured may not be representative of locally prevailing labor conditions.

To improve the validity and representativeness of the data used to determine locally prevailing wages, we recommend the Assistant Secretary for Employment Standards revise the survey process to:

1. select contractors for participation using statistical or other independent means; and
2. 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.

The reduction of items as a result of statistical sampling, along with other measures such as expanding the geographic coverage of the wage surveys, could mitigate higher costs associated with onsite collection. Third parties could continue to be involved by providing information to WH for verification of wage and benefit data collected from employers, for example, in geographic areas dominated by collective bargaining agreements.

Congress' recent appropriation of \$3.75 million for fiscal year 1997 to assist WH in improving its wage survey system presents a timely opportunity for the design and testing of modifications to the process. Accordingly, we further recommend the Assistant Secretary for Employment Standards:

3. 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. In the interim, contractor-submitted data can be verified on a sample basis and appropriate enforcement actions initiated against persons making false reports.

WAGE AND HOUR'S RESPONSE

WH responded to our draft report on February 24, 1997, the full text of which is included as Exhibit 3, attached to this report. WH indicated it was encouraged that OIG found no evidence of fraud or deliberate misreporting, that WH staff had done a creditable job in operating the program, and that a relatively small number of wage decisions were materially affected by the audit findings. WH expressed concern for the large number of significant errors discovered by the audit. WH stated it is taking action to improve the program but wanted OIG to emphasize that the audit was limited in scope and did not present a statistical view of the program nationally.

However, WH took issue with our recommendations to draw statistical samples of employers and conduct onsite payroll reviews in order to obtain wage data. WH did not believe that either of these recommendations would correct the errors cited in the audit. Independent samples of employers would eliminate third parties from the process. Onsite payroll reviews would be time-consuming, expensive, and more burdensome to employers. WH did agree to work with BLS in seeking program improvements. They also planned to continue recently increased verification of wage data.

OIG'S CONCLUSION

Although we did not find fraud or deliberate misreporting of wage data, such activity may exist. Our audit included both judgmental and statistical sampling in which we deliberately selected one wage survey from each WH region which produced decisions in calendar year 1995. Our audit was thus limited in scope and results were not statistically protectable to the nation as a whole.

As we advise users of this report of its limitations and caution against drawing inferences that are not supported, we also caution against dismissing the need for fundamental improvements in WH's survey methodology. The errors we discovered did not materially change many of the wage decisions because the data we sampled often represented a small portion of the responses for an individual WH survey. However, much of the data we examined was in error. As previously mentioned, nearly two of three WD-10s we subjected to onsite payroll reviews contained errors. If we had conducted more payroll reviews, we believe more exceptions would have been identified and would have revealed more material errors in published wage decisions.

We believe that independent selection of employers by WH provides many benefits, including elimination of errors caused by third parties who submit information to WH that duplicates data provided by employers and the potential for bias that now exists.

The time and costs of onsite payroll reviews may be offset by broadening the geographical coverage of the surveys and by combining efforts with other of BLS' survey efforts. Employer resistance could be lessened by the reduced frequency of wage requests due to combined survey efforts.

INTRODUCTION AND PRINCIPAL CRITERIA

Intent of the Davis-Bacon Act

On March 3, 1931, Congress passed the Davis-Bacon Act. Davis-Bacon's intent was to prevent U.S. Government funded construction projects from undercutting local prevailing construction wages. It was also intended that Davis-Bacon reduce local labor displacement resulting from the importation of low-wage workers from outside of the construction area. Davis-Bacon (40 U.S.C. 276) requires that employers pay local **prevailing** wages in the various construction skill trades for U.S. Government funded projects. Davis-Bacon, therefore, serves essentially as special **minimum wage** legislation for the benefit of construction workers.

Principal Criteria

WH's direction in administering its responsibilities under Davis-Bacon is established in Federal regulations published at 29 CFR Parts 1, 3, 5, and 7. Additional guidance for WH's staff is also published in the Davis-Bacon, Construction Wage Determinations Manual of Operations, April 1986.

To provide more detailed direction to its personnel, WH also produced The Survey Procedure, a 12-part guide to conducting wage surveys. WH staff received training on use of the guide in mid-1995.

Other significant sources of guidance include two WH Memoranda published in 1978:

- All Agency Memorandum No. 130, Application of The Standard of Comparison "Projects of A Character Similar" Under Davis-Bacon And Related Acts, March 17, 1978,
- All Agency Memorandum No. 131, Clarification of All Agency Memorandum No. 130, July 14, 1978.

OBJECTIVES, SCOPE AND METHODOLOGY

Our audit objective was to assess the accuracy of wage and fringe benefit data collected and used by WH in Davis-Bacon prevailing wage surveys. We completed audit work to determine if significant problems exist with the accuracy of data collected by WH. We acquired a general understanding of the reliability of collected wage data and identified some causes for inaccuracies. We also explored some alternative approaches to the collection of wage data.

OIG examined the accuracy of wage data submitted to WH for a random sample of seven surveys: one wage survey published by each of six WH's regional offices in calendar year 1995 (the Boston Region published no wage survey in 1995) and one of the wage surveys completed in 1995 by the Construction Resources Analysis (CRA), at the University of Tennessee. See Exhibit 1 of this report for a complete listing of surveys we reviewed. We assessed 837 WD-10s used by WH in determining prevailing wages and 502 WD-10s excluded by WH for not meeting the proper criteria.

We conferred with the U.S. Department of Labor, Bureau of Labor Statistics (BLS), to determine their policies and methods for conducting Area Wage Surveys that are used by WH for developing prevailing wage determinations under the Service Contract Act-- legislation similar to Davis-Bacon, but covering Government funded services, as distinct from Federally-funded construction activity.

We completed our audit work in WH's Washington, D.C. headquarters, six WH regional offices, CRA, and employers' places of business as necessary to fulfill our objectives. From the 70 wage surveys published by WH in calendar year 1995, we randomly selected one wage survey in each of six WH's regions. In addition, we selected a survey completed by WH's contractor, CRA.

We conducted our work from December 1995 through December 1996. OIG issued a "Statement of Facts" to each regional office of WH and considered their responses in preparing this report.

We identified the universe of WD-10s represented in each survey noted above. From a total of 837 WD-10s, we then selected a total of 360 WD-10s (based on a sample from each of the 7 surveys) to do more extensive testing of their accuracy. The sample selection process involved a combination of both judgmental and random sampling. (For a more complete discussion of our sampling methodology, see Exhibit 1.)

We applied three main audit procedures to the WD-10s:

- **desk reviews** of the completeness, reasonableness, appropriateness, and internal consistency of all 837 WD-10s selected for our audit;
- **confirmations** to employers covering 360 WD-10s selected for the sample, of which 315 were returned (a response rate of 88 percent). We requested that the employer confirm the accuracy of the WD-10's content. If a third party sent the WD-10, the employer became an independent entity attesting to the accuracy and validity of the WD-10. If the employer sent the WD-10 to WH, the employer was merely requested to reconfirm his/her own WD-10 through a second review of its contents; and
- **payroll reviews** conducted either from payrolls mailed by employers to WH or OIG or by onsite review of the payrolls, cost distribution reports and related data at the employers' premises. We conducted payroll reviews on 110 WD-10s.

OIG briefly explored alternative means of establishing prevailing construction wage data. We interviewed staff from BLS and considered their policies, sampling approaches, and other methodologies in setting prevailing wage levels in service occupations.

Our audit was completed in accordance with Government Auditing Standards, issued by the Comptroller General of the United States. We conducted a limited scope audit and did not design our samples and related audit procedures to project our sample results statistically to the nation.

Although we obtained a general understanding of the internal controls WH uses over the accuracy of the data in conducting the program, we did not rely on these controls. Rather, we tested the accuracy of data, independent of consideration for internal controls maintained by WH. Our concerns for the ability of WH's survey methodology and procedures to produce accurate and representative wage determinations are discussed in Chapter II of this report.

CHAPTER I

NO EVIDENCE OF FRAUDULENT DATA WAS FOUND, BUT SURVEY DATA WERE FREQUENTLY INACCURATE

No Evidence of Fraudulent Data Was Found

We completed desk reviews of data submitted on the survey instruments (WH Form WD-10s), obtained written confirmations from employers on the accuracy of WD-10s, and conducted payroll reviews of several employers' reported wage data. We found no evidence that instances of inaccuracies in the data were the result of fraud or intentional misreporting by building contractors, subcontractors, third parties or WH's staff. While intentional misreporting may occur, it was not identified in our sample of calendar year 1995 data.

As discussed in the Appendix of this report, WH reviews the data it receives for reasonableness and consistency to help ensure against inadvertent or careless errors committed by either employers, third parties, or WH itself. Analysts are to be aware of duplicate WD-10s, reported wages which appear unreasonable or contradictory, and conflicting information. Also, the wage analysts may contact the employer to clarify WD-10 entries which may be incomplete, internally inconsistent, or ambiguous.

We evaluated the accepted data to determine if it had been properly reviewed by analysts and if it should have been accepted. We also reviewed rejected data to determine if WH had properly excluded the information because it was not correct, complete or verifiable. Certain of the data wage analysts had excluded was reviewed for indications that it was deliberately reported in error. We also sent employers confirmations to ensure the data received by WH was accurate. Finally, payroll reviews of a selected number of employers were also completed.

We found 97.4 percent (489 of 502 WD-10s) of the rejected responses had been properly excluded, in accordance with WH's guidelines. Nothing came to our attention that indicated any of the data were intentionally erroneous, and we concluded that WH's review procedures afforded a measure of protection from unusable data.

Recently, WH has extended its procedures related to information submitted by third parties, to better ensure fraudulent data are not accepted. If data received from a third party are

incomplete or otherwise questionable, wage analysts are required to verify the data, by telephone, with the employer. If the employer cannot be contacted, the data are accepted only if payroll documentation is supplied. In addition, a sample of at least 10 percent of the data submitted by third parties is verified with employers.

Individuals who submit fraudulent information subject themselves to criminal statutes. Federal law (18 U.S.C. 1001) provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

In addition, Federal statutes (18 U.S.C. 1341) apply to the fraudulent use of the U.S. mail or private commercial carriers.

As this report was being prepared, WH began printing warnings on the WD-10 that submission of fraudulent or intentionally inaccurate data is a criminal offense. However, WD-10s are voluntarily submitted by employers and third parties who may not normally engage in Federal construction contracts. Therefore, WH is concerned that legal warnings against fraud on the WD-10 may dampen voluntary participation and make it difficult to obtain sufficient responses to make wage determinations.

Survey Data Were Frequently Inaccurate

Much of the data we sampled that WH used in its decisions contained inaccuracies. Overall, data related to 14.7 percent (123 of 837) of the survey forms (WH Form WD-10s) we examined contained one or more significant exceptions. In total, 211 significant errors were identified. We classified exceptions identified on individual WD-10s (caused by inaccurate data employers or third parties had submitted, or by WH in processing the data) as significant exceptions when (1) the data submitted differed by more than 10 percent from the corrected wage or fringe benefit rate or (2) the number of workers reported for any craft(s) was in error by one or more. (See Exhibit 2 for further discussion of the criteria we applied.)

Some Errors Caused Material Inaccuracies in Wage Decisions. Most of the exceptions we found either did not affect the wage decision or affected the accuracy of a wage decision by a small amount. However, several exceptions resulted in material inaccuracies in wage decisions.³ We judged an exception to have had a material effect when the errors resulted in a craft being improperly included in or eliminated from the survey, or if the wage or fringe benefit rate determined for a craft in the survey was misstated by \$.25 or more.⁴

Such exceptions occurred in five of seven states in which we reviewed WH's wage surveys: Florida, Idaho, Iowa, New York and Utah. All of these errors are shown as follows:

- In Florida, wages reported for tile mechanics (setters) on a WD-10 varied widely from the rates found through our payroll review. Wages for a small number of tile mechanics were used in the calculations. Hence, the error caused the rate to be overstated by \$1.08 per hour.
- In Idaho, carpenters' wages were understated by \$.25, carpenters' benefits overstated by \$.74, general laborers' benefits understated by \$.43, roofers' wages overstated by \$.30, and millwrights were incorrectly excluded.
- In Iowa, we found the wages for carpenters were understated by \$.32 per hour, plumbers' wages were understated by \$1.29 per hour, pipefitters' wages were overstated by \$.37 per hour and a wage rate issued for HVAC mechanics should have been dropped from the survey.

³The individual WD-10s we sampled were often one of several compiled by WH for a particular survey. Where a weighted average was used to calculate the rate for a craft, an error on an individual WD-10 usually did not materially alter a decision. Other exceptions made little or no difference in the wage rate because, (1) the determination was based upon a sufficient number of identical wage rates, unaffected by the exception, that determined the prevailing rate, or (2) WH found that union rates prevailed and based the wage determination upon a collective bargaining agreement.

⁴Errors we identified that materially affected a published decision are also included in the count of those that we determined were "significant exceptions." We considered an error "material" if it (1) altered a wage rate by 25 cents or more per hour, (2) resulted in a wage decision on a craft which should not have been made, or (3) excluded a craft on which a wage decision should have been made. We have distinguished material errors from others because we believe use of the inaccurate rates may have a material effect on the cost of construction. In several instances, it was not possible to determine the impact of errors. Consequently, we believe the number of material errors we identified is conservative. For a further discussion of our criteria, see Exhibit 2.

- In New York, elevator mechanics were inadvertently omitted by the WH National Office from the wage decision.
- In Utah, WH should not have issued a wage decision on asbestos worker, boilermaker, and structural ironworker crafts. These were mistakenly included in the survey under **building** construction type, whereas work was in a refinery which would correctly be classified as **heavy** construction.

In response to our “Statement of Facts,” WH generally agreed that the errors occurred and affected the wage decisions, as we have described.⁵

Most Exceptions Resulted From Bad Data Reported To WH. Employers, third parties and WH’s staff all contributed to the errors. However, the preponderance of exceptions we identified were in data provided by employers on the WD-10 forms and the greatest proportion of errors were in data supplied by third parties.

Figure 1 summarizes who made the errors, displayed in relation to the number of WD-10s we examined. As the Figure illustrates, the highest proportion of exceptions, 48 percent, was in data submitted by employers, who prepared 73 percent of the WD-10s in the universe we reviewed.

Third parties sent in only 27 percent (227) of the WD-10s in our audit universe, yet 36 percent (75) of all exceptions we have cited were against third-parties. Proportionately, employer-submitted WD-10s were more error free than those of third parties, but the exception rates for both entities were considerable.

The fewest mistakes were committed by WH. WH was responsible for only 16 percent (34) of all exceptions cited, against 837 WD-10s we examined. WH committed one or more errors in compiling the data from only 4 percent (32) of the related WD-10s.

⁵In our draft we reported that in a New York survey, open-shop plumbers’ wages and fringe benefits were incorrectly entered by WH as bricklayers, resulting in overstatements of \$.55 and \$6.46 per hour, respectively. WH responded to our draft report that although the error occurred, plumbers and pipefitters were doing the same work. Consequently, the union rate was found to prevail. This information contrasts with that obtained from WH through our “Statement of Facts.” Nonetheless, we have removed it from our listing of material inaccuracies.

Figure 1

WHO MADE THE ERRORS?	NUMBERS			PERCENTAGES		
	WD-10s* Tested	WD-10s** With One or More Errors	Total Errors	WD-10s Tested	WD-10s With One or More Errors	Total Errors
Wage and Hour	837	32	34	100.0%	3.8%	16.1%
Employers	609	57	102	72.8%	9.4%	48.3%
Third Parties	227	38	75	27.2%	16.7%	35.6%
Totals		123	211	100.0%	14.7%	100.0%

* Sum of the employer/ third party categories total 836 because of one WD-10 we have not classified.

** Amounts for the individual categories sum to more than the total because 4 WD-10s contained exceptions that were identified through more than one of our procedures.

Note: We identified 13 additional exceptions involving 12 WD-10s which are not included in the amounts above. The exceptions were identified while completing reviews of related WD-10s that were in our sample.

Payroll Reviews Proved Most Effective in Identifying Errors. Onsite payroll reviews proved the most effective means of identifying errors in wage data. Payroll reviews yielded the highest proportion (65 percent) of exceptions, with data on 64 percent of the WD-10s having one or more exceptions. The high percentage of errors identified by examining employer’s payroll records was particularly disturbing, since data on only 13 percent of the WD-10s in our universe were subjected to payroll reviews. Had we done more payroll reviews, we believe it is likely we would have found many more significant exceptions.

The three audit procedures we applied were (1) desk reviews of the WD-10s (including reviews of the data compiled by WH on the related WD-22a’s, WD-22S summary forms and the published wage decisions), (2) employer confirmations, and (3) onsite reviews of

employers' payroll data. Figure 2 provides a comparison of the exceptions we found and the number of reviews completed for each of the three audit procedures.

Figure 2

HOW WE FOUND THE ERRORS	NUMBERS			PERCENTAGES		
	WD-10s Tested	WD-10s With One or More Errors	Total Errors	WD-10s Tested	WD-10s With One or More Errors	Total Errors
Desk Reviews	837	32	34	100.0%	3.8%	16.1%
Confirmations	315*	24	40	37.6%	7.6%	19.0%
Payroll Reviews	110	71	137	13.1%	64.5%	64.9%
Totals		123**	211	100.0%	14.7%	100.0%

* We mailed 360 confirmations to employers and 315 were returned.

** Amounts for the individual categories sum to more than the total because 4 WD-10s contained exceptions that were identified through more than one of our procedures.

Desk reviews of WD-10s for completeness and consistency resulted in our finding only 34 significant exceptions, 16 percent of all significant exceptions discovered. The mistakes consist of improper inclusion of Federal construction projects, incorrect data entries from the WD-10 to the WD-22a, incorrect identification of construction or contract types, inclusion of projects outside the designated geographical area, failure to publish a wage decision on a craft although sufficient data was included in the WD-10s, WD-22as, and WD-22s, and inclusion of duplicate WD-10s.

Confirmation with employers of the data included on WD-10s resulted in identification of 40 exceptions, or 19 percent of all significant exceptions identified, and 8 percent of confirmations we received. We asked employers to confirm the accuracy of information submitted both by them and by third parties involving projects on which the WD-10 indicated they had worked. In several instances, employers confirmed to us that the information was accurate but we found the information inaccurate when we conducted a payroll review.

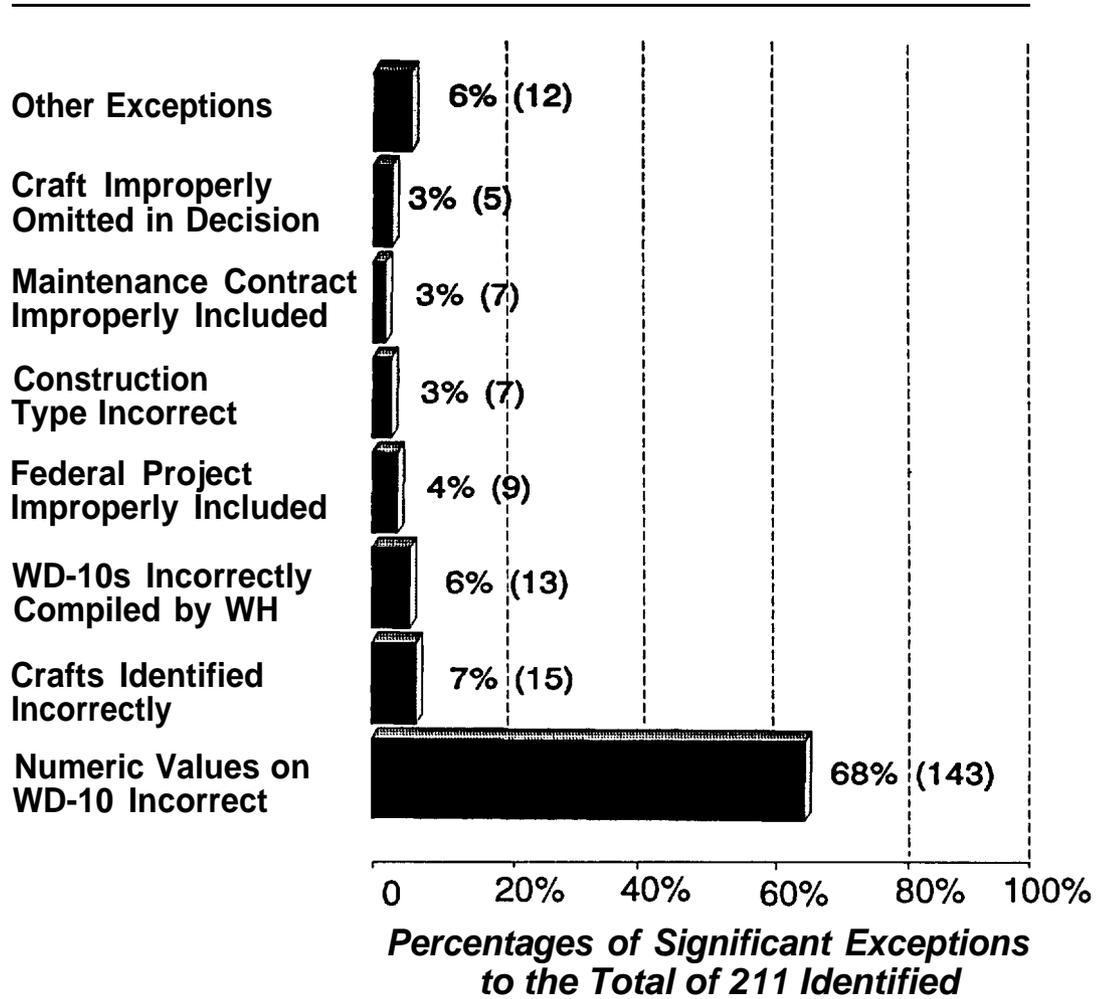
Over Two-Thirds of the Significant Exceptions We Identified Resulted from WD-10s with Incorrect Numeric Values. While a variety of errors were present on the WD-10, numeric value errors dominated the list of what errors were committed. Figure 3 illustrates the types of errors identified, by broad categories, from among the 211 exceptions we considered significant.

Confusion, Carelessness and Multiple Submissions Contributed to Errors. We were often unable to attach a cause to the exceptions we encountered. However, when a reason could be identified, it was usually the result of one of the following problems:

- confusion, sometimes acute, on how to correctly complete the WD-10. For example, one employer misinterpreted the directions on the form, identified all employees by craft in the peak week, then computed each of his/her average wages for a whole year;
- carelessness in completing the WD-10 which resulted in omitting individuals, peak weeks or other data on the form, and in lifting incorrect wages, or wages for incorrect periods, from the payroll. It also appears some employers used approximations rather than researching actual payroll data; and
- multiple sources of information for the same data. Employers and third parties sometimes submitted duplicate data or provided WH with information for the same projects with differences in peak weeks, numbers of employees in a craft, wages paid, benefits provided, etc. Some differences were caused by variations in the way the data was maintained and compiled by the various parties.

Figure 3

WHAT WERE THE EXCEPTIONS?



CHAPTER II

WH'S SURVEY METHODOLOGY SHOULD BE REEVALUATED

Better Methods of Collecting Data May Be Available

the data used in wage decisions. Errors which occur are not readily apparent from desk reviews of the information.

Although many reasons were identified for the exceptions on individual WD-10s examined in our sample, most emanate from WI-I'S reliance on employers and third parties to prepare voluntarily

We discussed WH's methodology with statisticians of the Department's Bureau of Labor Statistics (BLS), who stated a more reliable means of gathering the information used in wage decisions is the direct review and collection of the data from employers' records.

BLS conducts wage surveys by selecting employers rather than contracts. BLS also provides assurance of data accuracy through face-to-face interviews and review of personnel records and payrolls. To establish employer universes from which employers are randomly selected for review, BLS uses the Unemployment Insurance (UI) employer wage files, from which employers can be identified by Standard Industrial Classification codes. This contrasts with WH's soliciting wage information by mail from employers and third parties.

Such an approach would avoid the possibility of bias caused by participation of only those employers and third parties who may have an interest in participating in the wage surveys. Employer participation could continue to be voluntary, but uncooperative employers could be substituted through proper statistical replacement.

While some adaptation of BLS' methodology may be feasible, several barriers must be overcome. Revisions to the methodology would require regulatory and perhaps statutory changes. In addition, BLS indicates the direct collection of data is expensive. It is unlikely that WH could absorb the cost of collecting information through county-by-county surveys. Rather, if similar methods were adopted, larger geographic areas would have to be included in the surveys.

Nonetheless, BLS currently conducts wage surveys for WH to satisfy requirements under the Service Contract Act, legislation with provisions similar to those of Davis-Bacon. Methods BLS uses to collect data for the Service Contract Act may have some application to

Davis-Bacon. Finally, BLS indicates it is currently consolidating various prevailing wage surveys into a comprehensive system which should increase efficiencies in both staff time and amounts of data gathered.

Other Concerns Should Be Addressed

In assessing the accuracy of data used by WH, we became aware of other issues related to WHYS methodology of gathering and calculating prevailing wage rates. They include:

- prevailing wages established on data that are voluntarily compiled and submitted;
- decisions that are based on small numbers of individuals in a craft;
- disparities in the age of data used to establish craft rates among decisions and within crafts in the same decision;
- unnecessarily small geographic areas covered by WH surveys; and
- “peak week” criteria used in prevailing wage calculations that are often misreported and may not provide the most representative measure of wages.

Should WH Rely on Data Voluntarily Submitted? Federal regulations at 29 CFR 1.3 provide that WH collect data from construction employers and third parties who voluntarily participate in wage surveys. However, many construction employers do not participate. Consequently, the decisions made by WH may not reflect true prevailing wages and benefits in an area. As expressed by one WH official, “only those who vote, count.”

This process leaves open the possibility for certain employers and third parties to exert greater influence over the wage levels that are established. Also, some WH staff told us they believe some employers, especially small, nonunionized employers, avoid participation due to their belief that the system favors large, unionized employers. Small employers were also said to be more inclined to avoid involvement with the government.

Are Some Prevailing Wage Rate Decisions Based on Too Few Individuals? WH sometimes experiences trouble in obtaining enough survey responses from employers to ensure decisions on a craft are based upon sufficient numbers of workers. The Davis-Bacon.

Construction Wage Determinations Manual of Operations, Chapter V, pages 62 and 63 provides:

In most instances the survey response rate equals at least 25 percent, data for a substantial number of workers in each of the major classes will be accepted. However, for surveys conducted in rural counties where construction activity is sparse, or for highly specialized classes, the number of employees for whom data are provided may be limited. In such cases, a wage rate for an individual class is to be recommended only when information on at least six workers is received from three or more contractors, none of which accounts for 60 percent or more of the reported employment. However, if the overall survey usable response rate is 50 percent or more, data on only three workers, from two contractors may be utilized. Exceptions to these standards may be allowed, but must be justified in writing.

The surveys we examined contained several examples of decisions that were based upon small numbers of workers in a craft. In a special landscape survey related to highway construction in Ogle and Winnebago Counties, Illinois, WH used only one “Landscape Driver.” Only three Batt Insulators set the wage rate in a survey of Pasco County, Florida; three Sheet Metal Workers, three Backhoe Operators, and three Bulldozer Operators in Hernando County, Florida; three Bulldozer Operators in Tompkins County, New York; and three Landscape Operators in a survey of Henry and Rock Island Counties, Illinois.

Other examples in the sample include four electricians’ wages that were used in a two-county area of South Dakota. In a ten-county area of Iowa, data on only three HVAC Mechanics, three Soft Floor Layers, three Crane Operators, and three Tile Setters were used to set the prevailing wage. In the same Iowa decision, only four Batt Insulators, four Plasterers, four Pipefitters, and four Truck Drivers were used.

A potential for bias exists in using data from limited participation of employers and third parties. Low numbers of persons representing certain crafts may result in unreliable wage decisions.

Are Prevailing Wage Rates Out-of-Date? Prevailing wage rates, especially for nonunion wages, may be out-of-date by the time they are published by WH. This could hinder WH’s attempts to identify and set true wage levels in an area. Wages could thus be set too low for the affected crafts when wages are inflating over time.

We drew our audit samples from wage decisions published in calendar year 1995. However, many WD-10s from which these decisions were made included wages for peak weeks worked in 1993 and early 1994. The time gap between the peak week wages used in the decision and the date they are published can approach 3 years.

Conversely, when WH establishes prevailing wages from CBAs, the published rates are often updated to current levels. WH's surveys based on WD-10s of individual construction contracts are often periodically modified using wages included in updated CBAs. The use of current union rates and outdated nonunion wage data can result in insufficient wage levels established in nonunion areas. WH told us that some existing Davis-Bacon wage levels were established 7 to 10 years ago.

To illustrate, one county's wage decision in our sample was first published in February 1995 and modified periodically. The most recent modification was in November 1996. Because of the modifications, 20 CBA-based wage rates increased and 4 decreased. However, the two crafts whose rates were not CBA-based remained at levels published in February 1995 (from data related to the survey period of May 1, 1993 through April 30, 1994). The disparity in age between wage rates established by CBA and those that were not was at least 30 months. With the November 1996 modification, CBA-based wages increased an average of \$.52 per hour and benefits climbed \$.99 per hour.

Are Geographic Areas Covered by WH's Surveys Unnecessarily Small? WH attempts to establish construction prevailing wage rates at the county level, a level so finite that complete and timely coverage could be exceedingly difficult to achieve. The continual decline in WH's staff numbers has placed extra burdens on the agency to provide this coverage. Davis-Bacon, Construction Wage Determinations Manual of Operations, Chapter IV, page 38, provides:

A prime objective of the Davis-Bacon program is to protect "local rates of pay" and 29 CFR 1.2(b) stipulates that the "area" for the determination of wage rates is to be the city, town, village, or other civil subdivision, i.e., county, of the State in which the work is to be performed. For its data collection program, W-H usually designates the county as the principal area of focus, although in many cases more than one county is included in a specific data gathering efforts.

We acknowledge WH's objective in protecting local rates of pay. However, we believe that larger areas of consideration would not frustrate WH's objective.

Is the “Peak Week” Methodology a Sound Approach to Establishing Prevailing Wages?

WH requests employers and third parties to provide wage rate information for the week in which a particular craft has the most individuals working on a construction project. The peak week may vary for each of the crafts reported. The Davis-Bacon. Construction Wage Determinations Manual of Operations, Chapter III, page 31 provides:

In determining prevailing wages W-H utilizes a “peak week” survey concept to ensure that wage and fringe benefit data obtained from employers reflects a payroll period during which the greatest number of workers in each classification are used on the project (employed by general, prime, or subcontractors). The survey solicits the number of employees paid at each given rate during the peak week.

A significant source of exceptions in our sample was the identification of “peak weeks” by employers and third parties. Employers and third parties sometimes agreed on wages and benefits paid workers but differed on the peak week for a craft. Also, BLS officials expressed doubts as to the reliability of the peak week approach and suggested that a more representative measure might be the use of averages computed over a longer time frame during the survey period.

CONCLUSION

The high proportion of errors present in data reported to WH is a greater threat to the reliability of prevailing wage decisions than deliberate misreporting. Although WH does a creditable job of reviewing the data it receives, many errors escape detection because of underlying mistakes that are present in the information compiled and reported to WH.

Because the current process encourages voluntary submission of data from multiple sources, frequently on the same construction project, the process may be particularly vulnerable to reporting errors. Further, it may introduce bias into the survey results, particularly if the survey response rate is low.

In response to criticisms of its survey process, WH recently instituted additional review procedures. They include confirming a sample of third-party data with employers and, in certain circumstances, requesting the submission of payroll documentation. These

procedures, coupled with better understanding by employers of the data WH is requesting (perhaps through redesign of the WD-10 form), may help eliminate some errors.

However, such procedures should be viewed as temporary steps until more fundamental reforms in WH's survey methodology can be made. Davis-Bacon, long in existence, should be redesigned for the long term.

RECOMMENDATIONS

Independent selection and collection of payroll information offer the greatest assurance of obtaining accurate information. Therefore, we recommend the Assistant Secretary for Employment Standards revise the survey process to:

1. select contractors for participation using statistical or other independent means; and
2. 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.

The reduction of items as a result of statistical sampling, along with other measures such as expanding the geographic coverage of the wage surveys, could mitigate higher costs associated with onsite collection. Third parties could continue to be involved by providing information to WH for verification of wage and benefit data collected from employers, for example, in geographic areas dominated by collective bargaining agreements.

WH received \$3.75 million in its fiscal year 1997 appropriation to investigate methods of improving its wage survey system. Consequently, the means are available to study and test modifications to the wage survey system and procedures. Accordingly, we also recommend the Assistant Secretary for Employment Standards:

3. 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. In the interim, " contractor-submitted data can be verified on a sample basis and appropriate enforcement actions initiated against persons making false reports.

WAGE AND HOUR'S RESPONSE TO THE DRAFT REPORT

WH submitted its response to our draft report on February 24, 1997, and the full response is attached to this final report. (See Exhibit 3.) WH made the following comments:

- WH was encouraged that OIG found no evidence of fraud or intentional misreporting by any parties submitting wage data.
- OIG's audit was conducted before WH had implemented new data verification procedures.
- WH was gratified that WH staff were found to have done a creditable job in their program performance.
- WH was concerned about the high proportion of errors in data submissions.
- OIG should emphasize that the audit was limited in scope and was not designed to project findings and results nationally.
- Most of the data inaccuracies did not affect craft classifications or had minimal effect on craft wage decisions, with only 13 percent of the wage rates needing modification as a result of the audit.
- WH will address the causes for errors identified and the methodology issues cited in the report as a part of their ongoing reengineering initiative.

WH does not concur with the recommendation to select survey employers by means of statistical sampling or other independent means, although WH is not ruling out this approach which is done by BLS. WH believes that neither their "universe" approach to data gathering nor BLS' statistical approach would eliminate the errors found in the audit.

WH also disagrees with the recommendation to obtain wage data only by onsite employer payroll reviews. WH indicated such an approach would rule out mailed Occupational Employment Statistics (OES) survey data; would be more expensive, time-consuming, and burdensome to employers; could result in less employer participation with resulting less accurate information; and would cause fewer wage surveys resulting in even older, more outdated information. WH will conduct some onsite wage verification in their pursuit of methodological improvement.

In WH's view, third party participation in the survey process should not be eliminated. Third parties make a valuable contribution both in data needed and data accuracy. WH believes that no sources of data should be ignored so long as proper verification procedures are followed.

WH agrees with our recommendation to work with BLS in seeking program improvements. WH will also consult with other sources such as the American Statistical Association. For whatever systems are initiated or continued, WH believes that an effective data verification process must be included.

OIG'S CONCLUSION

Although we did not identify fraudulent or intentionally incorrect wage submissions during our audit, we reiterate that the possibility of such submissions continues to exist. Our audit work was limited in scope and involved a combination of both judgmental and statistical sampling. We stratified our sample to include one wage survey in each WH region which published wage decisions in calendar year 1995. To further emphasize the limited scope of our audit, we have included an additional statement describing the limitations in bold, bordered print on the opposite side of the title page of this report.

We acknowledge that many of the significant errors we discovered would not in themselves necessitate modifications to wage decisions. However, we also reemphasize that our reviews usually covered only a small proportion of the WD-10s related to a single craft. Had we reviewed more data, we are confident we would have discovered more inaccuracies. Particularly due to the high rate of significant errors cited in our payroll reviews, more payroll reviews would surely have yielded many more errors, enough of which could have led to additional changes in wage and benefits decisions. We believe it is especially significant that our limited testing resulted in changes to 13 percent of calendar year 1995 published wage rates.

As to use of statistical sampling versus what is described by WH as "universe sampling," we believe that statistical sampling is superior to voluntary wage submissions because the former eliminates potential bias in the results. With statistical sampling of contractors drawn by WH, outcomes could not be readily skewed by groups who more frequently respond to WH survey requests. Specifically, such an approach would neutralize the criticism that third parties unfairly impact craft wage decisions.

We agree that independent sampling alone would not correct many of the errors we cited in our audit. However, this form of sampling combined with direct payroll reviews would have presented a more accurate prevailing wage. Our own payroll reviews found significant errors in about two of three WD-10s examined. These were errors which would not have occurred if the data had been collected by WH through payroll review. We doubt that WH would experience increased resistance from employers by use of onsite reviews. Neither OIG nor BLS faced significant employer resistance to this means of obtaining data. Uncooperative employers could be replaced through statistical substitution.

If WH could broaden the geographical coverage of its wage surveys, WH might offset the increased time, effort, and cost required for onsite payroll reviews. Otherwise, we encourage the approach of blending the various wage surveys done by both WH and BLS, with particular emphasis on combining survey efforts for construction and service occupations. Certainly, the current direction of dovetailing with the OES and JOBS2000 (a program to replace BLS' Employment Cost Index, Occupational Compensation Survey Program, and Employee Benefits Survey) programs is worthy of further exploration. A fringe benefit component would need to be added to satisfy Davis-Bacon construction requirements. Onsite reviews should at least be a part of the process.

We do not agree with WH's objection to excluding third parties from wage surveys. Our audit indicated that third parties complicate the process of obtaining accurate data and contribute to significantly higher error rates. Additionally, third parties do not pay wages. Employers do. Data is usually more accurate when obtained from the original source, rather than from a third party. Therefore, a statistical selection of employers would go far in solving both the coverage and the accuracy problems faced by WH.

We encourage WH's commitment to cooperation with BLS and other agencies with statistical expertise in improving the Davis-Bacon construction wage survey program.

BACKGROUND

On March 3, 1931, Congress passed the Davis-Bacon Act. Davis-Bacon's intent was to prevent U.S. Government funded construction projects from undercutting local prevailing construction wages. It was also intended that Davis-Bacon reduce local labor displacement resulting from the importation of low-wage workers from outside of the Government construction area. Davis-Bacon (40 U.S.C. 276) requires that employers pay local prevailing wages in the various construction skill trades for U.S. Government funded projects. Davis-Bacon, therefore, serves essentially as special minimum wage legislation for the benefit of construction workers.

Provisions of the 1931 Davis-Bacon Act have remained largely unchanged. Since 1964, Davis-Bacon has included provisions for determining prevailing rates applicable to bona fide fringe benefits in addition to wages.

Davis-Bacon, as amended, is administered by the Secretary of Labor. The Secretary has delegated authority for carrying out Davis-Bacon's provisions to the Assistant Secretary for Employment Standards, Wage and Hour Division (WH), Division of Wage Determinations.

Federal personnel in WH make determinations that are used to establish prevailing wages. Determinations result from wage information collected by WH through survey instruments provided to contractors, their subcontractors and third parties, such as unions and trade groups. Whereas enforcement of Davis-Bacon's provisions is done in 64 of WH's area offices throughout the U. S., WH's seven regional offices conduct the surveys. Participation in the surveys is voluntary. WH indicates that many employers do not respond to wage requests due to time, costs and lack of interest in Federal construction contracts.

The determinations establish minimum wages Federal construction employers pay workers⁶ and also affect states that have "little Davis-Bacon" statutes and rely, in part, on Federal wage determinations to set prevailing wages for state and local construction projects.

The universe of projects covered by Davis-Bacon includes Federal and Federally-assisted contracts of over \$2,000 to which the Federal Government or District of Columbia is a party

⁶Davis-Bacon's provisions may apply not only to Federally-funded construction projects, but also construction in which the Federal Government has an interest. For example, projects in which the Federal Government has shared ownership or has guaranteed the loans may fall under Davis-Bacon's provisions.

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(2 of 5)**

and involve construction, alteration, or repair of public buildings or public works. Davis-Bacon applies to both general contractors, prime contractors, and subcontractors. Davis-Bacon does not apply to businesses that provide construction materials to the builders and repairers. Congress extended prevailing wage provisions to approximately 60 other Federal laws that assist construction projects through grants, loans, loan guarantees, insurance, and direct financing. These statutes are known as “Davis-Bacon Related Acts. ”

Davis-Bacon applies to all laborers and mechanics employed on a covered construction project. However, WH does not establish separate prevailing wage rates for apprentices, trainees, and working foremen. The construction “helper” may be included in wage surveys if the designation is established, clearly defined, is distinct from journeyman duties, and “helper” is not synonymous with “trainee. ” Any classification of laborers or mechanics not listed in the contract but employed under the same must be classified “in conformance” with the wage determination. An “in conformance” wage rate must bear a reasonable relationship to the wage rates contained in the wage determination.

WH identifies four major categories of projects when conducting prevailing wage analyses:

1. Commercial Building;
2. Residential Building;
3. Highway Construction; and
4. Heavy Construction.

When the nature of a project or the work assignments are not clear by craft, WH must consider other factors. These particularly include “area practices, ” common to construction activity in the general area.

The Survey Process

WH conducted 104 wage surveys in fiscal year 1995 (70 surveys in calendar year 1995) with a primary staff of approximately 25 positions in the national and regional offices. WH received about 75,000 WD-10s from over 37,000 employers and third parties. In fiscal year 1995, about 4,000 of the possible 12,400 (3,100 counties times 4 construction types) county-combinations of wage decisions were current, approximately 3,600 of which were made from collective bargaining agreements (CBAs).

**APPENDIX
(3 of 5)**

The survey process WH uses to determine prevailing wages is extensive. A variety of exceptions, special provisions and unique circumstances affect how WH conducts its surveys. However, the following narrative provides a general description of the process and methodology in use.

Annually, WHYS regional offices develop a survey plan. WH uses reports produced by the F. W. Dodge Division of McGraw Hill Information Systems. The reports identify active construction activity by various categories and areas of the country. Along with these reports, WH also considers current survey requests from employers, unions, trade associations, government entities and unfilled prior year's requests in preparing the annual wage survey plan. WH's national office reviews the regions' plans and compiles a national survey plan.

WH intends to protect "local rates of pay." Consequently, the county is often defined as the geographic area for determining wage rates. Other political jurisdictions, such as cities and towns, may be defined as the area for determinations; the geographic area may include several counties. However, the Department's regulations (29 CFR 1.7) prohibit commingling of information for "rural" and "metropolitan" areas. In addition, if requested by the funding agency, WH may establish wage determinations for a particular project.

CRA, affiliated with the University of Tennessee's College of Business Administration, contracts with WH for a number of activities related to the survey process. Among the activities are analysis of data, maintenance of data bases, and production of special reports that assist WH in planning, selecting and completing the surveys. CRA also conducts "minisurveys" to detect area practices and to assess whether union scale wages are likely to still prevail in an area or if "open shop" wages likely predominate. WH uses minisurvey findings in the survey planning process. In addition, CRA has also supplemented WH's staff by conducting prevailing wage surveys.

Most determinations and modifications are made using wage and fringe benefit data obtained from one of two sources:

1. Collective bargaining agreements (CBAs)
2. Surveys of construction projects in defined geographic areas

**APPENDIX
(4 of 5)**

The regulations define prevailing wages as those paid to a majority (greater than 50 percent) of workers, in an area, for particular job classifications, on similar construction projects, during a particular time period. If union negotiated rates dominate construction wages and fringe benefits in an area, WH may deem a prevailing wage survey unnecessary, because the “majority rule” applies, and determine the prevailing wage as that established by CBAs applicable to that period.

More often, a survey is used to determine whether union rates, or other wage rates not established through CBAs, predominate. If the “majority rule” does not apply, the prevailing wage is determined by calculating the weighted average of wages paid all workers in that classification. Similar criteria are applied to determine the prevailing fringe benefit rates (if any) that apply.

WH indicates that 49 percent of wage decisions are exclusively nonunion rates and 29 percent are exclusively union rates. The remaining 22 percent of the wage decisions are a mix of both union negotiated wage and “open shop” wage rates.

WH attempts to issue a determination on key crafts expected to be involved in construction and relies on voluntary submission of data from employers and other “interested parties” to complete its surveys. Once the decision to conduct a survey has been made, WH notifies local and national unions, trade associations, and governmental entities of its intentions and they are encouraged to provide information applicable to the area surveyed. WH also uses the Dodge reports to identify construction projects of a type, time frame and location applicable to the survey. In addition, information is solicited from general contractors regarding their subcontractors. WH then contacts subcontractors and requests wage and fringe benefit information.

Upon receipt of the wages from employers and third parties, WH completes “desk reviews” of the information against several criteria to ensure it is complete, appropriate and applicable to the survey, was submitted in a timely fashion, and does not duplicate data previously received. As necessary, the employer or interested party is contacted to resolve questions regarding the data that have been submitted.

WH recently began sampling 10 percent of third-party submissions and conducting more extensive checks to help ensure validity of wage information for the 10 percent sample. Procedures include contacting the entity identified on the returned survey form to ensure the data was, in fact, submitted by that entity.

**APPENDIX
(5 of 5)**

If found suitable for inclusion in the survey, the data are tabulated and a decision made as to whether adequate responses have been received to make a wage decision. WH guidance provides that the “usable response rate” must be 25 percent or greater.⁷

Special rules apply to surveys in which construction activity is sparse or a craft is highly specialized. In these instances, WH allows a determination to be made if the “usable response rate” is 50 percent or more and data are available on a minimum of two contractors involving a total of three workers.

If the “usable response rate” is inadequate, further followup may be done or the survey expanded. If the response rate is adequate, WH determines if there is a significant union presence and if the “majority rule” applies. If sufficient data cannot be obtained for particular crafts or for an entire survey, WH will not issue a decision.

OIG’s Involvement

Various individuals have questioned the accuracy of information WH collects and publishes. Recently, incidents occurred in which it is alleged that information reported to WH was fraudulent. The Department of Justice is conducting an investigation of whether information WH used to determine prevailing wage rates was fraudulent. The data was submitted by third parties in 1993 and 1994 and involved surveys in the Oklahoma City area which affect the 1995 wage decision.

Consequently, members of Congress requested both the U.S. General Accounting Office (GAO) and Labor’s Office of Inspector General (OIG) review issues related to the program. The agencies agreed to coordinate efforts toward this end.⁸

⁷WH calculates the “usable response rate” by dividing the number of responses received that contain usable data by the total number of contacts made with general contractors and subcontractors, and multiplying the result by 100.

⁸GAO issued its report on May 31, 1996, entitled, *Davis-Bacon Act, Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data* (GAO/HEHS-96-130). The report focused on the adequacy of policies and procedures in place to prevent use of inaccurate or fraudulent wage data.

OIG'S SAMPLING METHODOLOGY

SELECTION OF WH SURVEYS FOR AUDIT

Our overall sampling unit was surveys that WH completed and published in calendar year 1995. At our request, WH provided us a listing of 110 surveys published in fiscal year 1994 and 104 surveys published in fiscal year 1995. An additional listing showing five surveys published from October 1, 1995 to December 31, 1995, was provided to us. We decided to use calendar year 1995 surveys which were from the most recent 12-month period available. We used the more recent period to increase our chances of contacting contractors and subcontractors, as well as locating and examining payrolls and other support for the WD-10 survey documents submitted to WH.

Although we used the most recently published surveys, the survey periods sometimes included data from calendar year 1993. Consequently, we encountered some difficulty locating employer supporting information due to business reorganizations/liquidations, changeover in personnel who completed the WD-10s, purging of records, etc.

During calendar year 1995, WH published 70 surveys. We randomly selected one survey from each of the six regions for which a survey was published. We also selected a survey performed by CRA on behalf of WH. The purpose of selecting a survey from each region was to obtain nationwide coverage for our audit. Our sample results are not statistically protectable nationally.

Upon beginning the audit of the sampled survey in each WH region, we found that in some cases a multi-county survey resulted in more than one survey decision being published, and we had selected only one of the survey decisions. If WH receives enough usable WD-10s in response to its surveys, separate decisions will be published for various counties covered by the survey. WH considers each of these separate published decisions to be a survey, even though the multiple decisions resulted from one multi-county survey effort. In some instances, we elected to include the additional published survey decisions covered by a multi-county survey effort in our audit in order to review the entire survey effort.

The following table shows the number of surveys published for each WH region during calendar year 1995, the number we selected for audit, and the number of decisions we reviewed where a survey effort resulted in multiple decisions being published:

EXHIBIT 1
(2 of 4)

Region	Surveys Published	Surveys Selected	Resulting Decisions Audited
Boston	0	0	0
Philadelphia	26	1	2
Atlanta	18	1	2
Chicago	8	1	5
Dallas	5	1	1
Kansas City	10	1	1
San Francisco	2	1	2
CRA	1	1	1
Totals	70	7	14

The surveys we randomly selected and included in our audit are identified below:

Philadelphia (completed by WH's New York office)⁹ - Wage Decision No. NY950077 (Building Survey), published February 17, 1995, for Schuyler, Seneca and Yates Counties, New York. We also included Wage Decision No. NY950072, published February 10, 1995, for Tompkins County, New York.

Atlanta - Wage Decision No. FL950069 (Building Survey), published March 24, 1995, for Pasco County, Florida. We also included Wage Decision No. FL950077, published March 17, 1995, for Hemando County, Florida.

⁹Subsequent to the period in which the surveys we reviewed were completed, WH consolidated several offices' operations.

EXHIBIT 1
(3 of 4)

Chicago - Wage Decision No. IL950020 (Landscape Survey), published March 10, 1995, for Kankakee County, Illinois. Also included were four decisions for Illinois counties of Peoria, Tazewell, and Woodford; McLean; Ogle and Wimebago; and Henry and Rock Island. All decisions were published as Wage Decision No. IL950020 on March 10, 1995.

Dallas (completed by WHYS Denver office) - Wage Decision No. UT950004 (Building Survey), published February 10, 1995, for Davis County, Utah.

Kansas City - Wage Decision No. IA950019 (Building Survey), published March 31, 1995, for Adams, Clarke, Decatur, Fremont, Mills, Montgomery, Page, Ringgold, Taylor, and Union Counties, Iowa.

San Francisco (completed by WH's Seattle office) - Wage Decision No. ID950014 (Building Survey), published July 28, 1995, for Bear Lake, Bingham, Franklin, Oneida, and Power Counties, Idaho. We also included Wage Decision No. ID950013, published July 28, 1995, for Bannock County, Idaho.

CRA - Wage Decision No. SD950044 (Residential Survey), published February 17, 1995, for Bennett and Shannon Counties, South Dakota.

WD-10 SELECTION

Survey Decisions are published based on WH's compilation and analysis of information submitted by employers and interested third parties on Forms WD-10 (Report of Construction Contractor's Wage Rates). We obtained all usable WD-10s included in the surveys we audited and performed a desk review of each WD-10 for completeness and accuracy.

We selected a judgmental sample of WD-10's for written confirmation with the employer to validate the accuracy and legitimacy of the information on the form. We stratified the sample to ensure that WD-10s with large numbers of employees or crafts would be confirmed, and selected a random sample of the remaining WD-10s to ensure that all forms had a chance to be selected.

Our final selection was for onsite payroll reviews at employers' places of business. These reviews were performed to determine if authentic source data were available to support the

EXHIBIT 1
(4 of 4)

information reported to WH on WD-10s. The payrolls examined were judgmentally selected. Factors included were employers' and third parties' responses to confirmations, number of crafts and employees on the WD-10, and number of WD-10s submitted by the employer for the survey. The numbers of WD-10s related to each audit procedure we employed are shown below:

State	Desk Reviews	Confirmations	Payroll Reviews
New York	235	64	7
Florida	151	51	27
Illinois	60	60	11
Utah	80	50	16
Iowa	107	55	8
Idaho	188	64	25
South Dakota	16	16	16
Totals	837	360	110

In a small number of instances, we did not perform payroll reviews onsite. The payrolls were submitted to WH by the employers at the time the WD-10s were prepared or were submitted to us in lieu of an onsite visit. However, we did perform desk reviews of those payrolls. Because we used judgmental rather than statistical sampling, our results cannot be projected.

**“SIGNIFICANT” EXCEPTIONS AND EXCEPTIONS
WHICH MATERIALLY CHANGED
PREVAILING WAGE OR BENEFITS DECISIONS**

We noted many instances which we deemed “insignificant.” Such items included unexplained blanks in certain information blocks on the WD-10s, informational items marked out of WD-10s without clear reason or explanation, incomplete information in certain WD-10 blocks, peak week differences between WD-10 and confirmations/payroll reviews, etc. Therefore, we set parameters on what we considered “significant” exceptions.

We classified exceptions that met the following criteria as significant:

- Numeric values in the WD-10 differed from what was confirmed by employers or employer payroll reviews by 10 percent or more in wage rates or total fringe benefits rates by craft.
- The number of persons in a craft shown in the WD-10 differed from what was discovered through employer confirmations or payroll reviews.
- Crafts were either improperly included in or excluded from the WD-10 based on the information obtained from employer confirmations or payroll reviews.
- Numeric value differences of 10 percent or more existed in wages and benefits in the WD-22a from the documented values in the related WD-10.
- The number of persons in a craft shown in the WD-22a differed from what was shown in the related WD-10.

We cited exceptions which met the following criteria as **material**:

Cumulative effect on a craft in the survey as a whole moved the wage or benefits rate by plus or minus \$.25 per hour or more.

Exceptions we cited resulted in WH withdrawing a wage decision on a craft.

Exceptions we cited resulted in WH modifying a wage decision to publish a craft inadvertently omitted.

EXHIBIT 3

WAGE AND HOUR'S COMPLETE RESPONSE TO THE DRAFT REPORT



February 24, 1997

MEMORANDUM FOR JOHN J. GETEK

Assistant Inspector General for Audit

FROM:

JOHN R. FRASER

Acting Administrator

SUBJECT:

DRAFT OIG Report on Accuracy of
Davis_Bacon Wage Surveys/Determinations

Thank you for the opportunity to comment on your draft audit report - "Inaccurate Data Were Frequently Used in wage Determinations Made Under the Davis-Bacon Act" - on the accuracy of wage and fringe benefit data collected and used for the Davis-Bacon Act wage survey program.

We are encourage to note that your exhaustive examination of recent wage survey data found no evidence of fraud or intentional misreporting by construction contractors, subcontractors, or third parties. In this regard, it is also worth noting that your audit examined wage surveys conducted before new data verification procedures were implemented by Wage and Hour. In addition, we are gratified that you found that Wage and hour staff generally did a creditable job of reviewing and analyzing the survey data received, and correcting or eliminating responses which were not appropriate to the surveys. Nonetheless, we are seriously concerned that your audit found such a high proportion of data submissions, from all source, containing inaccurate data.

We believe it is also important to emphasize - as stated in your draft report - that you conducted a limited scope audit and did not design your sample and related audit procedures to be able to project the audit findings and results nationally. We also believe it significant that your audit found that most of the inaccurate data reported by survey respondents - referred to as "exceptions" in the draft report - did not affect the classifications and corresponding wage rates found to be prevailing, or only minimally affected the accuracy of a particular wage decision. Without intending in any way to minimize the seriousness with which we regard the findings of inaccurate data submissions, it must also be noted that only about 13 percent (22 of 170) of the wage rates needed to be - and have been - changed based on the audit findings. Even then, most of these changes were small and likely would have fallen within the statistical margin of error typical of other surveys.

The draft audit report states that you were often unable to attribute a cause to the data reporting errors that were detected, but that when a reason could be identified it usually resulted from: (1) confusion about how to complete the survey form (WD-10); (2) carelessness in completing the form; or (3) compilation problems associated with receiving data about the same project from two different sources. Clearly, these issues must be addressed as we improve the accuracy of the survey data submitted to Wage and Hour, and we fully intend to address these problems as we continue to develop alternative procedures as part of our on-going reengineering initiative.

Working for America's Workforce

Your draft audit report provides a detailed discussion (chapter II) of certain issues regarding the methodology currently used to establish prevailing wage rates under the Davis-bacon Act. These issues include: the possibility of bias in the survey data submitted; decisions based on a relatively small amount of data; disparities in the age of the data submitted; small geographic areas covered by the surveys; and the use of the "peak week" concept in the survey process. We agree that these issues warrant careful examination, and addressing many of these issues is at the core of our reengineering initiative. With the possible exception of the "peak week" concept, however, we do not believe that these methodological issues relate directly to the principal audit findings concerning the accuracy of the survey data submitted to Wage and Hour. Nevertheless, we share concern about these methodological issues and your Observations are a valuable addition to our reengineering considerations.

As we have stated, we agree in principle with the general thrust of your draft recommendations. However, as explained below, we urge that these recommendations be formed in light of the extensive work we have been doing to identify and evaluate potentially feasible and cost-effective options for improving the Davis-Bacon wage setting process.

With respect to your first recommendation, we cannot concur - at least at this time - that a viable long-term approach to conducting Davis-Bacon surveys must include a process to select survey participants using statistical or other independent means. As you know, we do not mean to "rule out" such an approach as we are currently examining different long-term approaches and at least one possible option would use Bureau of Labor Statistics' (BLS) survey data where participants are selected through statistical sampling. We do not believe, however, that the serious problems you found regarding the accuracy of the data submitted by survey participants relates only to the universe (rather than sample) survey approach currently used for the Davis-Bacon survey program. Whether conducting a universe survey (like the current process) or a sample survey (like BLS surveys), one must start with a comprehensive and reliable definition of the universe of possible respondents. And either survey approach must have effective means to validate the accuracy of information provided by survey respondents; as your draft report points out, there are many possible reasons that survey responses could be inaccurate ranging from purposeful misreporting to simple misunderstanding of the information being sought. These essential issues must be addressed by any survey approach - but there is nothing that we see which makes a sample survey inherently preferable to a universe survey approach. A universe survey gives all potentially interested parties an opportunity to participate and - provided adequate verification mechanism (needed in any case) - could produce more accurate results (with no sampling error) provided there is adequate, representative response. On the other hand, sample surveys are likely to be somewhat less expensive and time-consuming than universe surveys. It is clear, however, that the data reliability issues identified in the draft report must be addressed regardless of the survey approach utilized, and we do not believe that statistical sampling - in and of itself - will contribute to improving the accuracy of wage data submitted to and used by the Department.

We also cannot agree with the draft report's second recommendation that we obtain survey data only through on-site review of employed payroll records. This recommendation would eliminate the possibility of using major BLS survey program, such as the Occupational Employment Survey, which collect data by mail. We do agree - at least on a theoretical basis - that on-site data

collection should provide the most accurate result; however, we cannot agree with a view that surveys which do not collect their data through on-site records inspection are necessarily inaccurate (e.g. the Census, most BLS surveys, etc.). In addition, there can be no doubt that - compared to mail or telephone surveys - on-site surveys are much more expensive, time-consuming, and burdensome on employers which might choose to participate. In fact, adopting this recommendation could well result in less accurate Davis-Bacon wage determinations overall because even fewer employers might choose to participate (and thereby subject themselves to the burden and risk of on-site payroll records review) and fewer wage surveys could be conducted (because of the much higher unit-cost) so that more wage determinations would be based on older and, therefore, less accurate information. In assessing the possible methodologies to be adopted for Davis-Bacon purposes over the long-term, we believe it is essential to evaluate the costs and benefits of multiple approaches. Nevertheless, your audit findings are extremely helpful and, at a minimum, we will include some on-site data verification as part of the wage survey methodology improvements we are pursuing.

We must also question the draft report's recommendation that third party submissions - such as data from employer associations and labor unions - should be excluded from the Davis-Bacon wage survey process. The large majority of respondents to Davis-Bacon wage surveys are employers. But associations and unions also have interests in the process and can provide valuable information that promotes the accuracy of Davis-Bacon wage determinations. The real issue is data accuracy and, as long as there are adequate means to test and validate data submissions (from whatever source), there appears to be no clear reason - beyond the difficulties in identifying the survey universe - why some potential sources of accurate data should be excluded from the opportunity to participate in the survey process.

With respect to the draft report's final recommendation, Wage and Hour generally concurs. We have been, and will continue to obtain advice and assistance from BLS as part of our reinvention initiative. We should point out, however, that there are other potential sources of such assistance - such as the American Statistical Association - that may provide the same kind of services as BLS without creating the same kind of potential for mission conflict were BLS to become too involved in what is a regulatory function under Davis-Bacon. We also concur that employer-submitted survey data needs to be verified, at least on a sample basis, and the appropriate enforcement actions should be initiated against persons making false reports in response to Davis-Bacon wage surveys. We have already taken steps consistent with these recommendations.

Again, we thank you for this very thorough and useful audit. Attached are a few technical and factual corrections that we believe are needed in the draft report.

Attachment

cc: ESA Assistant Secretary Bernard Anderson
Donna G. Copson, Director, Office of Management, Administration and Planning

Technical/Factual Corrections for the OIG Draft Davis-Bacon Act Audit Report

Page 6, ¶ 3: The Bureau of Labor Statistics does not determine prevailing wages under the Service Contract Act (SCA). The Wage and Hour Division determines SCA prevailing wage rates; however, BLS surveys are one of the principal data sources utilized by Wage and Hour. In addition to BLS, Wage and Hour also utilizes Wage Board and Nonappropriated Fund surveys in developing SCA wage determinations. This sentence should read:

We conferred with . . .to determine their policies and methods for conducting Area Wage Surveys that are used by the Wage and Hour Division for developing prevailing wage determinations under the Service Contract Act...

Page 11, first bullet: We believe this bullet should be deleted. The omission of elevator mechanics was a mistake of the National Office in preparing the survey findings for publication in the wage determination. We do not believe that this type of error should be attributed to the survey process. Also, the statement regarding the plumbers' hourly wages and fringe benefits being overstated is incorrect. Although five open shop plumbers were incorrectly entered as bricklayers, when all the data for plumbers and pipefitters were analyzed, it was determined that they were doing the same work and the union rate was found to be prevailing for plumbers/pipefitters. Thus, the data entry error did not result in an error in the wage determination.

Appendix, 2 of 5, first full ¶: Davis-Bacon applies to all "laborers and mechanics" employed on a covered construction project. Davis-Bacon does apply to apprentices, trainees, and working foremen; however, we do not establish separate prevailing wage rates for these classifications.