

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

9992

The Davis-Bacon Act Should Be Repealed

The Congress should repeal the act because:

- Significant changes in economic conditions, and the economic character of the construction industry since 1931, plus the passage of other wage laws, make the act unnecessary.
- After nearly 50 years, the Department of Labor has not developed an effective program to issue and maintain current and accurate wage determinations; it may be impractical to ever do so.
- The act results in unnecessary construction and administrative costs of several hundred million dollars annually (if the construction projects reviewed by GAO are representative) and has an inflationary effect on the areas covered by inaccurate wage rates and the economy as a whole.



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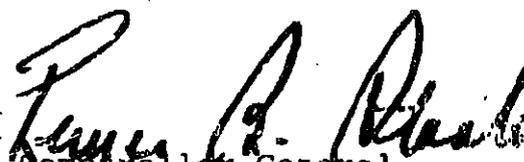
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To the President of the Senate and the
Speaker of the House of Representatives

This is our report to the Congress, "The Davis-Bacon
Act Should Be Repealed."

We are recommending that the Congress repeal the
Davis-Bacon Act because (1) there have been significant
changes in the economy since 1931 which we believe make
continuation of the act unnecessary, (2) after nearly
50 years, the Department of Labor has yet to develop an
effective program to issue and maintain accurate wage
determinations, and it may be impractical to ever do so,
and (3) the act is inflationary, and results in unnecessary
construction and administrative costs of several hundred
million dollars annually.

We are sending copies of this report to the Secretaries
of Labor; Commerce; Defense; Health, Education, and Welfare;
Housing and Urban Development; Transportation; and the
Treasury; the Administrator, Environmental Protection Agency;
the Postmaster General; and the Director, Office of Management
and Budget.


Comptroller General
of the United States

D I G E S T

The Davis-Bacon Act is no longer needed. Other wage legislation and changes in economic conditions and in the construction industry since the law was passed make the law obsolete; and, the law is inflationary. GAO believes it should be repealed.

The Davis-Bacon Act requires that each contract for the construction, alteration, or repair of public buildings or works in excess of \$2,000 to which the United States is a party--or, under 77 related laws, in which the United States shares the financing--state the minimum wages to be paid to various classes of laborers and mechanics. The minimum wages (including fringe benefits) are those determined by the Secretary of Labor to be prevailing for the laborers and mechanics employed on projects of a similar character in the area in which the work is to be performed.

The act was intended to discourage nonlocal contractors from successfully bidding on Government projects by hiring cheap labor from outside the project area, thus disrupting the prevailing local wage structure.

GAO believes that the Davis-Bacon Act should be repealed for the following reasons.

SIGNIFICANT CHANGES IN ECONOMIC
CONDITIONS AND WORKER PROTECTION
LAWS SINCE THE 1930s

When the act was passed in 1931, the United States was rapidly sliding into the great depression. Construction, which was about \$10.6 billion in 1929, fell to \$2.9 billion by 1933, and most of that was Government financed.

During the same period, employment in the construction industry declined from 1.5 million in 1929 to about 800,000 in 1933. Competition for contracts and for jobs was great-- especially for Government construction. There were no minimum wage laws and no unemployment compensation programs or other laws to protect the wages of workers.

Since the act was passed, the Congress has enacted a number of other laws to protect the wages of construction workers, including laws requiring that minimum and overtime rates be paid and laws prohibiting contractors from requesting kickbacks of wages. (See ch. 3.)

In 1977 about \$172.5 billion was spent on new public and private construction projects. About 78.1 percent (\$134.7 billion) was for privately financed projects without the prevailing wage protection of the Davis-Bacon Act. The remaining \$37.8 billion was for direct Federal or federally assisted construction spent by State and local agencies and involved an estimated 600,000 prime and subcontracts and an estimated 22 percent of the Nation's 3.8 million construction workers. (See ch. 1.)

THE ACT HAS BEEN AND CONTINUES
TO BE IMPRACTICAL TO ADMINISTER

After nearly 50 years of administering the Davis-Bacon Act, the Department of Labor has not developed an effective system to plan, control, or manage the data collection, compilation, and wage determination functions. GAO's review of the wage determination activities in five regions and headquarters showed continued inadequacies, problems, and obstacles in Labor's attempt to develop and issue wage rates based on prevailing rates.

Evaluation of the wage determination files and inquiries regarding 73 wage determinations at five regions and headquarters showed that, in many instances, wage rates were not adequately or accurately determined.

About one-half of the area and project determinations reviewed were not based on surveys of wages paid to workers in the locality, but on union-negotiated rates.

When surveys were made, the data collection and compilation practices were varied and inconsistent within and among regions, and at the headquarters level. There were also problems in identifying similar projects and collecting data from contractors on a voluntary basis.

Further, Labor deleted, added, and changed the wage data received without adequate reason or rationale. As a result, many of the worker classifications and rates issued did not represent the prevailing wages paid in the locality.

In GAO's opinion, Labor's procedures for developing and issuing wage rate determinations provide no assurance that the rates stipulated actually prevail for corresponding classes of workers on similar private construction projects in the locality. (See ch. 4.)

INCORRECT RATES ARE INFLATIONARY ON THE LOCAL AND NATIONAL ECONOMY

GAO's review of 30 Federal or federally assisted projects, costing an estimated \$25.9 million, showed that the majority of the rates issued by Labor were higher than the prevailing rates in 12 of the localities and lower in the other 18. In the 12 determinations where Labor's rates were higher, wage costs paid on the projects averaged 37 percent more than the comparable wage costs at rates prevailing in the localities. The higher wage costs ranged from a low of 5 percent to a high of 123 percent. As a result, Federal construction costs may have been inflated by an average of 3.4 percent. The increases ranged from 1 to nearly 9 percent. (See ch. 5.)

While GAO's selection of the 30 projects was made on a random sample basis, the sample size was insufficient for projecting the results to all Federal or federally assisted construction costs during the year with statistical validity. However, even in the absence of statistical certainty, the random nature of GAO's sample leads it to believe that, if these projects are representative (and GAO has no reason to believe they are not), the act results in unnecessary construction costs of several hundred million dollars annually. (See pp. 77 and 78.)

The inflated wage costs may have had the most adverse effect on the local contractors and their workers--those the act was intended to protect--by promoting the use of nonlocal contractors on Federal projects. Nonlocal contractors worked on the majority of these projects, indicating that the higher rates may have discouraged local contractors from bidding.

In the 18 projects where Labor's rates were lower than those prevailing locally, local contractors were generally awarded the contracts. They generally paid workers the prevailing rates in the community--higher rates than those stipulated by Labor. Thus, the act's intent--to maintain the local prevailing wage structure--is carried out only when the administration of the act has no effect.

In addition, the act and a related weekly payroll reporting requirement of the Copeland Anti-Kickback Act result in unnecessary contractor costs--which are passed on to the Government--estimated at almost \$191.6 million for 1976 and \$189.1 million for 1977. In addition, estimated unnecessary costs of \$10.9 million in 1976 and \$12.4 million in 1977 were incurred by Federal agencies to attempt to administer and enforce the act. (See ch. 6.)

The excessive wage determinations have an inflationary effect on areas covered and, because of the large volume of covered construction (about \$37.8 billion in 1977), on the construction industry and the national economy as a whole.

CONCLUSION

GAO believes that Davis-Bacon Act wage determinations could be eliminated with the same success achieved by eliminating wage determinations for workers on Federal contracts for supplies and materials under the Walsh-Healey Public Contracts Act. For the past 14 years Labor has issued no determinations under that act for the largest segment of Federal contractor employees, and apparently no adverse effect on wage rates of the workers involved has been evident. (See pp. 25 to 27.)

GAO believes that the significant changes in the Nation's economic conditions and the economic character of the construction industry since 1931, plus the passage of other wage laws, make the Davis-Bacon Act unnecessary. Moreover, the legislative intent--not to disturb local wage standards--is often not met; it is met only when Labor's wage determinations are lower than the wages prevailing in the project area.

RECOMMENDATIONS TO THE CONGRESS

The Congress should repeal the Davis-Bacon Act. GAO also recommends that the Congress rescind the weekly payroll reporting requirement of the Copeland Anti-Kickback Act.

In addition, the Congress should repeal the provisions in 77 related statutes which involve federally assisted construction projects and which require that wages paid to contractor employees be not lower than those determined by the Secretary of Labor to prevail in the locality, in accordance with the Davis-Bacon Act.

AGENCY COMMENTS

Officials of the Office of Management and Budget disagreed with GAO's recommendations and said that problems in implementing the Davis-Bacon Act could be resolved through administrative action including, where appropriate, modification of Labor's implementing regulations.

GAO disagrees. It believes the problems and inadequacies it has identified--over almost 20 years of reviews--cannot be corrected or improved significantly by any administrative action, regulation modification, or application of additional resources to program administration. (See p. 13.)

Labor officials also disagreed with GAO's recommendations, and in many cases they questioned GAO's findings and conclusions. The Secretary of Labor stated that he was satisfied that, on balance, the Davis-Bacon Act was being competently and effectively administered.

GAO believes that Labor was less than objective in its comments. GAO's analysis showed that Labor's comments for the most part were misleading, inaccurate, taken out of context, unsupported, and often did not reflect the information in its files.

As a result of Labor's voluminous comments, GAO had to make an extraordinary effort to review and evaluate Labor's comments and claims. GAO believes that its findings are accurate and representative of Labor's administration of the Davis-Bacon Act. GAO believes also that, in administering the act, Labor has been consistently inconsistent.

Indeed, in GAO's opinion, its analysis of Labor's largely unsupported comments further supports GAO's view that the act is not susceptible to practical and effective administration. Therefore, the results of GAO's analysis are included in the report in some detail. (See the end of chs. 3, 4, 5, and 6 and apps. IV through XII.)

C o n t e n t s

	<u>Page</u>
DIGEST	i
CHAPTER	
1 INTRODUCTION	1
The Davis-Bacon Act--its purpose, coverage, and administration	1
2 THE DAVIS-BACON ACT IS NO LONGER NEEDED AND SHOULD BE REPEALED	7
Significant changes in economic conditions and worker protection laws make the Davis-Bacon Act less relevant	7
The act has been and continues to be impractical to administer	9
The effects of Labor developing and issuing inaccurate wage rates-- some are too high, some are too low	10
The act has significantly increased the costs of Federal construction and has an inflationary effect	10
Our conclusion--the Davis-Bacon Act is not needed	11
Recommendations to the Congress	13
Agency comments and our evaluation	13
3 SIGNIFICANT CHANGES IN ECONOMIC CONDITIONS AND WORKER PROTECTION LAWS MAKE THE DAVIS-BACON ACT LESS RELEVANT	19
The economic conditions of the 1930s no longer exist	19
Other employee wage protection laws enacted since the Davis-Bacon Act	21
Other prevailing wage laws	25
Labor comments and our evaluation	28
4 THE DAVIS-BACON ACT IS IMPRACTICAL TO ADMINISTER, RESULTING IN LABOR DEVELOPING AND ISSUING INACCURATE WAGE DETERMINATIONS	35
Procedures for obtaining wage data and determining wage rates	36
Inadequacies and problems in Labor's collection of wage data	39

CHAPTER

	Labor is still issuing inaccurate wage rate determinations	47
	Labor issued incorrect wage determinations	53
	The accuracy of Labor's wage determinations is also questioned by the Wage Appeals Board	54
	Automating the wage determination program is unlikely to provide accurate determinations	56
	Labor's comments and our evaluation	58
	Our followup review shows that Labor's program improvements are not effective	63
	Conclusion	67
5	THE EFFECTS OF LABOR DEVELOPING AND ISSUING INACCURATE WAGE RATES	68
	Most wage rates issued by Labor did not prevail--some were too high, some were too low	69
	Increased costs and the effects on competition when Labor's rates are higher than those prevailing in the locality	71
	Effects when Labor's rates are lower than those prevailing in the locality	74
	Labor's comments and our evaluation	75
6	THE DAVIS-BACON ACT HAS RESULTED IN INCREASED COSTS FOR FEDERALLY FINANCED CONSTRUCTION AND HAS HAD AN INFLATIONARY EFFECT ON THE ECONOMY	76
	Increased federally financed construction costs	76
	Administration is costly and contributes to increased construction costs	78
	Administrative costs incurred by Federal agencies	82
	Inflationary effect of the Davis-Bacon Act	83
	Other studies on the Davis-Bacon Act's inflationary effect	85
	Conclusion	99
	Labor comments and our evaluation	100
7	SCOPE OF REVIEW	110

APPENDIX

I	Weaknesses in administering the Davis-Bacon Act noted in our prior reports to the Congress	113
II	The history of the Davis-Bacon Act	116
III	Statutes related to the Davis-Bacon Act requiring payment of wages at rates predetermined by Labor	125
IV	Examples of Labor's problems in obtaining wage data through its voluntary submission program	131
V	Examples of differences in wage rates and worker classifications we noted in verifying data Labor obtained from contractors and others	135
VI	Examples showing that Labor deleted, added, and changed wage data received in surveys without adequate reason or rationale	141
VII	Examples showing Labor's use of wage rates paid on Federal projects when determining wage rates	154
VIII	Examples showing Labor's use of projects not of a character similar to the Federal construction work	158
IX	Examples showing Labor still extending wage rates to adjacent and nonadjacent counties	163
X	Examples showing how Labor's duplicative counting of the same workers distorts the wage survey results	166
XI	Examples where Labor issued incorrect wage determinations to contracting agencies	169

APPENDIX

XII	Examples showing the effects of Labor developing and issuing inaccurate wage rates.	173
XIII	Wage determinations and related construction projects included in our review.	180
XIV	Our report, "Inaccurate Davis-Bacon Act Wage Determination Applicable To Alabama Mobile Bay Bridge Project (I-65-I(85)23) Overruled By the Wage Appeals Board"	184
XV	Letter dated February 8, 1979, from OMB	193
XVI	Letter dated January 15, 1979, from the Secretary of Labor.	194

ABBREVIATIONS:

GAO	General Accounting Office
HUD	The Department of Housing and Urban Development
OMB	Office of Management and Budget

CHAPTER 1

INTRODUCTION

The Davis-Bacon Act (40 U.S.C. 276a (1976)), passed in 1931, was the first Federal legislation requiring the payment of minimum wages to employees working on Federal or federally financed construction projects. The minimum wage is based on wages determined by the Department of Labor to be prevailing in the locality of the proposed construction. The Davis-Bacon Act applied to about \$37.8 billion of the more than \$172.5 billion spent on construction in the United States in 1977.

This is our ninth report since 1962 on the administration of the act by Labor. In earlier reports we addressed the development and issuance of wage determinations by the Secretary of Labor under the act and the related inflationary effect on Federal construction projects when rates were higher than the prevailing wages in the areas. We made numerous recommendations to the Secretary for improving data collection and compilation and for issuing wage rates. 1/

In this report we evaluate the improvements by Labor and discuss whether the original purpose of the Davis-Bacon Act is being implemented and whether it is still needed in view of the vast socioeconomic changes in the Nation since the act was passed in 1931.

THE DAVIS-BACON ACT--ITS PURPOSE, COVERAGE, AND ADMINISTRATION

The Davis-Bacon Act has remained a relatively obscure act since its enactment in the midst of the great depression of the 1930s. The history of the act, however, has been controversial from its inception nearly half a century ago to today. Federal contracting agencies and contractors, contractor associations, unions, and Labor have all been dissatisfied with aspects of the wage rates issued, enforcement under the act, or both. With numerous extensions of the act's prevailing wage concept to other legislation, State and local programs have been affected by the act.

The Davis-Bacon Act was passed when the Federal Government was engaged in a significant construction program to help alleviate the depressed employment and economic conditions in the economy and the construction industry.

1/See app. I for a list of the eight prior reports.

The principal objective of the act is to protect communities from the depressing influences of lower wage rates at which workers might be hired and brought into communities to work on Federal construction projects. This objective is to be accomplished through contract conditions requiring payment of not less than minimum wages which are based on wages prevailing in the communities where the Federal projects are to be constructed.

The legislative history of the Davis-Bacon Act ^{1/} indicated that the Congress intended that the determined rates should be based on the wage rates paid by private industry. The sponsors of the legislation offered statements and assurances that it did not require new rates to be established but merely required contractors to pay the rates that had been established by private industry for construction of a similar character.

The act, as amended, requires that each contract over \$2,000 to which the United States is a party--for construction, alteration, or repair of public buildings or public works--state the minimum wages to be paid to various classes of laborers and mechanics. The act provides that the minimum wages be based on wages determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed. The minimum wage determination includes the basic hourly rates of pay and fringe benefits, if any.

Extension of the Davis-Bacon Act

Initially, the act applied only to construction projects procured directly by Federal agencies. However, since 1937 the minimum wage provisions have been extended to 77 related statutes which involve federally assisted construction projects.

Contracts for construction with a Federal interest growing out of grants, loans, or insurance subject to the related acts specify that wages paid to contractor employees should not be less than those determined by the Secretary of

^{1/}A history of the act is presented in app. II.

Labor to be prevailing in the locality, in accordance with or pursuant to the Davis-Bacon Act. These statutes cover such Federal programs as housing, health, water and air pollution, transportation, and revenue sharing.

With these extensions to other acts, nearly every political subdivision in the Nation is confronted with the prospect of using Davis-Bacon Act wage rates on construction projects. A list of the 77 related statutes at April 30, 1977, is shown in appendix III.

Coverage of the act

About \$172.5 billion was spent on new public and private construction projects in calendar year 1977. About 78.1 percent (\$134.7 billion) was performed on privately financed projects without the prevailing wage protection of the Davis-Bacon Act. Federal construction of \$7.4 billion (4.3 percent of the total) was covered directly by the prevailing wage provisions of the Davis-Bacon Act. The remaining \$30.4 billion was spent on construction by State and local agencies, and a substantial portion involved Federal financial assistance, and thereby was covered by the act through extensions under the 77 related acts noted above.

A Labor official estimates that about 600,000 prime and subcontracts are awarded annually for these Federal, State, and local projects. With about 22 percent of total construction covered by the act, we estimate that less than 1 million of the 3.8 million U.S. construction workers were employed on these projects in 1977. Thus, the act directly affects less than an estimated 1 percent of the 100 million workers in the Nation's labor force.

Construction involves such a wide variety of activity that any attempt to generalize on industry characteristics is difficult. Federal and federally assisted construction covers all facets, from a crew of one or two on a \$2,000 repair job to hundreds of workers on projects costing millions of dollars. Similarly, wage rates paid to workers vary substantially, not only with the type of project, but also with local construction practices and project location, especially in relation to the distance from large urban centers.

One characteristic of the construction industry which affects Labor's administrative practices in determining prevailing wages in localities is the fact that the vast majority of construction contractors are small. In 1975 the Department of Commerce's Bureau of the Census published 1972 data which

showed that 755,000 (82 percent) of the 921,000 construction contractors in the United States were composed of proprietors and working partners or firms with four employees or less.

Another factor affecting Labor's administration of the act is that unionization in the construction industry is declining. Bureau of the Census data in 1977 indicate a range of unionization in the construction work force varying from 20 percent in the South to about 50 percent in the Northeast and West. As a percentage, construction work-force unionization has declined from 54.7 percent (except for carpenters, who were separately reported at 45.4 percent) in 1970 to 35.7 percent in 1977, inclusive of carpenters.

Program administration

The Secretary of Labor has delegated his responsibilities for wage determinations and overall coordination of enforcement responsibilities to the Assistant Secretary of Labor for Employment Standards, who heads the Employment Standards Administration. The administration's Wage and Hour Division administers and enforces the Davis-Bacon Act through its Washington, D.C., headquarters, 10 Labor regional offices, and 90 area offices throughout the United States.

The Wage and Hour Division issues wage rate determinations under the Davis-Bacon Act to requesting Federal agencies responsible for awarding contracts. These rates are then shown as minimum rates in the bid specifications and the final contracts. Two kinds of wage determinations are issued--project determinations and area wage determinations. Project determinations are issued for a specific agency project and are effective for 120 days from the date issued. Area determinations apply to certain geographical areas (such as counties or States) and are required to be used on all Federal projects to be constructed in the covered area. They are published in the Federal Register and are in effect until superseded.

The Wage and Hour Division carries out its wage determination activities with a staff consisting of wage specialists and analysts supported by clerks and typists at the Washington headquarters and 10 regional offices.

In March 1978 the Wage and Hour Division had 73 staff members working on the wage determinations program at the headquarters and regional offices. Of these, only 50 were wage determination specialists or wage analysts; 25 were located in regional offices and 24 at headquarters. The remaining 23 were clerks and typists--15 at the regional offices and 8 at the headquarters.

Appeal process

Under Labor's regulations, any interested party (such as an employee, a contractor, a Federal contracting agency, a contractor association, or a union) may seek a review of a Wage and Hour Division wage determination. The first step is informal--the determination is reviewed by the Wage and Hour Division, based on the complaint or protest and, if necessary, a formal hearing is held. The decision on the determination is then made by the Administrator, Wage and Hour Division. If still unsatisfied, the interested party may appeal the administrator's decision to the Wage Appeals Board.

Protests before the Wage Appeals Board

Wage determinations issued by Labor under the Davis-Bacon Act are final and not subject to judicial review. However, after much discussion on this point in congressional hearings held in 1962, the Secretary of Labor established in December 1963 the Wage Appeals Board.

The Board consists of three members appointed by the Secretary of Labor. It has jurisdiction to decide, at its discretion, appeals concerning questions of law and fact related to the Davis-Bacon Act decisions of the Secretary concerning:

- Wage determinations issued.
- Debarment cases.
- Controversies concerning enforcement of the payment of prevailing wage rates or proper job classifications which involve significant sums of money, large groups of employees, or novel or unusual situations.

The Board may decline the review of any case whenever in its judgment a review would be inappropriate because of (1) a lack of timeliness, (2) the nature of the relief sought, or (3) other reasons. The procedures for appeal and how the Board operates are set forth in the Code of Federal Regulations (29 C.F.R. 7) under the title "Appeals to the Wage Appeals Board."

Davis-Bacon wage determination activity

The Wage and Hour Division staff is responsible for developing, issuing, and maintaining prevailing wage rates for all worker classifications involved in varying types of construction in 3,119 political entities throughout the country. Labor usually defines the entities as counties of the United States, Puerto Rico, Guam, and the Virgin Islands.

During calendar years 1976 and 1977 the Wage and Hour Division staff issued these wage determinations:

	<u>Project</u>		<u>Area</u>		<u>Totals</u>	
	<u>1976</u>	<u>1977</u>	<u>1976</u>	<u>1977</u>	<u>1976</u>	<u>1977</u>
New determina- tions	10,738	13,723	57	46	10,795	13,769
Supersedes determina- tions	46	36	621	579	667	615
Modifications	<u>927</u>	<u>1,915</u>	<u>1,152</u>	<u>1,632</u>	<u>2,079</u>	<u>3,547</u>
Total	<u>11,711</u>	<u>15,674</u>	<u>1,830</u>	<u>2,257</u>	<u>13,541</u>	<u>17,931</u>

The Wage and Hour Division issued about 15,470 wage determinations in 1978.

CHAPTER 2

THE DAVIS-BACON ACT IS NO LONGER NEEDED

AND SHOULD BE REPEALED

We believe that the Davis-Bacon Act should be repealed because:

- Significant changes in social and economic conditions and the economic character of the construction industry since 1931, plus the passage of other laws to protect the wages of construction workers, have made the Davis-Bacon Act's intended protection unnecessary and irrelevant.
- After nearly half a century, Labor has yet to develop an effective program to maintain and issue current and accurate prevailing wage rates for every classification of employee working on the varying types of Federal or federally assisted construction. Labor's administration has resulted in inaccurate wage rate determinations being issued and has often produced results contradictory to the legislative intent.
- The act results in unnecessary construction costs and is inflationary. The setting of inaccurate wage rates by Labor causes the Federal Government to pay--if the construction projects we reviewed are representative--several hundred million dollars more than it should for construction each year. The act, along with the weekly payroll reporting requirement of the Copeland Anti-Kickback Act, also resulted in (1) an estimated \$191.6 million for 1976 and \$189.1 million for 1977 in unnecessary administrative costs for contractors complying with the acts' requirements--that are passed on to the Federal Government--and (2) estimated costs of about \$10.9 million in 1976 and \$12.4 million in 1977 to Labor and other Federal agencies to administer and enforce the acts.

SIGNIFICANT CHANGES IN ECONOMIC CONDITIONS AND WORKER PROTECTION LAWS MAKE THE DAVIS-BACON ACT LESS RELEVANT

The Davis-Bacon Act was enacted in 1931. The legislative intent was to discourage nonlocal contractors from bidding on Government projects and bringing in cheap, outside labor to work on the projects. The act as passed and amended

only provides that wages paid by successful contractors would not disturb local wage standards. It requires that contractors working on Federal projects pay at least the locally prevailing wages to their workers as determined by Labor. No new rates, either higher or lower than those prevailing, were required to be established by Labor.

The depression was a time that wreaked particularly severe havoc on the building industry. The dollar value of new construction declined steadily during the years 1929-33-- from about \$10.8 billion to \$2.9 billion. In that same period construction employment fell from 1.5 million workers to 800,000 workers. The annual earnings of the average construction worker also fell from \$1,674 in 1929 to about half that in 1933.

By 1931 the Government's involvement in the building industry was increasing. In 1926 only 18 percent of all new construction was publicly financed. But, as economic conditions declined, the Federal Government tried to help the economy by pumping more money into the construction industry. By 1934, 59 percent of all new construction was publicly financed.

Congressman Bacon of New York and Senator Davis of Pennsylvania believed that the Government should do something to assure that local labor and contractors got a fair opportunity to participate in the Government's building program. In 1931 they introduced identical bills in the 71st Congress that eventually became the Davis-Bacon Act, which was enacted on March 31, 1931. The act was passed under "emergency" procedures because of the depression and the unemployment situation.

The country has experienced tremendous growth since the 1930s. This is illustrated by the increase in the gross national product from \$75.8 billion in 1931 to \$1.9 trillion in 1977. The construction industry has grown significantly-- particularly in the private sector. By 1977 new construction had risen to \$172.5 billion, with over three-fourths (\$134.7 billion) in the private sector and one-fourth (\$37.8 billion) in the public sector.

Also, the construction industry employed about 3.8 million workers in 1977 (compared to about 1 million in the 1930s). Moreover, the average annual income of construction workers has increased from an estimated \$1,674 in 1929 to

about \$14,000 in 1977. This increase generally kept pace with wage increases in the mining and manufacturing industries.

In addition, since the act was passed the Congress has enacted a number of other laws to protect construction workers against wage losses, exploitation by contractors, and adverse conditions. These laws (1) prohibit contractors from requesting wage kickbacks, (2) require that contractors be covered by payment bonds, (3) require that minimum and overtime wages be paid, and (4) provide for unemployment compensation.

THE ACT HAS BEEN AND CONTINUES
TO BE IMPRACTICAL TO ADMINISTER

Labor has not developed an effective system to plan, control, and manage the data collection, compilation, and wage determination issuance functions under the Davis-Bacon Act. In fact, the policies, practices, and procedures developed by Labor for establishing wage rates under the act have only rarely implemented the legislative intent. Rates issued have nearly always affected local wage standards--in many instances amounting to wage fixing and limiting or establishing worker classifications for Government construction with no consideration given to classifications and corresponding wages paid on similar private construction in the locality.

Our evaluation of Labor's wage determination files and our inquiries regarding 73 specific wage determinations at five selected regions and headquarters showed that in many instances the wage rates were not accurately determined. About one-half of the area and project determinations reviewed were not based on surveys of wages paid to workers on private projects in the locality in which the wage rates issued were required to be paid. Instead, union-negotiated collectively bargained rates were required by Labor in these localities.

Also, when wage surveys were made there were problems in identifying similar projects and collecting data from contractors on a voluntary basis. In addition, much of the wage and worker classification data collected was not used or adjusted, upward or downward, by the regional and headquarters wage analysts, so that many of the classifications and rates seldom represented those that prevailed in the locality.

THE EFFECTS OF LABOR DEVELOPING AND
ISSUING INACCURATE WAGE RATES--
SOME ARE TOO HIGH, SOME ARE TOO LOW

As part of our review, we surveyed the wage rates in 30 localities and found that the wage scales issued by Labor did not prevail; this had the effect of Labor establishing new wage scales. We found that Labor's rates in 12 localities were higher than those prevailing in the locality; in 18 the rates were lower than prevailed. Labor's higher rates were usually based on higher union-negotiated rates, although our surveys showed that nonunion rates often prevailed. As a consequence, when Labor's rates were too high, Federal construction costs were inflated.

In addition to the inflationary costs of Federal construction where Labor's rates were too high, local contractors and workers in smaller communities were affected the most--because contracts on the majority of the projects were awarded to outside contractors.

Some local contractors stated that, rather than disturb their existing wage structures, they would not bid on Government projects when rates were higher than those prevailing in the locality. Thus, the inflated costs may have had the most adverse effect on local contractors and their workers--those the act was designed to protect--by promoting the use of nonlocal contractors on Federal projects.

Conversely, little or no adverse effect was evident in the 18 projects where Labor's rates were lower than those prevailing locally. In fact, the opposite occurred--local contractors were generally awarded the contracts, and they generally paid workers at rates above those stipulated by Labor. We found no instances where outside contractors took advantage of the low rates by importing low-paid workers into the locality.

THE ACT HAS SIGNIFICANTLY INCREASED THE
COSTS OF FEDERAL CONSTRUCTION AND
HAS AN INFLATIONARY EFFECT

Setting minimum prevailing wage rates for federally financed construction projects as required by the Davis-Bacon Act tends to increase the cost of Federal construction. In comparing prevailing wage rates paid to workers on private construction projects in 30 localities throughout the Nation with those issued by Labor on Federal or federally assisted

construction projects, we found that in 12 locations rates were too high and, as a result, the wage costs paid on the projects averaged 36.8 percent more than the comparable wage costs at rates prevailing in the locality. The higher wage cost ranged from 5.2 to 122.6 percent.

Consequently, the higher Labor rates may have increased total construction costs by an average of 3.4 percent. The increase ranged from 1 to nearly 9 percent.

We estimate that, as a result of minimum wages being established at rates higher than those actually prevailing in the area of the project, the construction costs, if the projects we reviewed are representative, for federally financed projects could be increased by several hundred million dollars annually.

In addition, the Davis-Bacon Act, along with the weekly payroll reporting requirement of the Copeland Anti-Kickback Act, also resulted in (1) unnecessary administrative costs estimated at \$191.6 million in 1976 and \$189.1 in 1977--which are passed on the Government--incurred by contractors for complying with the payroll maintenance and certification requirements of the acts and (2) estimated costs of about \$10.9 million in 1976 and \$12.4 million in 1977 incurred by Labor and other Federal agencies for administering and enforcing the acts' requirements.

Moreover, the act has an inflationary effect on the economy, labor conditions in the area of the construction project, and the country as a whole. The inflationary effect of the Davis-Bacon Act has been noted in studies on the act made by private economists, Government agencies, and others.

Concern has been expressed by Government officials and economists over the inflationary trend of construction costs caused by the act. The act was suspended for a short time in 1971 because of excessive costs and unemployment in the construction industry. There also have been numerous bills introduced in the Congress to repeal the act. None have been passed.

OUR CONCLUSION--THE DAVIS-BACON
IS NOT NEEDED

After nearly half a century Labor has not developed an effective program to maintain and issue current and accurate prevailing wage rates for every classification of mechanic and laborer working on the varying types of Federal or federally assisted construction in every city, town, village,

and other civil subdivision in the United States and the District of Columbia. We believe that the concept of issuing prevailing wages as stated in the act is fundamentally unsound.

Given the diverse characteristics of the construction industry, the differing wage structures on the varying types of construction, and the voluntary aspects of collecting wage data from contractors in every county throughout the Nation, we do not believe that the act can be effectively, efficiently, and equitably administered. The Secretary of Labor's comments in the President's veto message in 1932 (concerning an amendment providing for the predetermination of prevailing wages) are still relevant today. He stated that "it is impracticable of administration;" it would "stretch a new bureaucracy across the country;" and "unless * * * wages were based on a thorough investigation in the locality, the rate stated * * * would only provoke dissatisfaction and controversy."

Furthermore, we believe the act is no longer needed or relevant. The conditions of depression and deflation which existed in the 1930s when it was passed have not recurred since that time. In fact, the economy and the construction industry have experienced tremendous growth (particularly in the private sector) so that the act now affects less than an estimated .2 percent of about 3.8 million construction workers and less than 1 percent of the Nation's total work force.

Also, the Congress has enacted other laws to protect construction workers against wage losses, contractor exploitation, or adverse economic conditions.

Moreover, the legislative intent of the Davis-Bacon Act--not to disturb local wage standards--has seldom been carried out. Government contractors' costs have been inflated by rates prescribed by Labor that are higher than prevailing in the locality. Conversely, Labor has placed the Government in the position of supporting reduced labor standards when its rates are too low. However, when the rates are too low the legislative intent was generally achieved--local contractors were successful with contract awards and paid their workers at prevailing wages which were higher than those prescribed by Labor.

Since the act's intent is best met when wages become a competitive bidding factor in construction contracting, we believe that Davis-Bacon Act wage determinations could be

eliminated with the same success that has been achieved with the elimination of wage determinations for workers on Federal contracts for supplies and materials under the Walsh-Healey Public Contracts Act. For the past 14 years no determinations have been issued by Labor under the Walsh-Healey Public Contracts Act for this, the largest segment of Federal contractor employees, and no adverse effect on wage standards of the workers involved has been evident.

RECOMMENDATIONS TO THE CONGRESS

Because of (1) significant increased costs to the Federal Government, (2) the impact excessive wage determination rates have on inflating construction costs and disturbing local wage scales, and (3) the fact that contractors tend to pay prevailing rates--the intent of the act--when determinations are too low, we recommend that the Congress repeal the Davis-Bacon Act and rescind the weekly payroll reporting requirement of the Copeland Anti-Kickback Act.

The Congress should also repeal the provisions in the 77 related statutes which involve federally assisted construction projects and which require that wages paid to contractor employees should not be less than those determined by the Secretary of Labor to be prevailing in the locality in accordance with or pursuant to the Davis-Bacon Act.

AGENCY COMMENTS AND OUR EVALUATION

Office of Management and Budget comments

Commenting on a draft of the report (see app. XV), the Office of Management and Budget (OMB) stated that our effort in conducting the study of the Davis-Bacon Act is appreciated and that the data and information developed will be useful in its ongoing review of the act and other contract wage laws chaired by OMB's Office of Federal Procurement Policy. OMB said that it sought early resolution of some of the difficulties being experienced by procuring agencies and Labor in implementing these laws.

OMB said that the findings in our draft report were similar to views expressed in our previous reports, which criticized Labor's Davis-Bacon interpretation and implementing regulations. OMB stated, however, that it had not concluded that the public interest would be served by repeal of the Davis-Bacon Act and, therefore, it did not endorse

our recommendation. OMB concluded that the problems in implementing the act could be resolved through administrative action including, where appropriate, modification of Labor's implementing regulations.

We disagree with OMB and do not believe that the problems and inadequacies we identified in Labor's implementation of the Davis-Bacon Act can be improved to any significant extent through any amount or kind of administrative action. For about 20 years we have made many reviews of Labor's administration of the act, and our reports have included numerous recommendations to Labor to improve program management. In many cases, Labor has taken or promised to take action on the improvements we suggested.

Nevertheless, Labor's management improvements have not resulted in more effective administration of the act. As this report so vividly demonstrates, Labor has failed to develop an effective system to plan, control, or manage data collection and compilation, and it has failed to issue accurate wage determinations. Obstacles, inadequacies, and problems continue to hamper Labor's attempts to develop and issue accurate wage rates based on prevailing rates in localities. In our view, the act is impractical to administer--it cannot be effectively and efficiently administered.

Further, improving the administration of the Davis-Bacon Act prevailing wage determinations may slightly lessen or dampen, but not eliminate, the act's inflationary effect. Only the repeal of the act would return the determination of labor costs on federally funded or assisted construction projects to the forces of the competitive marketplace and eliminate the act's inherent inflationary effect.

Department of Labor comments

Commenting on a draft of this report (see app. XVI), Labor stated that repeal of the Davis-Bacon Act would provide no real hope of significantly reducing inflationary pressures. Labor said that, contrary to our draft report's conclusions, Federal and federally assisted construction wages are not a vital inflationary force today. In the last 7 years construction wages have been lagging behind all industry wage figures, and the gap has widened in the last year.

Labor questioned our estimate that the Davis-Bacon Act has caused an estimated \$715 million of unnecessary construction and administrative costs. It said that the report candidly states that over two-thirds of this estimate is based upon data which have no statistical validity. In addition to an inadequate sample, Labor said that there are three equally important flaws in our calculation: (1) our wage surveys were conducted under different rules from those of Labor, thus insuring different results, (2) our analysis failed to include productivity as a variable, and (3) the money an employer saves by paying lower wages is not necessarily passed on to the Government in its contract bid price (i.e., there are no savings to the Government through lower wages).

Our selection of the 73 projects--including the 30 for wage surveys--was made on a random basis, and the projects were selected proportionally to the number of wage determinations issued in each region we reviewed for various types of construction--building, heavy, highway, or residential. Also, our review, which was made at 5 of Labor's 10 regions, included all sections of the country--East, West, South, and North, and our coverage included regions with high construction activity, large numbers of construction workers, industrial and rural States, and areas with both high and low unionization.

We recognize that our sample size was insufficient for projecting the results to the year's universe of construction costs with statistical validity. However, because of the nature of our selection process, we have no reason to believe that our sample of projects was unrepresentative of the universe. Therefore, we believe that our cost estimates are a useful indication of the order of magnitude of the increased construction costs resulting from Davis-Bacon wage determinations.

We followed Labor's procedures in making our surveys except we (1) excluded Federal projects and (2) eliminated multiple counting of workers. Federal projects were excluded because we believe that the legislative history of the act indicated that the wage rates should be based on those that prevailed on private construction. This exclusion also eliminated any influence of incorrect rates that may have been issued on earlier Davis-Bacon projects. We considered the inclusion of the same employees working on different projects--multiple counting--to be a questionable practice which distorts survey results. Also, worker productivity

is a procurement and contracting issue, and has little to do with Labor's administration of the Davis-Bacon Act. Labor's function is to issue accurate prevailing wage rates.

Labor's comment that there is no direct relationship between wages and contract prices is speculative and unsupported. Others, such as State contracting officials and contractors, believe lower wages should result in lower contract costs. Moreover, in prior years Labor itself has estimated that significant savings in the Federal Government's construction costs could result through its use and issuance of more accurate wage rates under the Davis-Bacon Act. We believe also that the weekly payroll records requirements of the act are an unnecessary burden on both the contractors and contracting agencies, and that these records serve very little purpose; and contribute little to enforcement of the act. There is no question that it is costing contractors--and the Federal Government--a substantial amount; it is only a question of how much.

Labor's comment that construction wages have lagged in the past 7 years behind all industry wage figures is misleading. Although the all-industry average earnings in recent years increased by a larger percentage than the construction earnings increases, the actual money increase for construction workers was greater than the all-industry average. Only mining worker, earnings exceeded the earnings of construction workers and this occurred for the first time in 1977. Thus, while it may be true that the construction workers' most recent wage percentage increases have lagged a little compared to other industries, the reason could be that workers in other industries are starting to catch up to the construction workers' rates.

Labor also questioned the support for our findings and our conclusion that there are continuing problems and inadequacies in Labor's administration of the wage determination program under the Davis-Bacon Act. Labor acknowledged that it is keenly aware that administration of the act is a complex task, and that errors can occur in implementing it. However, after examining the record carefully, Labor is satisfied that on balance, the act is being competently and effectively administered.

Again we disagree with Labor. Our conclusion and beliefs that the Davis-Bacon Act is impractical to administer and that Labor has issued, and continues to issue, inaccurate wage

rates are based on well-documented and adequately supported findings--vividly illustrated by examples--developed during a review of a cross section of Labor's area and project determinations.

Finally, Labor said repeal of the Davis-Bacon Act would have a serious social and economic effect on construction workers and would undermine a basic legal protection of the wage of American workers in one of the largest, most economically unstable, and complex industries. In its view, the Davis-Bacon and related acts continue to provide a much-needed wage protection program for American workers and a business opportunity for local contractors in an industry characterized by highly uncertain employment conditions.

We disagree with Labor's assertion that repeal of the Davis-Bacon Act would seriously affect--economically and socially--construction workers and local construction contractors primarily because

--less than an estimated 1 million construction workers in 1977 were working on contracts subject to the Davis-Bacon Act;

--where Labor's wage determinations were too low, thus giving no effect to the act, local contractors were more successful in getting contracts and paid prevailing local wages; and

--some people believe that the Davis-Bacon Act wages may actually contribute to the unemployment problem because the high labor costs from excessive Davis-Bacon wage rates hinder the number of unemployed persons who could be employed on Government projects.

We found no indications, and Labor did not present any evidence, of an adverse effect on or exploitation by contractors of the estimated 3.0 million workers employed on construction projects not covered by the act.

Labor presented detailed comments on each of our findings in the report. These comments, which cover 83 pages, are in appendix XVI. With minor exceptions Labor disagreed with almost everything presented in this report.

On the basis of our analysis of Labor's comments, we believe that Labor's comments were mostly misleading, inaccurate, taken out of context, unsupported, and did not reflect

the information in its files. Further, in many cases Labor made accusations and assertions questioning our findings and conclusions, or it referred to specific actions it had taken for which it did not produce, nor could we find, adequate support.

Consequently, it took us an extraordinary amount of time and effort to analyze, review, and evaluate Labor's comments and claims. In many cases Labor did not provide us, nor could we find in its files, evidence or documentation to support its written comments. We believe that our findings are accurate and representative of Labor's administration of the Davis-Bacon Act. And the end result is that, in our opinion, Labor has failed to provide sufficient evidence or persuasive and logical reasons for us to alter our conclusions that the Davis-Bacon Act is not relevant and needed and that the Congress should repeal it.

Labor's detailed comments on our findings and our evaluation of them are presented at the end of chapters 3, 4, 5, and 6, and in the appropriate appendixes (apps. IV through XII).

CHAPTER 3

SIGNIFICANT CHANGES IN ECONOMIC CONDITIONS AND

WORKER PROTECTION LAWS MAKE THE DAVIS-BACON

ACT LESS RELEVANT

The Davis-Bacon Act, one of the earliest pieces of Federal labor legislation, has remained a relatively obscure law since its enactment in March 1931. Even though the act's basic objective has remained essentially unchanged since its passage, the economic and labor environment within which the act operates has radically changed since the great depression of the 1930s, resulting in the act being less relevant today. The conditions of depression and deflation which existed then have not recurred in the economy since that time.

Also, since the act was passed the Congress has enacted other laws to protect construction workers against wage losses, contractor exploitation, or adverse economic conditions.

THE ECONOMIC CONDITIONS OF THE 1930s NO LONGER EXIST

There have been significant changes and improvements in U.S. economic conditions since the Davis-Bacon Act was enacted in 1931. These changes can be seen in the growth of the Gross National Product ^{1/} (which includes new construction), the increase in wages and employment of construction workers, and the Nation's reduced unemployment.

The Davis-Bacon Act and the depression

When the Davis-Bacon Act was enacted, the United States was rapidly sliding into the worst economic depression it had ever experienced:

--Between 1929 and 1933 the Gross National Product fell in real terms by 30.5 percent (in constant dollars) and industrial production was cut in half.

^{1/}The Gross National Product is the market value of goods and services produced by labor and property supplied by residents of the United States before deduction of depreciation charges and other allowances for business and institutional consumption of fixed capital goods.

- Gross private domestic investment in constant dollars fell by about 87 percent.
- Farm prices in constant dollars declined to almost half of their 1929 peak, while industrial prices fell much lower.
- In 1931, about 16 percent of the American labor force was unemployed; this increased to about 25 percent in 1933.

These overall economic conditions were reflected in the construction industry. The dollar volume of new construction declined steadily from \$10.8 billion in 1929 to \$2.9 billion in 1933, its lowest level in 19 years. This decline in volume was reflected in the industry's employment figures. During the same period, employment in the construction industry declined steadily from 1.5 million in 1929 to a 15-year low of about 809,000 in 1933.

In addition to declining volume and employment, the earnings of construction workers also dropped sharply. In 1929 average annual earnings were about \$1,674. By 1933 earnings had fallen almost 50 percent--to \$869. The Government tried to alleviate these conditions by pumping more money into the construction area. In 1926, for example, only 18 percent of all new construction was publicly financed. Eight years later (1934) it had increased to 59 percent, and it remained near this level until the end of World War II. In this atmosphere the Congress debated and passed the Davis-Bacon Act.

During the early depression years, before such other protective laws as minimum wage laws and unemployment compensation, the Davis-Bacon Act may have marginally restrained the downward trend in construction wages. It established a floor, or minimum, under which construction wages could not fall; however, this floor was a constant downward shifting base. This resulted because, as the depression deepened, the private and commercial construction industry declined sharply, forcing the prevailing wage downward as less construction work was done every year.

In the year after the enactment of the Davis-Bacon Act, construction employment declined 20.1 percent and union wage rates for various building trades also fell--the decline ranged from 4.6 percent for electricians to 18.3 percent for carpenters. These declines continued into 1933. In 1934

union wage scales marginally improved; however, it was not until 1938 that wages recovered and passed the previous record high of 1930-31.

Improved economic conditions today

The country has experienced tremendous economic growth since the 1930s. This is dramatically reflected by the growth in the Gross National Product. In 1931 the Gross National Product was about \$76 billion; in 1977 it had grown to \$1.9 trillion.

The construction industry has been a significant part of that growth. In 1931 new construction amounted to about \$6.4 billion, and by 1933 it had declined to about \$2.9 billion. By 1977 it had risen to about \$172.5 billion--or about 9.1 percent of the Gross National Product--with the predominant share of construction being in the private sector. Construction in the private sector accounts for over three-fourths (\$134.7 billion); public construction accounts for about \$37.8 billion.

The construction industry employed about 3.8 million workers in 1977, compared to about 1 million in the 1930s. Moreover, the average annual income of these workers has risen from an estimated \$1,674 in 1929 to about \$14,000 in 1977. These increases generally kept pace with wage increases in the mining and manufacturing industries.

The Davis-Bacon Act was a relevant force from 1932 through 1936, since most construction activity--which ranged from about \$2.9 billion to \$6.5 billion--was federally financed and, thus, most construction workers were covered by the act. However, by 1977 the act was less relevant and protective because only about 22 percent of the total construction activity was subject to the act. The remaining 78 percent (\$134.7 billion) of construction activity--covering an estimated 3 million workers--is outside the act's provisions.

OTHER EMPLOYEE WAGE PROTECTION LAWS ENACTED SINCE THE DAVIS-BACON ACT

Since the passage of the act in 1931, the Congress has enacted a number of laws that protect construction workers against the loss of wages through exploitation by contractors or from adverse economic conditions.

These laws protect the employees' wages by

- prohibiting contractors from requesting wage kickbacks,
- requiring that contractors be covered by performance and payment bonds,
- providing unemployment compensation, and
- requiring that minimum and overtime wages be paid.

Copeland Anti-Kickback Act--1934

The Copeland Anti-Kickback Act (40 U.S.C. 276(c)(1976)) regulates payroll deductions on Federal or federally assisted construction. Enacted in 1934, the act prohibits anyone, under penalty of a fine or imprisonment, to induce an employee "to give up any part of the compensation to which he is entitled under his contract of employment." The act was passed to suppress the kickback racket, by which a contractor on a Government project--including projects covered by the Davis-Bacon Act--pays his workers at the rate the Government requires, but thereafter forces them to give back a part of the wages they have received.

The Copeland Act also requires that contractors submit a weekly statement on the wages paid to each employee during the preceding week. (If the Davis-Bacon Act were repealed, we believe there would be no need for contractors to submit the weekly payrolls to Labor, and this provision could be rescinded.)

Miller Act--1935

The Miller Act (40 U.S.C. 270 (1976)), passed in 1935, applies to the direct construction work covered by the Davis-Bacon Act, and provides that such work must be covered by a performance bond and a payment bond furnished by the contractor. The purpose of the performance bond is to protect the Government against financial loss resulting from a contractor's failure to perform pursuant to contract specifications. Payment bonds are designed to protect persons supplying labor and material from nonpayment. On November 2, 1978, Public Law 95-585 was enacted; it raised the threshold of contracts subject to the Miller Act from \$2,000 to \$25,000.

Under the Miller Act, every construction worker or person who furnished material on a covered contract has the right to sue the contractor or bonding company if they are not fully paid within 90 days after performing labor or furnishing such material.

Federally assisted construction work subject to the Davis-Bacon Act is provided protection similar to direct Federal construction under the Miller Act. OMB Circular A-102, ^{1/} requires that each State or local government unit receiving a Federal construction grant follow its own requirements for payment and performance bonds except for contracts exceeding \$100,000. For these contracts, the Federal agency may accept the grantees' bonding requirements and policy, provided the agency has determined the Federal Government is adequately protected. If it has not made this determination, the OMB Circular requires performance and payment bonds on the part of the contractor for the total contract price.

Also, the Senate Governmental Affairs Committee report ^{2/} on the bill, which became Public Law 95-585, stated that the Miller Act also has ramifications beyond Federal construction contracts. The report stated that, in testimony before a subcommittee, witnesses stated that State and local governments have adopted their own versions of the Miller Act.

Thus, construction workers under federally assisted construction contracts have protection similar to those under the direct Federal construction contracts covered by the Miller Act.

Social Security and Wagner-Peyser Acts--1935

Unemployment insurance was established in 1935 as part of the Federal-State employment security program authorized under the Social Security Act (42 U.S.C. 501, et seq. (1976)) and the Wagner-Peyser Act (29 U.S.C. 49, et seq. (1976)). Their primary objectives were to insure workers against the loss of wages as a result of adverse economic conditions. The programs were designed to provide temporary protection for qualified insured workers who lose jobs until they could either be rehired or find new employment.

The unemployment insurance program is operated jointly by Labor and the States. All States and the District of Columbia had joined the program by 1937; Puerto Rico joined later.

^{1/}See OMB Circular A-102, Attachment B, dated August 24, 1977, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments."

^{2/}See S. Report 1269, 95th Cong., 2d Sess. 2 (1978).

Under the program, the States and other jurisdictions normally provide up to 26 weeks of unemployment insurance benefits. An additional 13 weeks may be provided under an extended benefits program.

Fair Labor Standards Act--1938

On June 25, 1938, one of the Nation's basic labor laws was enacted--the Fair Labor Standards Act of 1938 (29 U.S.C. 201, et seq. (1976)). The act provided for the first statutory minimum wage--25 cents an hour--to be applied to all employees, not specifically exempted, who were engaged in interstate commerce or in the production of goods for interstate commerce.

The original act provided that the statutory minimum wage be increased in stages to 40 cents an hour by no later than October 1945. The act also established an overtime rate of not less than 1-1/2 times the regular hourly rate, which was to be paid employees working over certain maximum hours in a workweek. This time-and-a-half penalty overtime rate has never been altered; however, amending legislation over the past 40 years has provided substantial increases in the minimum wage and has extended coverage under the act to additional millions of previously unprotected workers. The most recent amendments, in 1977, established a minimum wage of \$2.65 an hour effective January 1, 1978, and further annual increases to \$3.35 an hour by January 1, 1981.

In 1961 the Fair Labor Standards Act was amended to cover certain workers in the construction industry. An estimate by the former Senate Subcommittee on Labor made in 1973 showed that 3.6 million (90 percent) of the 4.0 million construction workers were covered by the act.

Contract Work Hours and Safety Standards Act--1962

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327, et seq. (1976)), enacted in 1962, codified the existing series of confusing and overlapping work standard statutes and the Eight Hour Laws relating to the requirement for overtime pay. It also conformed contract work to the straight-time workweek of 40 hours established under the Fair Labor Standards Act.

The act requires contractors and subcontractors to pay laborers and mechanics performing on Government construction contracts overtime pay at not less than 1-1/2 times the basic rate of pay for work in excess of 8 hours a day and 40 hours a week. It applies to construction, and certain service, contracts which require or involve the employment of laborers and mechanics. The act also provides that each contractor or subcontractor who violates its provision be subject to an assessment for liquidated damages computed at the rate of \$10 for each individual violation for each calendar day it occurs.

OTHER PREVAILING WAGE LAWS

After passage of the Davis-Bacon Act in 1931, two other prevailing wage laws affecting wages of employees working on Federal supply and service contracts were passed by the Congress. These are the Walsh-Healey Public Contracts Act of 1936 (41 U.S.C. 35, et seq. (1976)) and the Service Contract Act of 1965 (41 U.S.C. 351, et seq. (1976)).

We noted that the prevailing wage provisions of these two laws have never been fully implemented. However, this apparently has not adversely affected the service and supply employees working on the contracts covered by the acts.

The Walsh-Healey Public Contracts Act

This act provides labor standards protection to employees of contractors manufacturing or furnishing materials, supplies, articles, and equipment to the Government. It applies to all Government contracts for supplies and equipment exceeding \$10,000. The act requires that the employees be paid wages not lower than the minimum wages determined by the Secretary of Labor to be prevailing in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract. We estimated that about 30 million workers were covered under the Walsh-Healey Act in 1978.

The general purpose of the act was to permit the Government to refuse to deal with sweat shop contractors. Its legislative history shows that the Congress also intended to bolster consumer purchasing power and to deter bid peddling and industry migration from high- to low-wage areas.

Labor issued 121 wage determinations and redeterminations under the Walsh-Healey Act between 1937 and 1964. However, Labor has not issued a wage determination under this act since 1964.

In 1964 a decision by the U.S. Court of Appeals 1/ held that, since the wage determinations issued were subject to the Administrative Procedures Act (5 U.S.C. 55, et seq. (1976)), interested parties had the right to inspect records on which the determinations were based. Labor maintains that it could not permit such inspection because much of the information on which wage determinations were based was confidential. Labor has not issued any wage determinations under the act since the court decision.

In the absence of wage determinations, employees working on contracts subject to the Walsh-Healey Public Contracts Act must be paid the minimum wages specified in the Fair Labor Standards Act of 1938.

The Commission on Government Procurement 2/ Study Group #2 evaluated the effect of not issuing wage determinations under the act and concluded in its final report 3/ that:

"The need for a prevailing wage in most manufacturing industries to protect workers from the Government's policy that contracts go to the lowest bidder is not necessary under current economic conditions."

The Commission's Study Group based its conclusion on the fact that there was no evidence that Government purchasing was exerting downward pressure on wages and the fact that

"The 'sweat shop' conditions characteristic of the 1930's have given way to an era of prosperity and there is no current evidence that contracting by the Government is having any adverse effect on labor standards in manufacturing industries."

1/Wirtz v. Baldor Electric Company, 337 F. 2d 518 (D.C. 1964).

2/The Commission was established by the Act of November 26, 1969, Public Law 91-129, 83 Stat. 269, to study and recommend to the Congress methods to promote the economy, efficiency, and effectiveness of Federal procurement.

3/See final report, Study Group #2 of the Commission on Government Procurement, "Controls Over the Procurement Process," Nov 1971.

The Study Group did not find any adverse impact by Labor discontinuing making wage determinations for the millions of workers covered under the Walsh-Healey Act. Its report stated:

"In discussions with major contractors and with contracting agencies, the study group was unable to develop any information or views that the wage determination aspect of law had some relevancy today."

We also discussed the effect of discontinuing wage determinations under the act with cognizant Labor officials, who advised that, since 1975, Labor has received no significant complaints alleging an adverse effect on labor standards and protection of workers employed by manufacturing contractors doing business with the Government.

The Service Contract Act

The Service Contract Act of 1965 provides labor standards protection to employees of contractors and subcontractors furnishing services to Federal agencies. The act applies when a contract's principal purpose is to provide services in the United States using service employees. It requires that service employees under Federal contracts receive minimum wages no less than the minimum wages specified under the Fair Labor Standards Act and, for contracts exceeding \$2,500, the minimum wages and fringe benefits be based on rates the Secretary of Labor determines as prevailing for service employees in the locality.

The act covers white collar workers in positions similar to those of Federal workers as well as the blue-collar counterparts of Federal wage board workers. The only persons now excluded from the act are bona fide executive, administrative, and professional employees. Labor estimates of workers covered under the act range from 337,000 in 1974 to 500,000 in 1976.

Labor is not issuing wage determinations for all requests received from agencies. During fiscal years 1977 and 1978 Labor reportedly received about 33,357 and 38,067 requests for wage determinations, respectively, and it issued determinations for 25,199 requests (75.5 percent) in 1977 and 31,512 (82.8 percent) in 1978. The remaining contracts were, however, subject to minimum wage requirements of the Fair Labor Standards Act.

Again, we discussed this with cognizant Labor officials, who could not provide us with any current examples of adverse effects on the labor standards protection of workers employed by service contractors where no wage determinations were issued.

LABOR COMMENTS AND OUR EVALUATION

Commenting on a draft of this report (see app. XVI), Labor stated that the purpose of the Davis-Bacon Act is much broader than to slow the downward trend in construction industry wages in the early 1930s and avoid destructive contractor competition. Labor said that the act is not solely the product of the great depression, it was a part of an early trend and continues to be necessary. Labor stated that this is evidenced by the many States that have enacted their own Davis-Bacon Acts--some in the 1950s and 1960s--when the economic condition was quite different from the 1930s.

We recognize that the Davis-Bacon Act was enacted for broader purposes. However, we believe the principal objective of the act was to protect communities from the depressing influences of lower wage rates at which nonlocal workers are hired and brought into communities to work on Federal construction projects. We are also aware that many States have enacted so-called "little Davis-Bacon" laws.

In this regard we noted that in March 1971, at the time the Davis-Bacon Act was temporarily suspended, the United States Attorney General ruled that (1) all State-required wage standard provisions under the States' acts had been rendered inapplicable to federally assisted construction and (2) a State may not substitute its wage rates for the suspended Davis-Bacon rates on federally assisted projects. This opinion was made known to all States' Attorney Generals by the Solicitor of Labor in March 1971.

It should be noted also that several States are concerned about their Davis-Bacon Acts and have initiated action to repeal them. For example, in Florida a Governor's economic task force recommended in January 1979 that the State's act requirements be adjusted inasmuch as they lead to excessive costs for public construction. According to a study made for the task force, the prevailing wage is actually union scale, whereas the actual prevailing rate was between 23 to 41 percent lower for some crafts. The study stated that a special survey of education construction estimated that the wage rates under the State's law increased costs by up to 15 percent. Based

on the survey's results, indicating an average 15-percent potential cost savings, it estimated that the State and local counties could save \$142.7 million on their total estimated construction outlay of \$950.7 million for 1978-79. On April 12, 1979, the State's legislature voted to repeal the Florida Davis-Bacon Act.

Similar charges that the State Davis-Bacon Act is wasting millions of dollars by establishing artificially high wages--based on union wages--for State highway and building projects were recently made in Minnesota. Legislation has been introduced to repeal that State's law. In addition, the Federal Bureau of Investigation is investigating allegations that fraudulent wage data was used as the basis for establishing prevailing wage rates under the State's law.

Other employee wage laws protecting construction workers

Labor said that the various labor standards statutes enacted since 1931 complement the Davis-Bacon Act, but cannot substitute for the act because none of the five laws we mention is a wage protection law. Labor states that the Miller Act protection applies only to direct Federal construction and does not apply to federally assisted construction, which accounts for 90 percent of Federal construction activity. It also states that the Fair Labor Standards Act has little relevance to most job classifications in the construction industry and that its studies show that only 2 percent of the workers in construction are minimum wage workers.

We are not stating that the other employee wage protection laws cited in the report are a substitute for the Davis-Bacon Act. Rather, these laws provide the construction worker some protection--which was not available at the time the Davis-Bacon Act was enacted--against loss of wages through exploitation by contractors or from adverse economic conditions. The protection afforded by these laws, plus the significant improvements in the economic condition of the construction workers, makes the Davis-Bacon Act unnecessary in our opinion.

We agree that the Miller Act payment and performance bond requirements apply only to direct Federal construction. Labor's inference, however, that there is no similar protection for federally assisted construction is erroneous. As

we point out on page 23, protection to ensure that construction workers' wages will be paid in federally assisted construction is available through (1) the payment and performance bonding requirements under OMB Circular A-102, which covers Federal construction grants and (2) individual State and local governments adopting their own versions of the Miller Act.

We disagree with Labor that the Fair Labor Standards Act is not relevant to the construction industry. As we point out in the report, amendments to the act had extended its coverage to about 90 percent of the 3.8 million construction workers. While it may be true that only about 2 percent of the construction workers are minimum wage workers, this is because most workers in the construction industry are receiving wages well above the minimum. Nevertheless, the minimum and overtime protection provisions in the Fair Labor Standards Act are available to construction workers--which was not the case when the Davis-Bacon Act was passed in 1931.

Other prevailing wage laws

Labor said that the Walsh-Healey Act wage determinations are not parallel or comparable to Davis-Bacon determinations because they measure the prevailing industrywide minimum wage, either nationally or regionally. Therefore, they applied only to the lowest wage earners among the occupational classifications in an industry.

It is true that the Walsh-Healey and Davis-Bacon Acts are not exactly parallel, since each gives the Secretary of Labor different authority and discretion to set and administer the prevailing minimum wage for the construction and materials and supplies industries. Nevertheless, both laws are

- (a) employee wage protection laws--each for a different industry,
- (b) passed at about the same time--when the country was in the midst of a great depression,
- (c) based on the philosophy that the Government needed to protect the workers in each industry (construction and supply) from the sharp decline of wages and prices in the depression, and
- (d) based on legislation requiring the payment of minimum wages determined to be prevailing and

published through the mechanism of wage determinations by the Labor Department.

Thus, we believe the acts are somewhat comparable, and our reference to the Walsh-Healey Act in this report is appropriate and valid.

The Service Contract Act, Labor said, is another indication that the Congress concern with special wage protection for employees of Government contracts is not depression oriented. We disagree. Because the Congress saw fit to enact a law in 1965 to protect employees of service contractors does not necessarily mean, as Labor implies, that there is a continuing need for laws such as the Davis-Bacon Act, if the economic and other conditions that existed at the time of enactment have changed favorably.

Repeal will not affect programs for minorities in the construction industry

Labor stated that repeal of the Davis-Bacon Act would have serious social costs because it would seriously affect Labor's programs to place minority groups and women in the building trades. Labor said participation of these minority groups in apprenticeship and other skills training programs in the construction industry have significantly increased as a result of the Government's affirmative action efforts during the 1970s, and the minority groups are just beginning to be represented in the high-paid "mechanical" building trades (plumbers, ironworkers, sheet metal workers, etc.). According to Labor, "Obviously, the tenuous foothold these workers have in the industry make them especially vulnerable to the wage exploitation which could occur with repeal of Davis-Bacon."

Labor provides no factual or logical basis for its viewpoint.

The employment of minorities and women on federally financed projects is covered under the affirmative action and contract compliance program established under Executive Order 11246, which is administered by Labor. This program is unrelated to, and administered separately from, the Davis-Bacon Act. This is also true for the other programs to protect minorities and women, such as title VII of the Civil Rights Act of 1964, administered by the Equal Employment Opportunity Commission and designated State and local fair employment agencies. These programs would continue whether

or not the Davis-Bacon Act was repealed. This is also true for the Federal Government's apprentice training program, which is carried out by Labor under the Comprehensive Employment and Training Act--not the Davis-Bacon Act.

We could find no evidence or documented concern that the repeal of Davis-Bacon would have any discriminatory effect on women or ethnic categories of construction workers. To the contrary, contractors argue that Davis-Bacon wage rates actually resulted in fewer construction job opportunities for low-skilled minorities and those just starting in construction. According to a study on youth and minority employment published by the Congressional Joint Economic Committee on July 6, 1977, Davis-Bacon wage requirements discourage nonunion contractors from bidding on Federal construction work, thus harming minority and young workers who are more likely to work in the nonunionized sector of the construction industry.

Repeal will not economically affect construction workers

Labor stated that repeal of the Davis-Bacon Act would risk serious economic and social costs for the 3.8 million workers in the construction industry. Although the industry has very important implications for the national economy, according to Labor, it is one of the most highly competitive businesses in the country, and it is characterized by short-term employment, unemployment fluctuations, a preponderance of small firms and, although it has high labor costs, employers have less control over other costs--land, material, etc.--which have been increasing at a higher rate than labor costs. Labor also stated that the unemployment rate in the industry has been higher than in most others--10 percent versus 6 percent for the American work force as a whole--and wages of construction workers in the past 7 years have lagged behind the average increases in all industries--and the gap has increased in the past year. These factors, Labor stated, make employment in the construction industry inherently uncertain and workers highly vulnerable.

We agree that the construction industry, although composed mostly of small firms, has important implications for the national economy, since it has averaged about 9.4 percent of the Gross National Product--about \$146.5 billion during the 5-year period 1973-77. We also agree that the construction industry is competitive, and we recognize the significance of the industry's costs other than labor (such as

land and materials). We fail to see, however, how these factors have a relevance to, or would be affected by, repeal of the act.

Labor stated that unemployment is higher in the construction industry than in other industries. Although this is true, we are not aware of the relevance of the need for the Davis-Bacon act in relation to the unemployment situation. Some people believe that the Davis-Bacon act may actually contribute to the unemployment problem because the higher labor costs from excessive Davis-Bacon wage rates hinder the number of unemployed persons who could be employed on Government projects. 1/

Labor cites data to indicate that between 1971 and 1977 construction worker wages increased 5.9 percent per year, compared to the all-industry average of 7.3 percent. Labor said that between 1975 and 1977 the gap widened, since the construction workers' increases were 5.5 percent per year and all industry increases were 7.7 percent.

These statistics are misleading.

The all-industry average wages cited by Labor mainly reflect the generally lower-than-construction wages of over 90 percent of employees on private nonagricultural payrolls. To illustrate, Department of Labor statistical data show that in 1977 there were about 67.2 million employees on private nonagricultural payrolls, of which only about 3.8 million (5.7 percent) were employed in the construction industry. The data also shows that the average hourly and weekly earnings of construction workers have been substantially greater than the all-industry average (e.g., 56.5 percent greater in 1977). Therefore, the computation of percentage increases normally results in smaller percentage increases for construction wages relative to the lower all-industry average wages.

For example, the average weekly earnings of construction workers rose from \$266.08 in 1975 to \$295.29 in 1977, an increase of \$29.21 (11 percent). The all-industry average weekly earnings went from \$163.53 in 1975 to \$188.64 in 1977, an increase of \$25.11 (15.4 percent). Thus, although the all-industry average earnings increased by a larger percentage

1/See article, "Hard-Core Unemployment, Public Housing Construction, and the Davis-Bacon Act," by Jerry E. Pohlman, Labor Law Journal, Apr. 1971, Vol. 22, No. 4, p. 196.

between 1975 and 1977 than construction earnings, the actual money increase for construction workers was greater than the all-industry average.

With regard to average weekly earnings, only mining worker earnings exceeded the construction workers, and this occurred for the first time in 1977. Thus, while it may be true that the construction workers' most recent percentage wage increases have lagged a little compared to other industries, the reason could be that workers in other industries are starting to catch up to the construction workers' rates.

Finally, Labor stated that the Davis-Bacon Act is still needed and continues to serve its purpose of affording needed protection to the construction worker. According to Labor this need is reinforced by the fact that the Congress, through passage of the 1964 amendments including fringe benefits under the act, has reaffirmed the continuing need for prevailing wage legislation for construction workers. Labor concludes its comments on this chapter by stating:

"* * * the costs of the repeal of Davis-Bacon would be very onerous and fall directly upon the four million persons attached to the industry, particularly women and minorities."

We believe that Labor is overstating the hypothetical impact of repealing the act. Labor provided no documentation or support that the costs would be onerous or fall heavily on women and minorities. To the contrary, there are indications that repeal could benefit women and minorities.

The fact that an estimated 3 million construction workers who work on projects not covered by Davis-Bacon are among the best paid workers in the country indicates to us that construction workers do not need the "special protection" Labor deems so essential.

CHAPTER 4

THE DAVIS-BACON ACT IS IMPRACTICAL TO ADMINISTER, RESULTING IN LABOR DEVELOPING AND ISSUING INACCURATE WAGE DETERMINATIONS

After nearly 50 years of administering the Davis-Bacon Act, the Department of Labor has not developed an effective system to plan, control, or manage the data collection, compilation, and wage determination issuance functions under the act. Our review of the wage determination activities in five regions and headquarters showed continued inadequacies, problems, and obstacles in Labor's attempt to develop and issue wage rates for federally financed construction based on prevailing rates determined in accordance with the act's and Labor's requirements.

Our evaluation of the wage determination files and inquiries regarding 73 wage determinations at Labor's headquarters and five of its regions showed that, in many instances, these wage rates were not adequately or accurately determined. About one-half of the area and project determinations we reviewed were not based on surveys Labor made of wages paid to workers on private projects in the locality where the wage rates issued were required to be paid. Instead, union-negotiated rates were used, on the assumption that those rates prevailed.

When Labor did make surveys, the data collection and compilation practices were varied and inconsistent within and among regions and at the headquarters level; even Labor's basic wage determination regulations and procedures were not always uniformly applied.

Also, when Labor made surveys there were problems in identifying similar projects and collecting data from contractors on a voluntary basis. Further, Labor deleted, added, and changed the wage data received without adequate reason or rationale. As a result, many of the worker classifications and rates issued did not represent those prevailing in the locality.

In our opinion, Labor's procedures for developing and issuing wage rate determinations provided no assurance that the rates stipulated actually prevailed for corresponding classes of workers on similar private construction projects in the locality.

PROCEDURES FOR OBTAINING WAGE
DATA AND DETERMINING WAGE RATES

Labor's regulations in 29 C.F.R. Part I provide that Davis-Bacon Act wage rate determinations must be issued for construction, alterations, and repair on such varying types of projects as buildings, bridges, dams, highways, tunnels, sewers, powerlines, railways, airports (buildings and runways), apartment houses, wharves, levees, canals, dredging, land clearing, and excavating. Labor generally issues wage rates under broad classifications, covering building, heavy construction, highway, and residential construction.

The regulations also require that, to make and issue wage rate determinations under the act, the Administrator of the Wage and Hour Division is to conduct a continuing program of obtaining and compiling wage rate information.

Wage data collected through surveys

The act does not explain how the wage rate information is to be obtained. The regulations and the Wage and Hour Division's program encourage the voluntary submission of wage rate data to Labor's headquarters and regional offices by contractors, contractors' associations, labor union organizations, public officials, and other interested parties.

If Labor does not have sufficient data to make a wage rate determination for all crafts that are necessary for performing the construction under the proposed contract, a wage rate survey may be conducted in the area. The wage surveys are usually made by Labor's field staff. Occasionally onsite surveys are made. However, because of limited staff resources, Labor's surveys generally consist of mail or telephone contact with contractors, contractor associations, unions, and other parties who might be knowledgeable of wage rates being paid in the area--requesting voluntary submission of payment evidence to support such rates paid.

Elements of a wage determination

The act provides that the minimum wage to be paid construction workers:

"* * * shall be based upon the wages that will be determined * * * to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed * * *."

During its surveys Labor must (1) identify the classes of workers for whom the determination should be made, (2) fix the boundaries of the area for which the determination is to be made, (3) decide what projects are of similar character to the proposed project, and (4) determine what wages actually prevail.

Identifying classes of workers--The act and Labor's regulations clearly require that the determinations of prevailing wage rates be for classes of laborers and mechanics corresponding to those who are to work on the proposed construction project.

Geographic area to be considered--The act and regulations provide that the area to be considered when determining prevailing wage rates be the city, town, village, or other civil subdivision of the State in which the work is to be performed. Labor has defined an area or locality as a county, although it considers more than one county in many cases.

Projects of a character similar--The regulations provide that, when making wage rate determinations, projects completed more than 1 year before the date of the request for a determination may, but need not, be considered. If there has been no similar construction within the area in the past year, wage rates paid on the nearest similar construction may be considered.

Labor's manual states that, to make a proper determination, Labor must establish what projects in the area bear a similarity in terms of local construction practices to the proposed project. While Labor generally issues rates under broad classifications--building, heavy, highway, and residential construction--it recognizes that, in determining what projects are of a similar character there may be dissimilarities in the mode of construction within each broad classification. For example, in heavy construction, dam construction does not necessarily have the same wage rates as sewer systems.

Labor often considers most federally financed construction projects when determining projects similar to the proposed project, even though the legislative history of the act shows that rates should be based on similar private construction.

Determining the prevailing rates

The act provides little guidance in defining a prevailing wage rate. Labor has therefore established certain rules for determining the prevailing rate.

When determining rates, the regulations provide that Labor consider the following information gathered in its surveys of projects of a character similar to the proposed construction:

1. Statements showing wage rates paid on construction projects. These must show the names and addresses of contractors, including subcontractors, location, approximate cost, dates of construction, type of project, the number of workers employed in each classification, and the wage rate paid each worker.
2. Signed collective bargaining agreements.
3. Wage rates determined for public construction by State and local officials pursuant to prevailing wage legislation.
4. Information furnished by Federal and State agencies.

After obtaining wage payment data during its surveys, Labor makes a determination, in accordance with regulations, of the "prevailing wage rate:"

1. The rate of wages paid in an area in which the work is to be performed, to the majority of those employed in the classifications to be used on the proposed construction project.
2. In the event there is not a majority paid at the same rate, then the rate paid to the greater number, provided such greater number constitutes 30 percent of those employed. This is called the 30-percent rule.
3. In the event that no single rate is paid to 30 percent of those employed, the average rate is used.

In applying 1 above, the rate of wages, and in 2 above, the same rate, mean to the penny. In general, only contractors who are a party to a union-negotiated collective bargaining agreement pay all workers exactly the same rate.

Issuing wage determinations

Labor issues or publishes two types of wage determinations--area determinations and project determinations. Area determinations are published in the Federal Register and reflect those rates determined to be prevailing (a) in a specific geographic area and (b) for the type of construction described. They are generally published whenever the area or locality wage pattern for a particular type of construction is well settled and there is a recurring need. Area determinations have no expiration date but remain in effect until modified, superseded, or withdrawn.

Project wage determinations are issued at the specific request of a contracting agency, are applicable to the named project only, and expire 120 days from date of issuance. Prior to 1972, Labor's headquarters received agency requests, and developed and issued project determinations. In 1972 Labor made its 10 regional offices responsible for receiving requests and developing wage data. At the time of our review, Labor's regional offices prepared project wage determinations and, after review and approval by headquarters, mailed the determinations to the contracting agency.

In January 1978 these responsibilities were transferred back to headquarters--however, regional staff continue to perform wage surveys at the direction of headquarters for project as well as area determinations.

Wage and Hour Division manuals

To guide and assist the Washington and regional staff with making wage surveys and issuing wage determinations, the Wage and Hour Division headquarters issued in February 1972 the "Interim Manual of Operations for Making Wage Determinations Under Davis-Bacon and Related Acts." The Interim Manual was replaced in August 1977 by the "Construction Wage Determination Manual of Operations."

INADEQUACIES AND PROBLEMS IN LABOR'S COLLECTION OF WAGE DATA

We found that about one-half of the 73 area and project determinations we reviewed at the five selected regions were not based on surveys made by Labor of wages paid to workers on private projects in the locality for which the wage rates issued were required to be paid. Instead, union-negotiated rates were usually used on the assumption that those rates prevailed. Similar findings were noted in our review of 530 area determinations issued by headquarters.

Also, when Labor made surveys the wage data was usually obtained by mail or telephone and was never verified to contractors' payroll records; the rates and number of workers paid were also not always accurate. In addition, some surveys were as much as 6 years old without any update of the wages or other data.

Labor also encountered problems in its data collection and compilation process. For example, wage data was furnished to Labor on a voluntary basis by contractors and others, and Labor estimates that only about 30 percent of the contractors submitted data.

Many wage determinations were not supported by surveys of wages paid in the locality

Nearly half of the 73 project and area determinations included in our random sample were not supported by surveys of wages paid on similar construction projects in the locality. Labor relied on wage rates and corresponding worker classifications and work practices established in union-negotiated collective bargaining agreements to set wage rates in the locality of the construction.

Labor's regulations and manuals provide little guidance on when and where to conduct wage surveys. They only provide that, when data on hand is outdated, questioned, or insufficient for furnishing wage rates to Federal agencies for a particular locality, consideration must be given to conducting a survey. However, the availability of collective bargaining rates in a locality may be considered as sufficient data to indicate that union rates prevail.

We reviewed a random sample of 73 wage determinations-- 50 project and 23 area determinations issued or published between January 1, and June 30, 1976, at the five regions in our review. We found surveys had not been made for 22 of the 50 projects and 13 of the 23 area determinations--nearly 50 percent of the 73 projects reviewed.

The tables below show the type of construction and basis for rates in our sample.

Table 1

Wage Determinations, by Region and Types
of Construction, in Our Random Sample

<u>Type of construction</u>	<u>New York</u>	<u>Atlanta</u>	<u>Chicago</u>	<u>Dallas</u>	<u>San Francisco</u>	<u>Total</u>	<u>Supported by survey</u>
Building	1	8	7	8	-	24	10
Heavy	-	-	1	3	1	5	1
Highway	2	-	-	-	-	2	-
Residential	6	3	4	4	10	27	22
Water well	-	-	-	-	2	2	2
Water and sewer	-	1	-	-	-	1	1
Combinations of above (note a)	<u>6</u>	<u>3</u>	<u>1</u>	<u>-</u>	<u>2</u>	<u>12</u>	<u>2</u>
Total	<u>15</u>	<u>15</u>	<u>13</u>	<u>15</u>	<u>15</u>	<u>73</u>	<u>38</u>

a/Combinations include: building, heavy, highway, and dredging; heavy and highway; building and heavy; building, heavy, and highway; and heavy, water and sewer.

Table 2

Wage Determinations Supported and Not Supported by
surveys Conducted by Labor

<u>Region</u>	<u>Total</u>	<u>Project determinations</u>		<u>Area determinations</u>		<u>Totals</u>	
		<u>No survey</u>	<u>Survey</u>	<u>No survey</u>	<u>Survey</u>	<u>No survey</u>	<u>Survey</u>
New York	15	5	5	4	1	9	6
Atlanta	15	3	7	-	5	3	12
Chicago	13	7	3	2	1	9	4
Dallas	15	6	4	3	2	9	6
San Francisco	15	1	9	4	1	5	10
Total	<u>73</u>	<u>22</u>	<u>28</u>	<u>13</u>	<u>10</u>	<u>35</u>	<u>38</u>

In the 35 determinations where surveys were not made, rates issued by Labor were always those obtained from union-negotiated collective bargaining agreements.

In the 38 determinations where surveys were made, the surveys were conducted, generally, by mail or telephone. In a few instances surveys involved onsite visits to the contractors.

Wage surveys not made for most area determinations

Since 13 of the 23 area determinations in our sample were not supported by surveys in the locality, we reviewed the status of surveys completed on all area determinations in effect nationwide during the period of our review. Labor estimates that 75 percent of the construction projects in the Nation use area determination rates. Thus, erroneous wage rates in these determinations can have the most significant effect on the cost of Federal or federally assisted construction and local wage standards. Similar to the findings in our sample, surveys of wage rates paid to workers had never been made in localities for most of the 530 area determinations reviewed. Wage rates were based on union collective bargaining agreements.

The area determination concept was developed in the mid-1960s to eliminate the time and expense involved in issuing separate project determinations for every construction project requiring wage rates under the act. Labor hoped to increase efficiency in handling an ever-increasing workload.

Labor began publishing these rates in the Federal Register in August 1971. Because of the relative ease in administration versus the issuance of separate determinations for each project, Labor has expanded the concept. Between 1973 and 1976 counties covered by area determinations more than doubled for most types of construction. By October 1976 Labor maintained 530 area determinations on all types of construction covering as much as 96 percent of the 3,119 political subdivisions (counties for the most part) of the United States, Guam, Puerto Rico and the Virgin Islands.

<u>Determinations</u> <u>Type</u>	<u>Number</u>	<u>Counties covered at</u>		<u>Percent of</u> <u>total counties</u> <u>at Oct. 1976</u>
		<u>Dec. 1973</u>	<u>Oct. 1976</u>	
Building	190	529	1,157	37
Heavy	2	637	1,868	60
Highway	28	2,348	2,993	96
Residential	131	275	677	22
Other (note a)	<u>179</u>	-	1,488	48
Total	<u>b/530</u>			

a/Combinations of two or more types listed above, and a small number for construction not otherwise classified (such as flood control, dredging, and water and sewer). Also, 1973 data not obtained.

b/The number of area determinations had increased to 648 at December 1977.

We asked Labor to provide the basis for wage rates published in each of the 530 wage determinations in effect in October 1976. Data furnished by the Labor staff showed no surveys were made for 302 (57 percent) of the determinations. Some determinations for which no surveys were made covered multiple counties (both urban and rural) and even entire States.

In all areas covered by the 302 wage determinations Labor based its determinations on union rates from collective bargaining agreements. These negotiated union wage rates and worker classifications were published as prevailing. Moreover, on receipt of new agreements from local or international union offices, Labor's headquarters staff routinely published changes to the wage rates in the Federal Register.

Also, when determining the rates for the area determinations, Labor's headquarters staff sometimes required payment evidence; however, verification that the rates were being paid in the locality generally consisted of a phone call to the local union business agent or a signatory contractor. Labor did not determine how many workers were paid the rates in the locality or the extent of nonunion wages paid to workers engaged in similar work in the area.

For the remaining 228 area determinations, the Labor staff, Department of Housing and Urban Development (HUD), or State highway departments had conducted surveys. Nonunion rates had been determined to prevail in about 82 percent of

these areas (186), mixed union and nonunion rates in about 8 percent (18), and union rates in the remaining 10 percent (24).

We found also that many surveys were old. For example, 146 of the surveys had been completed more than 1 year before the October 1976 index we reviewed. Survey data on 32 of these determinations was more than 3 years old (the oldest was more than 6 years old).

Labor's practice of issuing area determinations may alleviate its workload, but its practice of relying for the most part on collective bargaining agreements favors the organized segment of the industry and supports higher rates that may not prevail and, conversely, discriminates against the nonunion segment. Also, by not updating its surveys Labor may support lower wage rates than may actually prevail in the locality. The procedures for developing and maintaining this program provide no assurance that rates issued actually prevail in the localities covered by the determination.

Labor's problems in obtaining wage data through the voluntary submission program

The Davis-Bacon Act does not require construction contractors--in the private or public sector--to provide wage information to Labor for use in making its wage surveys and issuing wage determinations. Labor's regulations provide for the voluntary submission of wage data from contractors, unions, contractor associations, and other interested parties to obtain up-to-date information. Labor needs the voluntary cooperation of the contractors. Such cooperation, however, is not easy to obtain, nor is it easy to obtain data on the universe of construction activity in a county or project area.

We tried to (1) identify and contact all construction contractors in each of the 30 localities where we made wage surveys, (2) determine all projects of a character similar to the proposed Federal construction, and (3) obtain wage rates paid to all classes of workers from contractors' payrolls and related records. However, this proved to be a formidable task that was impossible to perform with complete assurance that all wage rate data was obtained.

We met with contractors, when possible, and were able to convince many of the need for current wage data in our review. However, in several surveys in each of the five regions, contact could not be made or contractors refused to provide any data.

Following are some of the problems we encountered:

- Initial contact was difficult with contractors-- many would not return calls.
- Records were not always kept on projects, or they were in storage and could not be readily retrieved.
- Contractors were too busy to cooperate and search files for data.
- Many would furnish data verbally, but refused any verification with records.
- Contractors who had worked in the locality were from other counties. Data was obtained by telephone contact and without verification.

Labor has recognized the problem of obtaining wage data voluntarily in its "Construction Wage Determinations Manual of Operations," which states

"In order to obtain a complete wage picture, it is essential to have as many firms as possible participating in our surveys. Unfortunately, contractor response to letters requesting wage information on known projects which have been shown on Dodge Reports [reports of construction activity] is sporadic at best. Furthermore, second request letters seldom produce additional responses."

This difficulty has been highlighted by the Labor staff in interviews with our staff and in memorandums accompanying their surveys in most of the regions we visited. Examples of the regional office comments are presented in appendix IV.

Labor obtains only limited wage data

The problem of voluntary wage data collection is further highlighted by the limited amount of data received on individual projects in surveys. Labor obtained individual wage rates for only one worker classification for projects costing as much as \$2 million. We found examples where data on only a few employees was obtained on large projects in most regions visited.

Examples of the total wage data received by Labor on projects surveyed in some localities follow.

<u>Labor region</u> <u>County and State</u>	<u>Project cost</u>	<u>Total wage data on project</u>	
		<u>Worker classifications</u>	<u>Number of employees</u>
Atlanta:			
Dickson County, Tennessee	\$ 702,000	3	9
Spartanburg County, South Carolina	800,000	2	17
New York:			
Middlesex County, New Jersey	2,000,000	1	7
Orange County, New York	2,000,000	4	12
	1,500,000	3	13
Dallas:			
Gregg County, Texas	2,000,000	1	5
San Francisco:			
Stanislaus County, California	3,000,000	2	2

Inclusion of data on the many unreported workers on such projects could affect the prevailing wage rates issued. Without including data on all workers in the locality who worked on similar projects, there is no assurance the issued rates are those that actually prevail.

We also attempted to determine the response rate on all Labor surveys in five regions, but found that some files were incomplete. The average response rate on the 14 surveys where data were available was about 58 percent, ranging from 5 to 100 percent.

However, Labor estimates that, nationwide, data will be received on only about 30 percent of the construction projects it identified and the contractors it contacted. Thus, wage rates for workers on 70 percent of the construction projects identified are not included in its surveys. Based on the results of Labor's efforts, it appears that an adequate wage rate survey with participation on a voluntary basis may be impossible to accomplish.

Labor did not verify the wage data obtained in surveys

The vast majority of the wage and classification data was obtained by Labor's wage determination staff by mail and telephone. Consequently, payrolls were rarely obtained or reviewed.

Moreover, there were no formal procedures or requirements in Labor's regulations or manuals for the staff to verify data to payroll records--even on a sample basis. Without some verification, Labor has no assurance that the rates and classifications furnished were actually paid to the number of employees reported on the project.

In some instances, we were able to check the data Labor obtained from contractors in its surveys with data we obtained from payroll records. In most cases, we found differences in the rates and classifications.

In many cases the contractors we contacted could not explain the differences in the data we noted from their records and the data given to Labor. Some did not even remember providing data to Labor. In other cases, Labor obtained data from a contractor and contractor association representative with both sets of data being somewhat different. When we visited the contractor we obtained still different data from the contractor's records. Some examples of different rates and classifications noted by us are presented in appendix V.

LABOR IS STILL ISSUING INACCURATE WAGE RATE DETERMINATIONS

Our review of the wage determination files for the 73 wage determinations showed that in many cases the wage rates were not adequately or accurately determined and seldom represented the prevailing wages paid in the localities. In collecting and compiling data from surveys for making wage determinations, the practices were varied and inconsistent within and among the five regions and at the headquarters level: even Labor's basic wage determination regulations and procedures were not always uniformly applied.

When surveys were made by Labor, its staff frequently deleted, added, and changed the wage data received without adequate reason or rationale. Rates from surveys that were higher than union rates were not used or they were adjusted downward; conversely, rates that were considered by the Labor staff to be too low or were lower than those issued in prior determinations were deleted, increased, or not issued.

Labor still followed some of the questionable practices and procedures we identified in prior reports. Labor (1) continued to use wages paid on Federal projects where Labor had previously stipulated rates to be paid, (2) applied data from surveys to projects that were not of a character similar to the proposed Federal construction, (3) extended wage rates to adjacent and nonadjacent counties, (4) included wages paid to the same contractor work force in the compilation base for as many projects as the contractor furnished data, and (5) applied its 30-percent rule, which can inflate wage rates.

We tried to quantify the errors, variations, and inconsistencies in procedures, especially where rates were supported by surveys, but the files in some regions were so poorly documented and incomplete, or could not be located, that this was impossible.

When surveys were made Labor deleted, added, and changed wage data without adequate reason or rationale

Labor's regulations and its manuals provide that data from wage surveys may be omitted if it is not (1) from projects of a character similar to the proposed project, (2) in the appropriate time frame (past 12 months), or (3) from the same locality as the proposed project. Otherwise, data from surveys are to be utilized in computing prevailing wages for classifications. However, these basic criteria were often not followed by regional offices, and the practices and procedures for compiling data and computing wage rates were not uniformly or consistently applied within or among regions and the headquarters office.

Our review showed that wage rates were deleted, added, or adjusted (both up and down); worker classifications were deleted, changed, or combined; these deletions and adjustments frequently were not supported by data obtained in the surveys, and the basis or rationale for the action was not always adequately documented by Labor officials.

More specifically, in some cases the Labor staff (1) added classifications at union-negotiated rates on which no data were received in the survey, (2) adjusted a rate, after union protest on a multicounty survey, and issued rates from combined counties on all other classifications, (3) generally deleted the lowest rates, and (4) contrary to Labor's regulations, deleted and did not use data obtained in the survey on a piece rate basis.

These inconsistencies and questionable practices are detailed in the examples obtained from surveys by Labor staff at the five regions we visited. These are presented in more detail in appendix VI.

Labor continues to use wage rates paid on Federal projects when determining wage rates

Even though the legislative intent of the act provided that rates issued should be based on those that prevailed in similar private construction, Labor obtained and used rates from Federal or federally assisted projects on which Davis-Bacon Act rates had previously been required. In our review of the 73 projects we noted instances where the use of rates from such projects contributed to the issuance of rates that were higher or lower than those prevailing in the private sector. Also, when inaccurate wage rates were prescribed for Federal projects the inclusion of these projects in subsequent surveys would compound and sustain the errors.

Wage analysts and specialists in all regions visited, except New York, included federally funded projects in their wage rate surveys. The wage analyst in New York said that he does not use Federal projects if he has enough data from private sources because of their potential for distortion and inflationary impact. He said that, in 25 wage surveys he completed over a 2-year period, he included a Government project only once.

Examples of where Federal projects were included in the Labor surveys and the effect of deleting these projects from surveys are presented in appendix VII.

Labor used projects not of a character similar to the Federal contract work

Labor's surveys included wage data from projects that were not always of a character similar to the proposed projects.

The act provides that the minimum wages paid to construction workers be based on wages determined to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or political subdivision where the work is to be performed. To determine prevailing rates Labor, in its instructions, classified construction into the broad classifications of building, heavy, highway, and residential construction. However, in each of these categories

there are many dissimilarities in local labor practices and related wages due to the size, type, and complexity of construction.

Labor's surveys did not always account for these dissimilarities, and the resulting rates were applied to all agency projects. An analysis of the data received in surveys indicate wage differences in rates on varying construction projects within each broad classification. As a result, many of the wage rates prescribed by Labor were not based on similar construction work.

We found examples of dissimilar projects in surveys and the application of rates to dissimilar Federal projects in four of the five regions visited during our review. Some examples are listed in appendix VIII.

Labor still extending wage rates to adjacent and nonadjacent counties

The act and implementing regulations provide that the area to be considered when determining prevailing wage rates be the city, town, village, or other civil subdivision of the State in which the work is to be performed. The regulations also provide that, if there has been no similar construction within the area in the past year, wage rates paid on the nearest similar construction may be considered. Labor's manual instructions provide that, when conducting wage surveys, adjacent county data may be included in the data collection process, except that metropolitan data generally should not be used to produce data for a rural county or vice versa.

Our review showed that wage rates determined in several counties, both supported and not supported by surveys, were extended to and issued for projects in adjacent and nonadjacent counties, even though an adequate basis generally existed for issuing prevailing rates based on the labor force and construction data in the locality. This procedure has resulted in the application of rates from noncontiguous counties and the use of union rates in predominately nonunion areas. Moreover, the use of wage rates from another area is not in accord with the act's intent, which was to maintain the local wage rate structure and not raise or lower wages on the basis of rates prevailing in other areas.

Of the 73 determinations in our sample, files were sufficiently complete on 56 to determine the sources of rates issued. Eighteen, nearly one-third, were based on rates extended from other counties. One county had been used for two nonadjacent county determinations in our sample.

Examples illustrating this problem are presented in appendix IX.

Labor's duplicate counting of the same workers distorts survey results

The interim manual provides that the Labor staff should collect data by project rather than on individual mechanics or laborers working in the locality on similar projects. Union business agents, association representatives, and contractors can furnish data on the same labor force working on several projects. Such data overstates the number of employees in the locality and can bias the rates issued.

To illustrate, a county may have only 2 contractors, A and B, employing 15 and 5 carpenters, respectively. Contractor A worked on one large project for a full year and reported the rate paid to each of his 15 carpenters at \$7.00 an hour. Contractor B's labor force worked on 10 smaller projects during the same year and reported each carpenter on each project earned \$10 per hour. The Labor staff would compile this data as follows:

A--15 carpenters @ \$ 7.00
B--50 carpenters @ \$10.00

The resulting rate, based on majority rule but representing a wage rate paid to only 25 percent of the carpenters in the locality, would be issued at \$10.00 per hour.

Labor's procedures do not call for identifying individual workers on each project. Payment evidence data from contractors was not always available in the files. When evidence was available contractors occasionally noted that craftsmen or laborers listed on one project were the same individuals that were reported on in another project that was also in the survey. Many of the surveys we reviewed contained wage data from contractors who reported on more than one project.

Several examples of this questionable practice and its effect on wage rates are presented in appendix X.

Labor's 30-percent rule results in unrealistic wage rates

Labor's application of its 30-percent rule--using the rates paid to at least 30 percent of each classification of workers to be covered in the determination--as a method

for determining the prevailing wage rates in an area has led to some unrealistic wage rates. The rule has resulted, in some cases, in the issuance of significantly higher or lower rates than are actually paid to the majority of workers engaged in similar construction in the area.

Labor's regulations define the prevailing wage rate as the wage rates paid in the area in which the work is to be performed to the majority of those employed in each classification on similar construction in the area. When the majority is not paid the same rate, the prevailing rate shall be considered to be the rate paid to the greatest number, provided it constitutes at least 30 percent of those employed. If less than 30 percent of those employed receive the same rate, then the average rate shall be considered to be the prevailing rate.

In areas where unions have organized at least 30 percent of the construction workers, their wage scales have an excellent chance of becoming the prevailing rate, even though 70 percent of the rates paid to other workers may vary by small amounts. Once a rate has been established, its chances of influencing future determinations are high, because in many cases Labor considers the previous rate when it establishes new rates.

Union pay scales, which are set forth in collective bargaining agreements, are uniform; open-shop contractors generally recognize different skill categories, time in service, productivity, and other factors when establishing wage scales. Thus, it is unlikely to find open-shop contractors paying most of their employees the same wage, as is true under union collective bargaining agreements.

An illustration of higher wage rates established by Labor was the wage rate of \$12.40 an hour determined to be prevailing for painters in Carson City County, Nevada, on the basis of results of a wage survey of 11 projects in the area. The survey showed that, out of eight painters, three were paid at the \$12.40 hourly rate and five were paid hourly rates between \$6.25 and \$9.00, as follows:

<u>Number of painters employed (4 of the 11 projects)</u>	<u>Hourly wage rate paid</u>
2	\$ 6.25
2	8.74
1	9.00
3	12.40

In issuing the \$12.40 rate paid to 37.5 percent of the painters as the prevailing rate, the 30-percent rule gives no consideration to the lower rates paid the other five--the majority of the eight workers. Thus, any contractors employing painters at the lower rates would have had to increase painter's wages by as much as \$6.15 an hour if they obtained work on federally financed construction in the area.

In another area, use of the 30-percent rule in Mineral County, Nevada, led to the adoption of the lowest pay rate as the prevailing rate. Labor determined the wage rate of \$3.50 an hour to be prevailing for laborers on the basis of a wage survey which showed 5 of 11 laborers were paid that rate. The six other laborers were paid rates between \$4 and \$7.90 an hour.

<u>Number of laborers employed</u>	<u>Hourly wage rate paid</u>
5	\$3.50
3	4.00
2	5.55
1	7.90

In prescribing \$3.50 as the minimum hourly rate, Labor gave no consideration to the higher wage rate paid to 6--the majority--of the 11 workers covered by the wage survey.

LABOR ISSUED INCORRECT
WAGE DETERMINATIONS

Labor's regulations and procedures require the contracting agency to review the Federal Register to determine whether an area determination is in effect and, if so, the agency must incorporate the wage rates into the construction contracts that are subject to the act. If an area determination that covers the type of work in the contract has not been published in the Register, the regulations require that the contracting agency submit a request for a project determination to Labor. Based on the descriptions of the construction projects furnished by agencies, Labor issues prevailing wage rates for the type of construction involved.

During our review we identified instances where Labor furnished wage rates to agencies on a project (1) not covered by the Davis-Bacon Act and (2) of a different type of construction than that described by the agency. These examples are described in appendix XI.

THE ACCURACY OF LABOR'S WAGE DETERMINATIONS
IS ALSO QUESTIONED BY THE WAGE APPEALS BOARD

Since 1975, the number of cases involving Labor's wage determination activities appealed to the Wage Appeals Board have been increasing. In 1975 only 13 cases were appealed to the Board, in 1976 these increased to 19, and in 1977 there were 34 appeals.

Of the 34 cases filed with the Board in 1977, 17 dealt with Labor's administration of wage determinations under the act. We analyzed the 17 cases and found that the Board had rendered decisions in 13 cases. The remaining four cases were either dismissed or withdrawn.

In 12 of the 13 cases where the Board rendered a decision, the Board disagreed with Labor's administrative practices and identified problems similar to those discussed in our report. For example, the Board directed Labor to (1) conduct wage surveys, (2) use only projects of a character similar to the Federal project, (3) conduct a survey to determine that rates are actually being paid, and (4) use all data obtained in surveys.

In some of the cases where Labor was overruled, it was directed to perform another survey, which resulted in lower rates being established and used. An example was decision WAB-77-2, dated October 21, 1977--which involved construction of dual bridges over Mobile Bay, Alabama. (This case was the subject of a report by us. 1/)

Labor had ruled that the State of Alabama had to use heavy construction wage rates rather than highway rates for a certain portion of the project. Heavy rates were about twice the highway rates.

The Board ruled against Labor and said that the projects used by Labor as a basis for setting the wage rates were not similar to the bridge construction except in the broadest sense of the term. Labor's survey included wage rate information from railroad, dock or waterfront, and industrial site

1/See app. XIV for our report, "Inaccurate Davis-Bacon Act Wage Determination Applicable to Alabama Mobile Bay Bridge Project I-65-((85) Overruled By the Wage Appeals Board" (HRD-78-128, June 20, 1978).

construction projects, dam repairs, and other miscellaneous projects. The Board directed Labor to issue new wage determination.

As a result, Labor made a new wage survey of bridge construction in Mobile County and included other bridge construction work at highway rates. Based on its survey, Labor issued a new wage determination for bridge construction work in Alabama which contained wage rates considerably lower than its previous determination.

Examples of wage rate decreases included

- carpenters from \$9.32 an hour to \$4.50, a decrease of \$4.82;
- electricians from \$10.49 an hour to \$5.80, a decrease of \$4.69;
- piledrivermen from \$9.59 an hour to \$4.25, a decrease of \$5.34; and
- crane operators from \$9.77 an hour to \$5.00, a decrease of \$4.77.

The contracting officer for the Alabama State Highway Department stated that the State will realize some savings in construction costs by use of the new lower wage rates for completing the remaining work on the Mobile Bay Bridge project.

In still another case in which the Board overruled Labor in 1977 (WAB-77-19, Dec. 30, 1977), the Board admonished Labor:

"After analysis of the oral testimony presented at the hearing and a study of the briefs submitted by the interested parties, it appears to the Board that the Department of Labor has in this case and in other recent cases before the Board given insufficient weight to the plain language of the Davis-Bacon Act and the related statutes * * *. The operation of the statute should be to reflect the local wages, not to establish new wage payment practices. In this and the other recent cases it appears that the Assistant Administrator's attempts to standardize procedures have resulted in the introduction of new rates into the applicable area rather than reflecting those wage rates already there."

Thus, the Wage Appeals Board's findings and decisions support our views that Labor has frequently issued inaccurate wage determinations and, in general, poorly administered the Davis-Bacon Act.

AUTOMATING THE WAGE DETERMINATION
PROGRAM IS UNLIKELY TO PROVIDE
ACCURATE DETERMINATIONS

Labor initiated action in 1973 to review the possibility of automating its wage determination program and, by June 30, 1978, efforts were under way to establish an automated system. Labor has experienced trouble in this endeavor and has found it more difficult than anticipated to design a system to provide reliable data to issue accurate wage determinations.

In an earlier report ^{1/} we recommended that Labor change its system for compiling and issuing wage data from a manual operation to an automatic data processing system. Potential advantages of using automation in the wage determination program had been noted in a Labor report on an internal review of operations in July 1969.

No action was taken, however, until 1973, when a Department-wide automatic data processing study recommended a feasibility study to investigate the benefits of automating wage determination processing under the act. Based on its efforts during 1974 and 1975 to review the feasibility of providing computer support to the Davis-Bacon Act wage determination staff, Labor management approved and funded a project to develop a computer-based data collection and wage computation system.

In February 1976, after evaluating proposals from eight firms, Labor awarded a contract for \$500,000 to a firm in Maryland. The statement of work called for 10 task and 3 subtask efforts beginning with the performance of a requirement analysis and conceptual automated system design, continuing with performance of the detailed design, development, and test of the automated system, and concluding with the provision for documentation, training, data conversion, and optional maintenance. The schedule provided that the system be implemented by May 1977, with an optional 6-month maintenance period concluding in November 1977.

^{1/}"Construction Costs for Certain Federally Financed Housing Projects Increased Due to Inappropriate Minimum Wage Rate Determinations" (B-146842, Aug. 12, 1970).

In early 1977, with only 3 of the 10 tasks completed or in process and contract costs approaching the \$500,000 contract value, Labor reevaluated the feasibility of continuing the project with the same contractor under a different type of contract or, again, soliciting competitive proposals from firms for the balance of the work to complete the system. Labor decided to continue with the same contractor on a sole-source basis under a cost plus award fee arrangement. The contract was modified in July 1977--costs were increased to \$1,329,131 and the schedule extended 22 months to September 30, 1979.

In justifying continuance of the contract, Labor stated that the contractor had "successfully completed, with distinction, the performance of tasks 1, 2, and 3--it has consistently received high evaluation on the work performed to date."

However, by June 30, 1978, a Labor evaluation of costs and technical and managerial performance under the contract revealed slippage. About \$1.1 million (81 percent) of the total amount funded for the contract had been expended as of June 30, 1978, and it appeared that additional funding would be necessary to complete the project. Labor officials told us that the contractor attributed the schedule slippage to system design complexities and turnover of staff.

Labor renegotiated the contract in September 1978 from a cost plus award fee arrangement to firm fixed price. Work segments were restructured into four components: (1) collective bargaining agreements, (2) an analysis task, (3) data collection/wage computation, and (4) wage information. The collective bargaining component is to be completed with options that can be exercised by the Government on the remaining segments. The options are to be exercised only if the contractor successfully completed the first segment within cost and schedule. If the contractor performs the balance of the work as planned and Labor exercises options in the contract, the project will have experienced a delay of 26 months and cost about \$1.6 million.

We reviewed the contract specifications and data developed by the contractor to date. Our review showed that

- voluntary participation in the wage collection program will be as it is today;
- there are no special plans to verify contractor, union, or association data furnished;
- input editing operations planned will still allow for additions, deletions, and adjustments to data.

The problems in the present manual operations will apparently continue under the computer-based system. It does not appear at this time that the entire wage determination function will be automated, but, if it is, we believe that administrative and system deficiencies identified in our report will continue to exist.

LABOR COMMENTS AND OUR EVALUATION

Labor stated that our analysis of its administration of the Davis-Bacon Act contained fundamental misconceptions and errors. Labor said our sample of 73 area and project determinations--which include 50 project and 23 area determinations--was too small to be representative and was inadequate.

We disagree. Our conclusion and belief that the Davis-Bacon Act is impractical to administer and that Labor has issued inaccurate wage rates are based on well documented and adequately supported findings developed during a review of a cross section of Labor's area and project determinations.

We recognize that our sample was small, but it was made on a random basis and stratified to the number of wage determinations issued during the period, and therefore it is representative of the determinations issued in the regions we reviewed. Moreover, our review was made at 50 percent of Labor's 10 regions, included all sections of the country, and included regions with (1) areas with much construction activity (in dollars), (2) areas with large numbers of construction workers, (3) both industrial and rural States, and (4) areas with high and low union representation.

Labor also took issue with all of our findings presented in this chapter on inadequacies in program administration and inaccurate wage determinations. Presented below is our evaluation of Labor's comments on our findings that many wage determinations were not supported by surveys (the wage rates issued were mainly based on union collective bargaining agreements), the effects of Labor's 30-percent rule, and the automation of the wage determination process. Our evaluation of Labor's comments on our other findings are presented in the appropriate appendixes (IV through XI).

Lack of wage surveys

Labor stated that our comments on the lack of surveys for many wage determinations were based on an erroneous assumption that accurate wage rates can only be determined in one way--a rigid adherence to the survey process in every

instance. It stated that surveys are unnecessary, in some cases, because through maintaining a continuing liaison with contracting agencies, contractor and labor groups, and others interested and knowledgeable about construction in the various parts of the country, Labor has been able to develop and update economic information on the construction industry. This, Labor said, on many occasions, gives a clear indication as to whether open shop or union wages prevail for a particular civil subdivision or for certain crafts in the subdivision. But where there is uncertainty as to whether open shop or union rates prevail, and when sources indicate nonunion rates prevail, Labor said a survey is made.

We disagree with Labor's assertions regarding the adequacy of its wage survey and data collection system. We found no systematic planning, control, or management of the data collection functions. We could not substantiate through a review of the files or discussions with Labor officials that continuing liaison with agencies, contractors, and labor groups provides Labor with sufficient economic information on the construction industry to give a clear indication as to whether open shop or collectively bargained rates prevailed. We found no data in the files, either in the field or headquarters, relating to "economic information" in each county.

In counties where no surveys had been made, the files contained information identifying the union local having jurisdiction in the county and, sometimes, collective bargaining agreements, if applicable. This information was sent to the field offices from Labor headquarters in 1972, when the wage activity was decentralized. There was no other support, either at headquarters or the field, to show what wages prevailed in the locality. In January 1978 the wage issuance function was again centralized at Labor headquarters. Thus, the function is now performed by headquarters staff, which is further removed from the localities and has less knowledge than regional staff of local wages and area practices.

Given the everchanging makeup of the construction industry, it is logical that current wage surveys should be the primary method for collecting wage data and determining accurate prevailing rates. Labor asserts that it conducts surveys wherever and whenever needed; this is contrary to what we found. Surveys are conducted generally on an ad hoc basis, in response to protests or complaints or recognition that file data were so far out of date that they were no longer useful.

Labor's wage rates are based mainly on collective bargaining agreements

Labor stated that, when information is available to indicate that negotiated rates prevail, the collectively bargained agreement is used to insure that accurate rates are reflected. Labor asserts, however, that where doubt exists as to whether union rates do prevail, they are resolved by undertaking a survey.

Our review indicated that Labor made few surveys to determine whether union rates prevailed. Generally, if Labor had a collective bargaining agreement in its files that covered the locality where a determination was requested, in the absence of survey data it issued the union rates.

For the most part, Labor had no other information in its files to show that union rates prevailed. We asked Labor staff for additional data showing that union rates prevailed, but they had none.

Lack of surveys for area determinations

Labor said that the percentage of area determinations which are current is constantly increasing. Labor said that it had analyzed each of its 9,516 county schedules--which list the wage rates issued in the counties--and found that 78 percent of the wage rates were set in the past year, and only 3 percent were more than 3 years old. Labor said this provides a more accurate and up-to-date description of the status of Davis-Bacon wage determinations than the information in our report.

We believe Labor's figures are misleading. For one thing, the updating of the county schedules was not all based on surveys showing the wages that prevailed in the local areas covered by the determinations. We asked Labor officials to provide us information about those schedules that are updated by surveys. Labor officials stated that they were unable to provide this information; the updating data was not developed this way. Thus, in the absence of such information, we were unable to determine how many schedules were based on surveys or other valid documentation of wages being paid in the counties, as opposed to merely establishing current wage rates based on collective bargaining agreements without assurances that those rates actually prevailed in the counties.

Labor's 30-percent rule

Labor said the 30-percent rule is not established as being inflationary. It cited as support (1) a study by the Council on Wage and Price Stability, which showed in some cases that Labor's Davis-Bacon wage rates were lower by 2.7 percent than the average rate for commercial construction and (2) a study it made of 1,609 craft classifications where surveys were made, which showed that the 30-percent rule produced a prevailing wage rate very close to the average rate in a locality. For this reason, Labor said it cannot concur with our criticism that the 30-percent rule results in inflated and unrealistic wage rates. Labor stated also that the 30-percent rule has been applied consistently since 1935 and was reviewed in depth in 1962 by the House Special Subcommittee on Labor, which strongly supported its continued use.

In our opinion, the inflationary impact of the 30-percent rule is demonstrated by the example on page 52 of this report; this is one of the examples we found during our review. Moreover, the potentially adverse effect on the workers (if Labor established wage rates that are lower than those prevailing, and workers were actually paid those lower rates) is illustrated in our examples on page 53, where the 30-percent rule resulted in significantly lower wage rates than what the majority of workers were receiving. Similar examples were reported in our prior reports on the problems in Davis-Bacon administration.

Labor's statement that the 1962 report by the House Special Subcommittee on Labor strongly supported continued use of the 30-percent rule was used out of context and is misleading. Our review of the report shows that the majority of the Subcommittee believed that Labor's use of the 30-percent rule (1) was not legislatively authorized and (2) had led to difficulties and justified criticism. It recommended that the 30-percent rule be established legislatively. However, no action has been taken on this proposal in the ensuing 17 years.

Moreover, the Subcommittee's minority opposed the 30-percent rule and concluded that, by legislating its use as the majority suggested, the Secretary could avoid being accused of doing wrong because he would be following a specific statutory direction--this, the minority members stated, would be ridiculous and superficial. They recommended that the 30-percent rule be abandoned.

We believe Labor also used the Council on Wage and Price Stability's study out of context. The Council relied on a Bureau of Labor Statistics special survey of union, nonunion, and average wages in 19 cities classified as Standard Metropolitan Statistical Areas. These are large metropolitan areas that are typically union areas in most types of construction. This is acknowledged by the Council's study, which states "The Special Survey includes mostly large cities, whose degrees of unionization or patterns of industrial organizations may differ from that of other smaller cities." The Council also said the special survey covered the Standard Metropolitan Statistical Areas, whereas the Davis-Bacon rates do not necessarily encompass the entire areas.

Another significant fact, which was acknowledged by the Council, is that its wage comparisons did not include fringe benefits (which must be paid along with the basic wage rate) which, the Council states, are likely to be larger for union than for nonunion workers. In our review, we found for example at a New Jersey project in October 1976, that the union fringe benefits ranged from about \$1 to over \$4 an hour, depending on the craft and locality. A study by the Massachusetts Institute of Technology showed that, on average, both the level of benefits and the proportion of nonunion employees receiving them are much lower than those in the union sector. The study said that for union employees the fringe benefits comprise a substantial proportion of hourly earnings ranging from 10 to over 20 percent of the basic hourly wage.

Labor also cited its study in fiscal year 1978 showing that, where surveys were made, the 30-percent rule resulted in nearly a 50-50 split between higher and lower than the average wage rate, with a difference of only 9 cents higher on the overall average. Labor's study showed that the 9 cents difference higher rate is made up of an average of 88 cents higher rates for 20 percent of the classifications at union rates and 10 cents lower rates for 80 percent of the classifications at nonunion rates. The union-negotiated rates did not include fringe benefits. This means that, when nonunion rates were determined by the 30-percent rule, wages were 10 cents an hour lower than an average rate. When union rates were determined by the 30-percent rule, they were 88 cents higher--adding \$2 or \$3 for fringe benefits would make this even more dramatic.

Thus, it appears that the 30-percent rule application frequently does not produce data that is very close to the average rate in a locality, except maybe in predominately nonunion areas.

It is our view that the application of the 30-percent rule is most widely abused by Labor in localities where no surveys have ever been conducted. Labor has determined that a wage may be considered prevailing if it is paid, to the exact penny, to 30 percent of those in one classification.

Pay rates to the exact penny are set for the most part only by union collective bargaining agreements. Nonunion contractors customarily vary rates of pay to workers to account for experience, seniority, productivity, etc.

As a result, in localities where Labor believes (but may not know for sure) that unions have organized at least 30 percent of the workers, the union rate generally prevails in all counties within the jurisdiction of the agreement. Beginning on page 42 we discuss area determinations which are frequently based on collective bargaining agreements. Labor does not verify that at least 30 percent of the workers in the locality are working on projects of a character similar to and being paid at the union rate. There was no data in the Labor files, either at headquarters or the regions, to support many of these wage determinations.

Thus, application of the 30-percent rule in this manner has frequently assured that union rates prevailed in many localities covered by collective bargaining agreements until a protest is received.

OUR FOLLOWUP REVIEW SHOWS THAT LABOR'S
PROGRAM IMPROVEMENTS ARE NOT EFFECTIVE

Labor stated that its management of the program is being constantly improved. It stated that in the past 2 years it has taken active steps to increase its efficiency in administering the Davis-Bacon Act to the fullest possible extent. It cited the following:

- Processing of project wage decision requests through the regional offices has been eliminated to avoid duplication of effort and to reduce possible error resulting from both regional office and national office handling.
- Intensive training of the 10 regional wage specialists has been undertaken to assure a uniform approach to the wage determination program on a nationwide basis and to have an informed center of responsibility for the program in each region.

--New sections have been added to the Field Office Operations Handbook, and the Construction Wage Determination Manual of Operations has been updated and published.

--All regulations relating to the issuance of wage determinations in this program are in the process of being reviewed to provide full guidance to contracting agencies and other users of Department interpretive positions and procedures.

In our opinion, these actions will not help Labor increase the efficiency of the administration of the act. In one case the action taken may be counterproductive, in another the action apparently hasn't yet been initiated, and in yet another the action will not assist Labor in issuing current and accurate prevailing wage rates. Our evaluation of each of Labor's comments follows.

Centralizing the processing of requests

Field staffs were established in 1972 to insure that the Labor staff responsible for developing and issuing wage determinations would be better able to have current knowledge of local construction industry and area practices. Under the current system, where determinations are handled at the headquarters, those most knowledgeable of the locality have been eliminated from the wage determination issuance process. In our opinion, this has resulted in the loss of a check and balance function formerly performed in part by each group.

For example, the headquarters staff recently eliminated separate wage schedules for paving and utilities projects associated with building construction in Texas, although this had been a longstanding area practice in the State and recognized as such by Labor's field staff. The action was later reversed by the Wage Appeals Board. In recent cases, the headquarters staff has issued incorrect rates--residential rates for building construction. In our opinion, continued involvement of the field staff in issuing determinations may have eliminated such mistakes.

Intensive training undertaken

We contacted several regional wage specialists about the intensive training Labor said had been provided since our review. None could recall having received any recent training. Labor's comments may refer to a 1-week meeting in October and November 1978, but this was primarily oriented to enforcement practices under the Davis-Bacon Act and Service Contract Act and was not directed to a uniform approach to issuing wage determinations.

New and updated manuals

New sections in the Field Office Operations Handbook cited by Labor provide guidance to compliance officers in carrying out enforcement investigations under the act. These will provide little or no guidance or assistance to wage specialists and analysts, either in the field or headquarters, to help issue current and accurate prevailing wage determinations.

Updating the Construction Wage Determination Manual of Operations primarily involved the addition of data furnished to agencies in the selection of the type of construction schedule to use for their projects. It provides examples of projects and their related broad category of construction (building, heavy, highway, and residential). The Wage Appeals Board has already told Labor that its administrative practices in identifying projects of a similar character have given insufficient weight to the language of the act, and that Labor's attempts to standardize procedures have resulted in introducing new rates into areas rather than reflecting applicable rates already there. (See p. 55.)

We agree with the Board and believe that the addition of this data to the manual may result in additional confusion.

Review of regulations providing guidance to agencies

This comment is not relevant to the basic finding in our report--Labor's administrative practices do not result in current, accurate prevailing rates. It is doubtful that reviewing regulations that provide guidance to agencies and other users of wage determinations will result in more efficient and effective wage determinations by Labor.

Results of followup review

To determine whether any of these improvements have had an effect on Labor's administrative practices, we made a followup review in early calendar year 1979 at four of the five regions in our review. We observed that all of the ineffective practices identified in this report still exist--inaccurate wage rates are still being issued. We found current examples of problems similar to those in our previous review:

--Rates were based on surveys made up to 8 years ago, or no survey was ever made in the locality.

- Voluntary participation by contractors in furnishing wage rates resulted in limited data acquisition, rates issued based on as few as one rate obtained in surveys.
- Data was not verified; inaccurate or false data was furnished to and used by Labor in determining rates.
- Data obtained in surveys was not used or was deleted and/or changed.
- Data on Federal projects in surveys distorted the prevailing wage determined in the locality.
- Survey projects were not always of a character similar to each other or to the Federal project to which they were applied.
- Rates were extended from urban to rural localities on the basis of jurisdictional coverage in union collective bargaining agreements, or because that was all that was available.
- Duplicate counting of workers on more than one project in a survey distorted the prevailing determined rate.
- Rates were issued for a different type of construction than that requested by the agency.
- Rates obtained in surveys were not issued.
- Use of the 30-percent rule resulted in issuance of unrealistic rates, or it was not applied to avoid issuing too low a rate.
- Helper classifications were not issued even though surveys indicated a substantial use of the classification in the locality.
- Piece-rate wage data was not used in determining prevailing rates, although it was the prevailing form of payment in the locality.

We also made surveys in each region. In two localities, we found that wage rates issued by Labor were substantially greater than those that prevailed in private projects in the locality. For example, in Coweta County, Georgia, we found the following differences in rates issued by Labor in some classifications.

<u>Craft</u>	<u>Labor rates issued in January 1979</u>	<u>Our survey rate</u>	<u>Difference (Labor rate higher)</u>
Bricklayer	\$10.20	\$8.00	(\$2.20)
Cement mason	9.65	4.00	(5.65)
Electrician	12.17	5.83	(6.34)
Iron worker	10.04	4.95	(5.09)
Plumber	11.71	6.04	(5.67)

Labor issued union-negotiated rates on 11, of the 14 classifications we compared in our survey in Coweta County. Of the 14 rates compared, our survey indicated that 13 were nonunion and lower than the rates Labor issued. Labor's rates averaged 47.8-percent higher than the rates we found prevailing, ranging from 7.1 percent to 141.2 percent.

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In our opinion, the results of the followup review demonstrate the continued ineffectiveness and inefficiencies in Labor's administration of the act. It also shows how consistently Labor is inconsistent in its determinations of the prevailing wages in localities.

CONCLUSION

We believe that the continuing problems in administering the act support our overall concern that a systematic management program to determine accurate prevailing wages for every classification of construction worker in each of the varying types of construction in literally every city and area in the Nation could never be achieved. Given the diverse characteristics of the construction industry, the large number of political subdivisions in the country, and the needed voluntary participation of contractors in providing wage data, it is doubtful that additional resources or improvements in administration would result in efficient and effective accomplishment of the act's legislative intent.

CHAPTER 5

THE EFFECTS OF LABOR DEVELOPING AND ISSUING INACCURATE WAGE RATES

The Davis-Bacon Act was passed to prevent itinerant contractors from importing gangs of cheap labor into communities to work on Federal construction projects and paying them at lower wages than those prevailing in the locality, to the detriment of jobs for local workers and local wage scales. One purpose of the act was to insure that itinerant contractors would pay at least the locally prevailing wage to their workers, as stipulated by the Government. No new wage scales, either higher or lower than those prevailing, were to be established by Labor.

Our review showed that the legislative intent has seldom been achieved, and that nearly all the problems in Labor's administration identified in our prior reports still exist--corrective action has not been taken or has been ineffective.

As part of our evaluation of the development and issuance of wage rates under the act, we selected 30 locations from our random sample, made surveys of the wages being paid by private contractors in the localities, and compared the results with the wage rates issued by Labor. We found that the wage scales issued by Labor usually did not prevail in the 30 localities surveyed, and Labor in effect established new wage scales. In 12 localities Labor's rates were higher than those prevailing in the locality and in 18 the rates were lower than those that prevailed. Labor's higher rates were usually based on union-negotiated rates, although our surveys showed that nonunion rates often prevailed.

In the 12 determinations where Labor's rates were higher than those prevailing in the locality, wage costs paid on the projects averaged 36.8 percent more than the comparable wage costs at rates prevailing in the localities. The higher wage costs ranged from a low of 5.2 percent to a high of 122.6 percent.

As a result, Federal construction costs may have been increased by an average of about 3.4 percent on the 12 projects. The increase ranged from 1 to nearly 9 percent.

More importantly, the increased costs may have had the most adverse effect on local contractors and their workers--those the act was to protect--by promoting the use of non-local contractors on Federal projects. We found that nonlocal

contractors worked on the majority of these projects, indicating that the higher rates may have discouraged local contractors from bidding.

On the other hand, little, if any, adverse effect was evident in the 18 projects where Labor's rates were lower than those prevailing locally. In these 18 localities the Government was, in effect, supporting a lower wage standard. However, local contractors were generally awarded the contracts and generally paid workers at rates higher than those stipulated by Labor.

MOST WAGE RATES ISSUED BY LABOR
DID NOT PREVAIL--SOME WERE TOO
HIGH, SOME WERE TOO LOW

From our random sample of 73 wage determinations, we selected 30 Federal or federally assisted projects under construction, with estimated costs of \$25.9 million, that had used the wage rates required by Labor. (See app. XIII.)

We made surveys of wages paid to corresponding classes of workers on similar private construction projects in the localities. We generally used Labor's regulations and procedures when collecting the data and determining rates. We surveyed wage rates paid on private construction only (eliminating Federal projects with Davis-Bacon Act rates) and eliminated duplicate counting of workers where contractors had worked on more than one project during the survey period.

In the 30 localities, we compared the wage rates for 277 worker classifications with those rates required by Labor in the wage determinations. Our wage rates and Labor's were the same for 35 worker classifications (13 percent). For the remaining 242 worker classifications--87 percent--the prevailing wage rates prescribed by Labor did not prevail on similar private construction in the area.

For the 242 worker classifications we found 98 (35 percent) that were higher by an average of \$2.04 an hour (ranging from a few cents to \$5.44), and 144 (52 percent) that were too low by an average of \$0.99 an hour (ranging from one cent to \$5.30).

The table on the following page shows the differences by region between rates issued by Labor and those obtained in our surveys.

Comparison of wage rates issued by Labor with
rates determined prevailing in our survey

<u>Region</u>	<u>Total wage rates compared</u>	<u>Labor rates higher than prevail- ing wages</u>		<u>Labor rates lower than prevail- ing wages</u>		<u>Labor and our rates the same Number</u>
		<u>Num- ber</u>	<u>Average differ- ence</u>	<u>Num- ber</u>	<u>Average differ- ence</u>	
New York	34	15	\$3.68	18	\$1.01	1
Atlanta	75	29	1.77	39	.90	7
Chicago	46	12	1.77	30	.98	4
Dallas	43	26	1.84	16	1.00	1
San Francisco	<u>79</u>	<u>10</u>	<u>1.51</u>	<u>41</u>	<u>1.08</u>	<u>22</u>
Total	<u>277</u>	<u>98</u>	\$2.04	<u>144</u>	\$0.99	<u>35</u>
Percent	100	35		52		13

Union-negotiated rates
were generally used by Labor

During our review of the 277 worker classifications in the 30 locations, we noted that 66 percent of Labor's rates were union negotiated rates based on collective bargaining agreements and 34 percent were nonunion rates. In our surveys, however, union-negotiated rates prevailed on only 42 percent of the wage rates; the remaining 58 percent showed nonunion rates prevailed. Union-negotiated rates issued were generally higher than the nonunion rates we found to be prevailing.

The table on the following page presents our survey results on wage rates in the 30 localities.

Comparison of Union-Negotiated And Nonunion
Rates Issued By Labor And Our Survey

<u>Region</u>	<u>Total wage rates compared</u>	<u>Labor rates issued</u>		<u>Our survey rates</u>	
		<u>Union negotiated</u>	<u>Non- union</u>	<u>Union negotiated</u>	<u>Non- union</u>
New York (percent)	34 (12)	33 (97)	1 (3)	20 (59)	14 (41)
Atlanta (percent)	75 (27)	16 (21)	59 (79)	3 (4)	72 (96)
Chicago (percent)	46 (17)	35 (76)	11 (24)	18 (39)	28 (61)
Dallas (percent)	43 (16)	34 (79)	9 (21)	14 (33)	29 (67)
San Francisco (percent)	79 (28)	65 (82)	14 (18)	61 (77)	18 (23)
Total	<u>277</u>	<u>183</u>	<u>94</u>	<u>116</u>	<u>161</u>
(Percent)	(100)	(66)	(34)	(42)	(58)

INCREASED COSTS AND THE EFFECTS
ON COMPETITION WHEN LABOR'S RATES
ARE HIGHER THAN THOSE PREVAILING
IN THE LOCALITY

In 12 of the 30 localities sampled, Labor's rates for Federal or federally assisted construction projects were higher than those we determined prevailed on similar private projects. Total construction costs of about \$4.6 million on the 12 projects may have been increased by an average of about 3.4 percent. The increases ranged from 1 to nearly 9 percent.

Also, as a result of Labor rates the wage costs paid on the 12 projects averaged 36.8 percent more than the comparable wage costs at rates prevailing in the localities. These ranged from a low of 5.2 percent in the Dallas region to 122.6 percent in the New York region.

Also, nonlocal contractors were awarded contracts on the majority of these projects--7 of the 12--all in counties with less than 100,000 population. Local contractors were

most successful only in the large counties. The higher rates may have had an adverse effect on competition by discouraging some local contractors from bidding on the projects.

The higher Labor rates occurred on all types of construction and in every region we reviewed, as shown in the following schedule:

Projects with Labor Wage Rate Higher Than
Prevailing on Private Construction--
Location of Prime and Subcontractors

Type of construction (note a)	Determination number	Location-- county, State, and (population)	Project costs (estimated or actual)		Difference	Percent increase	Prime contractors (note b)	
			With Labor rates required	With prevailing local rates			Local	Nonlocal
New York	F	76-NY-231 Nassau, NY (1,382,000)	\$ 116,215	\$ 110,898	\$ 5,317	4.8	x	
	HV	76-NY-89 Oneago, NY (58,300)	577,251	530,816	46,437	8.7		x b/67
	H	NJ76-3128 Essex, NJ (687,487)	337,560	333,893	3,667	1.1	x	
Atlanta	B	76-TN-88 Dickson, TN (26,283)	44,130	41,343	2,787	6.7		x b/28
Chicago	H	76-IL-60 Scott, IN (18,885)	29,000	28,206	794	2.8		x b/30
	B	AR-7152 Barron, WI (17,146)	2,684,021	2,614,153	69,868	2.7		x b/52 b/170
	H, S, T&W	WI-14 Sheboygan, WI (99,214)	125,589	122,548	3,041	2.5		x b/50
Dallas	H	76-AR-41 Little River, AR (11,817)	142,284	140,625	1,659	1.2	x	
	H	OK76-4027 Oklahoma, OK (517,919)	181,577	179,155	2,422	1.4	x	
	B	OK76-1016 Wagoner, OK (27,225)	21,994	22,917	957	4.2		x b/85
San Francisco	HV	76-CA-6 Tulare, CA (210,986)	12,891	12,682	209	1.6	x	
	P	76-CA-7 Kings, CA (69,510)	285,352	274,794	11,558	4.2		x b/200
Total			\$4,260,746	\$4,112,050	\$148,696	3.4	5	7

a/R=Residential
H=Heavy
HV=Highway
B=Building
W=Water well
S, T&W=Sewer, tunnel, and water

b/Distance in miles of contractors from locality of project.

Labor's rates were based on wage surveys in only 4 of the 12 localities. Labor had never conducted surveys in the remaining eight localities but, instead, issued union-negotiated rates in the locality or, in one case, extended from a nonadjacent county.

The 12 projects included 86 of the 277 worker classification wage rates we compared in our surveys. Labor issued union-negotiated rates on 81 (94 percent) of the 86 worker classifications. In our surveys we found that union-negotiated rates prevailed in only 29 (34 percent) of the 86 worker classifications.

Wage costs increased significantly because of Labor's higher rates

In the 12 localities sampled, the higher rates established by Labor for the Federal or federally assisted construction projects resulted in significantly higher wage costs--an average of 36.8 percent--being paid on the projects. The higher wage costs occurred in all regions; the highest percentage--122.6--occurred in New York, as shown in the following schedule.

Schedule Showing Projects With Higher Wage Costs Being Paid As a Result of Labor's Wage Determinations

Region	Determination number	Location county/ State	Wage costs		Difference	Percent Increase
			With Labor rates required	With prevailing local rates		
New York	76-NY-251	Nassau, NY	\$ 19,552	\$ 14,235	\$ 5,317	37.4
	76-NY-89	Otsego, NY	84,302	37,865	46,437	122.6
	NJ76-1128	Essex, NJ	33,290	29,623	3,667	12.4
Atlanta	76-TN-88	Dickson, TN	10,546	7,759	2,787	35.9
Chicago	76-IN-60	Scott, IN	10,810	10,016	794	7.9
	AR-1152	Barron, WI	194,241	124,173	69,868	56.2
	76-WI-14	Sheboygan, WI	15,861	32,820	3,041	9.3
Dallas	76-AR-43	Little River, AR	27,011	25,192	1,639	6.5
	OK76-4022	Oklahoma, OK	48,582	46,160	2,422	5.2
	OF76-4016	Wagoner, OK	4,207	3,250	957	29.4
San Francisco	76-CA-6	Tulare, CA	1,042	833	209	25.1
	76-CA-7	Kings, CA	83,379	71,821	11,558	16.1
Total			\$552,843	\$404,147	\$148,696	36.8

Three examples of prevailing rates determined in our survey which were substantially lower than those issued by Labor are presented in appendix XII.

Effect of competition on Government construction projects

During our surveys some contractors stated that, rather than disrupt their wage structures and worker classification practices, they would not bid on federally financed projects. Reasons given were the increased administrative costs (including preparation of certified payrolls) and the general problems of dealing with the Government. Some contractors cited hardship and morale problems among employees when wage rates were reduced after completion of the Federal projects and the workers were returned to the lower rates paid on private construction in the area.

For example, during our survey in Dickson County, Tennessee, most of the local contractors who had previously worked on Davis-Bacon Act projects complained of the higher Davis-Bacon Act rates; one contractor stated that he refused to bid on Government jobs because of the high rates.

This factor limited competition on the construction projects we reviewed and probably accounted for the success of nonlocal contractors with receiving the majority of the contracts in those localities where Labor's rates were higher than prevailing wages.

Estimates of the magnitude of reduced competition and the associated increased labor costs are difficult to make because of the uniqueness of each area's labor market. However, in our review of the project in Dickson County, Tennessee, none of seven bids received on the project were from local contractors. The successful bidder was a Nashville contractor who imported his workers from that city. Also, two of the three subcontractors were from communities 24 to 28 miles away. The adoption of Nashville union wage rates as the prevailing wage on the Dickson project increased labor costs by about 6.7 percent.

EFFECTS WHEN LABOR'S RATES ARE LOWER THAN THOSE PREVAILING IN THE LOCALITY

In the remaining 18 localities included in our sample, the wage rates issued by Labor were lower than our surveys showed prevailed on similar private projects. Labor wage rates were on the average about \$1 per hour lower than the prevailing wages.

For 9 of the 18 localities Labor issued wage rates based on surveys made in the localities. In the remaining nine localities Labor issued union collectively bargained rates for the worker classifications without surveys.

The 18 localities included 191 of the 227 worker classification rates we compared. Labor issued union-negotiated rates on 103 (54 percent). Our surveys indicated that union-negotiated rates prevailed on 97 (51 percent) of the rates. However, many of Labor's rates were lower, sometimes substantially, than the collectively bargained rates at the time the contracts on these projects were awarded. This was because Labor's rates were based on outdated union collective bargaining agreements.

Labor's lower-than-prevailing rates placed the Government in the unusual position of supporting lower wage standards in the 18 localities. However, local contractors were the successful bidders on 15 of the 18 projects, and the majority paid their workers more than that required by Labor--sometimes more than we found prevailed. Population in these 15 counties ranged from 25,000 to 1.5 million.

Thus, the act's intent--to maintain the local prevailing wage structure--was carried out when Labor established rates that were lower than those prevailing in the communities.

Examples of where Labor's issued rates were lower than those prevailing are presented in appendix XII.

LABOR'S COMMENTS AND OUR EVALUATION

Labor's comments on this chapter and our evaluation are presented in appendix XII.

CHAPTER 6

THE DAVIS-BACON ACT HAS RESULTED IN INCREASED COSTS FOR FEDERALLY FINANCED CONSTRUCTION AND HAS HAD AN INFLATIONARY EFFECT ON THE ECONOMY

Setting prevailing wages for federally financed construction, as required by the Davis-Bacon Act, has increased the direct cost of Federal construction. We estimate that, as a result of wages being established at higher rates than those actually prevailing in the area of the projects, construction costs for federally financed projects could be increased by an estimated \$228 million to \$513 million annually.

The act has also resulted in unnecessary administrative costs estimated at \$191.6 million for 1976 and \$189.1 million for 1977, which were incurred by contractors for complying with the act's paperwork requirements--which are passed on to the Government--plus an estimated \$10.9 million in 1976 and \$12.4 million in 1977 by Labor and other Federal agencies for administering and enforcing the act's requirements.

Thus, the Davis-Bacon Act--which affected less than an estimated 1 million workers in 1977 (about 1 percent of the total workforce)--may be costing the taxpayer several hundred million dollars annually.

Moreover, the act has had an inflationary effect on the economy--specifically in the area of the construction projects, but also in the country as a whole.

INCREASED FEDERALLY FINANCED CONSTRUCTION COSTS

We reported in 1971 ^{1/} that Labor's prescribing higher wage rates for federally financed construction projects than those that actually prevailed not only increased the cost of Federal construction but also could adversely affect the economic and labor conditions in the project area and the country as a whole. We estimated that, as a result of minimum

^{1/}"Need for Improved Administration of the Davis-Bacon Act Noted Over a Decade of General Accounting Office Reviews" (B-146842, July 14, 1971).

wages being established at rates higher than those actually prevailing in the area of the project we reviewed, construction costs increased 5 to 15 percent. This amounted to about \$9 million of the total \$88 million in construction costs involved in these projects.

However, our earlier reports resulted from a congressional inquiry or our initiated reviews of questionable wage determinations. Our reports also primarily covered residential construction projects located in Southern and Eastern States.

In our current review we expanded our coverage to include all sections of the country and wage determinations issued for all major types of construction. Also, in each of the 5 regions we visited we randomly reviewed project and area determinations proportionate to the number issued in each region for various types of construction. A total of 73 area and project determinations were randomly selected for detailed review. In addition, for 30 projects we made our own wage surveys in the localities of the projects and compared the wages we found prevailing with those Labor said prevailed. (See ch. 5.)

In our review in the 30 localities surveyed, we found that the wage scales issued by Labor usually did not prevail and Labor, in effect, established new wage scales. In 12 localities we found that Labor's rates were higher than those prevailing in the locality, and in 18 the rates were lower than those that prevailed. Labor's higher rates were usually based on union-negotiated rates, although our surveys showed that nonunion rates frequently prevailed.

As a consequence, when Labor's rates were too high, Federal construction costs may have been inflated. In the 12 cases where Labor's rates were higher than those prevailing in the locality, Federal construction costs of \$4.6 million on the 12 projects apparently have been increased by an average of 3.4 percent. The increases ranged from 1 to nearly 9 percent. (See schedule on p. 72.)

While our selection of 30 projects for review was made by random sampling, the sample size was insufficient for projecting the results to the universe of construction costs during the year with statistical validity. However, even without statistical certainty, the random nature of our sample leads us to believe that if these projects are representative (and we have no reason to believe they aren't) our cost estimates are a useful indication of the order of magnitude of the increased costs resulting from the Davis-Bacon Act's wage determinations.

For example, an estimate could be made, based on our data, showing the projects--12 of 30 (40 percent)--where construction costs were inflated because the wage rates required by Labor were higher by an average of 3.4 percent than those prevailing in the locality. On this basis, costs of about \$15.1 billion (40 percent of the estimated \$37.8 billion in 1977) of Federal or federally assisted construction subject to the act may have been increased by about \$513 million (3.4 percent of \$15.1 billion).

On the other hand, a more conservative approach would be to estimate the savings on a project cost basis. The 12 projects found with inflated wages comprised 17.8 percent (\$4.6 million) of the total estimated cost of \$25.9 million of the 30 projects sampled. On this basis, costs on about \$6.7 billion (17.8 percent of the estimated \$37.8 billion in 1977) of Federal or federally assisted construction subject to the act would have been increased by about \$228 million (3.4 percent of \$6.7 billion).

ADMINISTRATION IS COSTLY AND CONTRIBUTES TO INCREASED CONSTRUCTION COSTS

The cost of administering and complying with the requirements of the Davis-Bacon Act have been estimated at about \$202.5 million for 1976 and \$201.6 million for 1977.

Of the three major types of administrative costs associated with the act--those incurred by Labor, other Federal agencies, and the contractors--the estimated cost to the contractors is the most significant. These were estimated to be about \$191.6 million for 1976 and \$189.1 million for 1977.

The administrative costs to contractors are for payroll information to comply with the records maintenance, certification, and other reporting requirements of the act. These requirements were established by the provisions of the Davis-Bacon and Copeland Anti-Kickback Acts. Under Labor's regulations issued pursuant to the two acts each contractor must:

- Pay construction workers and laborers wages and fringe benefits at least once a week at rates not lower than those determined by the Secretary of Labor.
- Post the wage rates to be paid each worker prominently at each work site.
- Maintain detailed payroll records and related data during the course of the project, showing the wages and fringe benefits paid to each worker.

- Submit a copy of the payroll to the contracting agency weekly.
- Submit a weekly statement of compliance with respect to the wages paid each employee during the preceding week.
- Preserve the payrolls and related data for at least 3 years after contract completion and make them available for review by the contracting agency.

Moreover, each prime contractor is responsible for assuring that all subcontractors used on the construction project adhere to the above requirements, and for certifying and passing on the subcontractors' weekly payrolls to the contracting agency.

Contractors also incur administrative costs when collecting and supplying wage data and other information for wage surveys that Labor makes to determine prevailing wages in localities.

During our surveys we asked many of the contractors for estimates of increased administration costs on projects subject to the act. The estimates we received ranged from nothing to as much as 50 percent of contract costs. But the ranges were so varied or not given from a sufficient number of contractors--many would not give estimates--that they were not useful.

However, one empirical estimate of contractor administrative costs was reported by the Commission on Government Procurement. ^{1/} The Commission requested that the Associated General Contractors of America sample its membership to obtain estimates of the administrative costs involved with complying with the payroll requirements of the Davis-Bacon Act. The survey was conducted in the fall of 1972. Based on the information received in that sample, the Association estimated that the annual cost to contractors was \$190 million.

The Association's figure was based on an estimate that one-half of one percent of the contractors' overall contract price was required for Davis-Bacon Act reporting requirements. Applied to the \$38.3 billion in Federal construction contracts awarded in 1976 and the \$37.8 billion in 1977, this cost estimate amounts to \$191.6 million and \$189.1 million, respectively.

^{1/}See report to the Congress by the Commission on Government Procurement, Volume 3, Part E--Acquisition of Construction and Architect-Engineer Services, Dec. 1972.

In a discussion in September 1978 with an Association official, we were advised that the one-half of one percent figure for administrative costs is still relevant. The official said the costs, if anything, may be even higher today.

Also, two of the Commission on Government Procurement Study Groups concluded that the submission of weekly payroll records--as required by Labor's regulations--is ineffective as an enforcement tool, and they recommended that the Secretary of Labor eliminate the requirement that contractors submit weekly payrolls.

Study Group #2 concluded that the weekly statement of compliance with payroll requirements--specifically required under the Copeland Anti-Kickback Act--contributes little to enforcement. The Study Group recommended that the Congress amend the Copeland Anti-Kickback Act to delete the requirement for a weekly statement. It said that if some form of assurance is deemed necessary a single notarized statement at the beginning of each construction project would be an appropriate substitute.

Study Group #13c said that Federal agencies expressed the opinion that submission of weekly payroll records to them results in unnecessary paperwork and in an accumulation of data impossible to review under present staffing limitations. The agencies indicated that surveillance could be maintained just as effectively by spot checks by agency personnel of payroll records kept by the contractor. The study group recommended that Labor regulations and applicable labor laws be amended to require that contractor payroll records be kept available for inspection for a 3-year period following contract completion.

The Commission's final report, issued December 31, 1972, 1/ although not specifically citing the Study Groups' recommendations, cited the weekly payroll requirements as costly to the contractors and a significant contribution to the cost of construction. It also said that verification of the weekly payrolls by Government personnel is a time-consuming and costly activity. The report also stated that Government resident engineers and contracting personnel responsible for such verification were almost unanimous in their conclusion that few, if any, violations of significance were ever disclosed as a result of their review and verification of weekly payrolls.

1/Ibid, p. 79.

The Commission concluded that, although it may be desirable to retain a payroll reporting requirement for Davis-Bacon Act purposes, the act's requirements could be met and costs and administrative burdens could be reduced by providing for the submission of a notarized statement at the beginning and end of each contract--with appropriate penalties for falsification--that the required wages and fringes had been paid.

The high costs to contractors for complying with the act's payroll reporting requirement were also discussed in a 1975 comprehensive report on the act made by the Wharton School of the University of Pennsylvania. 1/

The report commented on the study by the Association of General Contractors and said the \$190 million estimate was justified but may be overstated:

"Although this figure is justifiable on the basis of the sample taken, it is possible that it overstates the costs somewhat. Even if it is too high by a factor of two, it is still close to \$100 million per year of expense to generate paperwork which duplicates other required information and which is seldom of use to those receiving it. The reports are not even used for statistical compilations."

The report concluded that the payroll reporting requirement is time and money not well spent, and it recommended that the requirement at least be modified so that the payroll form is submitted only once--at the end of the job.

The higher costs created for a contractor by the act's recordkeeping requirements were also cited in a report issued by the Massachusetts Institute of Technology in June 1978. 2/ The report stated:

1/Report No. 10, "The Davis-Bacon Act," by Armond J. Thieblot, Jr.; The Industrial Research Unit, the Wharton School, University of Pennsylvania, Philadelphia, Pa., Jan. 1975.

2/"A Comparison of Wages and Labor Management Practices in Union and Nonunion Construction," by Clinton C. Bourdon and Raymond E. Levitt, School of Engineering, Massachusetts Institute of Technology Research Report No. R78-10, prepared under Contract #H-2327-R., U.S. Department of Housing and Urban Development, June 1978.

"* * * Record Keeping and Reporting Costs: The paperwork involved in the Davis-Bacon reporting requirement seems both onerous and nonsensical. Contractors are required to continually submit payroll data to the local Employment Standards Office as evidence that they are indeed paying the 'prevailing wage.' Contractors normally keep fairly complete labor cost records, even on private work, for use in future estimating. However, the necessity to report these to the Department of Labor, along with the multi-occupational record keeping alluded to above, certainly results in additional inconvenience and cost to builders of public housing * * *."

ADMINISTRATIVE COSTS INCURRED
BY FEDERAL AGENCIES

Many Federal agencies and departments have construction contracts subject to the Davis-Bacon Act; thus, these agencies need full- or part-time personnel assigned to administration and enforcement responsibilities required by the act.

For example, under the Davis-Bacon Act the contracting agencies have primary responsibility for enforcement-- pursuant to Labor's regulations. This includes (1) making sure the contractors adhere to the weekly payroll record requirements and (2) retaining the records and statements of compliance submitted by the contractors in their files for 3 years. The administrative burden these requirements impose on Government agencies was highlighted in a letter dated September 22, 1977, from the Secretary of Commerce to the Secretary of Labor in connection with the President's program to reduce the public's reporting burden. The letter stated that Commerce's Economic Development Administration alone would be involved in about 6,000 projects under the Local Public Works program during 1977, and

"There is no practical way nor any amount of staffing resources which will allow the Department [Commerce] to make use of the resultant payroll reports EDA [Economic Development Administration] will accumulate."

The Secretary of Commerce also estimated that the magnitude of the effort on the weekly payroll requirements alone is large--more than a million employee hours a year--and that it affects many Government agencies.

However, the costs incurred by the Federal departments and agencies--other than Labor--are difficult to estimate, because agencies do not segregate such costs from their total administrative costs.

In April 1976, however, we surveyed 17 major Federal departments and agencies that award construction contracts subject to the Davis-Bacon Act to determine their administrative costs. Sixteen of the 17 agencies surveyed provided information on their administrative costs; the 17th said it had no costs. Estimated total administrative costs were about \$8.3 million in fiscal year 1976 for the 16 agencies. In addition to the contracting agencies, Labor estimated its fiscal year 1976 costs to administer the act to be about \$2.6 million.

Thus, about \$10.9 million was spent by Labor and other Federal agencies in 1976 to administer and enforce the Davis-Bacon Act. We estimate that these Government agencies' administrative costs were about \$12.4 million in 1977. We also noted that Labor's estimated administrative costs had increased to \$4.3 million in 1978 and \$6.1 million in 1979.

INFLATIONARY EFFECT OF THE DAVIS-BACON ACT

Prescribing minimum wage rates higher than those prevailing for similar construction in an area not only increases the cost of federally financed construction, but also, because of the large volume of such construction (about \$37.8 billion in 1977), minimum wage rates tend to have an inflationary effect on the construction industry and the national economy as a whole.

During the 1970s, wages and prices were growing at a rapid rate. In 1970 the average union-negotiated collective bargaining agreement in the building trades called for increases averaging 15 to 18 percent and continued into the spring of 1971. Government officials and economists expressed concern over the inflationary trend of construction costs and the need to control such costs in the fight against inflation.

Also, by the end of 1970 the unemployment rate in the construction industry was approximately 11 percent--almost double the overall unemployment.

This emergency condition, along with the Federal Government's planned expansion of its construction program, prompted the President, on February 23, 1971, to suspend the provisions of the Davis-Bacon Act to all federally funded construction as well as those statutes under related acts which incorporate Davis-Bacon Act wage determination provisions.

The President's suspension proclamation 1/ stated that the Nation was confronted by a set of conditions involving the construction industry which, taken together, created the emergency situation. These included:

- Construction industry collective bargaining settlements are excessive and show no signs of decelerating.
- Increased unemployment and more frequent and longer work stoppages in the construction industry have accompanied the excessive and accelerating wage demands and settlements in the construction industry.
- The excessive and accelerating wage settlements in the construction industry have affected collective bargaining in other industries, thus contributing to inflation in the overall economy.
- The combination of factors in the construction industry has threatened the basic economic stability of the construction industry and, thus, the Nation's economy.
- The Davis-Bacon Act and other acts dependent on it frequently require contractors working on Federal projects to pay high negotiated wage settlements to mechanics and laborers, thereby sanctioning and spreading high rates and thus inducing further acceleration, which contributes to the threat to the Nation's economy.

The suspension lasted only 35 days--until March 29, 1971. When he reinstated the act, the President provided for labor-management boards to review collective bargaining agreements for each construction craft and established the Construction Industry Stabilization Committee--composed of

1/Presidential Proclamation 4031, "Proclaiming the Suspension of the Davis-Bacon Act of March 3, 1931," Feb. 23, 1971. Published in Federal Register, Vol. 36, No. 38; Feb. 25, 1971.

four representatives from labor, management, and the public--to review the boards' findings on future collective bargaining negotiations and agreements.

Organized labor also agreed to voluntary wage restraints, holding wage increases in negotiated agreements to an annual rate of about 6 percent.

Concern over the inflationary effect of the Davis-Bacon Act on federally funded construction also led to the introduction of legislation to repeal it. Between 1971 and March 1979 there were at least 27 bills introduced in the Congress to repeal the act or its provisions from related acts.

The most recent bill was H.R. 3155, which was introduced in the 96th Congress on March 21, 1979. As of March 31, 1979, none of these bills had been enacted into law.

OTHER STUDIES ON THE DAVIS-BACON ACT'S INFLATIONARY EFFECT

There have been a number of studies which commented on the inflationary effect of the Davis-Bacon Act.

Commission on Government Procurement

Two Commission on Government Procurement study groups reviewed the act's administration and arrived at different conclusions. Study Group #2 concluded that the act still has a relevant purpose--the protection of construction workers from the competitive effects of Government procurement policy. It recommended that the Secretary of Labor improve administration and that the Congress amend the act in several respects to facilitate administration and enforcement.

Study Group #13c concluded that the act was no longer needed for the purpose for which it was enacted, which was to prevent importation of cheap outside labor into areas where Federal construction was being performed. The group also concluded that the prevailing wage concept of the act was inflationary, even if it was perfectly administered. Repeal was recommended.

Study Group #13c also recommended that, if the act was not repealed, it should be amended to facilitate reasonable administration. Among its recommendations were:

"--Raise the minimum contract cost subject to wage determinations under the act from \$2,000 to \$25,000."

"--Change the format and scope of wage determination by one of the following alternates:

"1. The concept of establishing the prevailing rate in the particular locality should be abandoned in favor of a prevailing minimum rate for a region.

"2. Separate wage determinations should be abandoned altogether in favor of a national minimum wage for federally affected construction issued annually. Such a minimum wage could be based on several things including a multiple of the Fair Labor Standards Act minimum wage, or it could reflect the average hourly earnings for construction workers in the previous year." 1/

The Commission's final report, issued on December 31, 1972, 2/ recognized many of the problems cited by the study groups with administration and enforcement of the act, but recommended only that a program be established for legislative and executive branch reexamination of socioeconomic objectives implemented through the procurement process, and that the threshold be raised to \$10,000 for applying socioeconomic programs to the procurement process (recommendations A-43 and 44). Both recommendations were under consideration by OMB's Office of Federal Procurement Policy as of December 1978. 3/

1/ See final report, Study Group #13c (Construction), Feb. 1972, Commission on Government Procurement.

2/ Ibid, p. 79.

3/ On Nov. 2, 1978, Public Law 95-585 was enacted; it raised the threshold for contractors subject to the Miller Act from \$2,000 to \$25,000.

Presidential conferences on inflation

In September 1974 conferences on inflation, jointly sponsored by the President and the Congress, were held throughout the country to explore the causes and cures for inflation and to solicit advice on how to deal with the problem from every possible source. Representatives from organized labor, home builders, heavy construction contractors, and other groups all attended one conference--the housing and construction conference on inflation in Atlanta, Georgia, on September 12, 1974.

A summary report on the conference in Atlanta said that there was sharp disagreement concerning the Davis-Bacon Act and its effect on the economy. The report stated, for example, that a large contractor organization, in a preconference paper, declared "that the act is a serious contributing factor to inflation." The act, said the Group, "limits true competition in the construction industry." The report also cited comments by delegates of several labor organizations who disagreed that the act was inflationary.

Thirteen of the participants presented statements or spoke at the Atlanta conference on the Davis-Bacon Act and its impact on the economy. Comments from most were generally along the line that artificially high wage rates imposed by Labor under the act were a serious contributing factor to inflation in the construction industry. Seven of the 13 called for repeal of the act. Two called for suspension or amendment, and three expressed no specific position, but two of these described the act as inflationary or an example of special consideration for the construction industry.

Only one participant--the representative of the Building and Construction Trades Department, American Federation of Labor-Congress of Industrial Organizations--presented a position for retention of the act. He did not believe that the act inflated wages--it merely requires that Government contractors pay the prevailing wage rates in the area of the construction project.

Wharton School

In 1975 the Wharton School of the University of Pennsylvania published a comprehensive study of the act. 1/

1/Ibid, p. 81.

The study concluded that the act

"* * * adds fuel to the inflationary fires of the economy, that it benefits a few at the expense of the many, and that it should be either repealed or drastically amended."

The study cited various estimates of the inflationary effect of the act ranging from \$240 million to \$567 million annually, all of which were considered conservative. The study also concluded that

"The higher figures range to as much as \$1.5 billion a year. Davis-Bacon may not be solely responsible for escalating construction costs and accelerating inflation. But certainly must be counted among the major causes of both."

Council on wage and price stability

In May 1976, the Council on Wage and Price Stability issued the results of a study ^{1/} in which it investigated whether procedures utilized in administering the Davis-Bacon Act by Labor might be inflationary. In the study, the Council attempted to determine whether there would be significant cost savings to the Government from switching to a prevailing wage determination procedure based on an average mean calculation. The study found that, if average (mean) rates were used instead of Labor's procedures, some savings would be obtained in certain cities and occupations but that the widespread savings expected by some observers were unlikely.

The Council used data from a Bureau of Labor Statistics special construction wage survey and actual Davis-Bacon Act rates provided by Labor's Enforcement Standards Administration. The data used covered union, nonunion, and average rates for bricklayers, electricians, and laborers working in commercial construction, and carpenters and laborers working in residential construction in 19 cities for September 1972. The study compared actual Davis-Bacon Act wage rate to rates which would have applied if the data had been averaged in all cases. It also compared the average and union rates.

^{1/}"An Analysis of Certain Aspects of the Administration of the Davis-Bacon Act," May 1976, by the Council of Wage and Price Stability, Executive Office of the President.

For residential construction, the study showed that Labor's Davis-Bacon Act wage rates were higher than the average wage rates by 3.1 percent. It also showed that union rates were higher than the average rates by 5.4 percent.

The study showed that the union rates were higher for commercial construction than the average wage rates by 2.1 percent. However, the study also found that the Davis-Bacon act rates were lower than the average rates by 2.7 percent. A possible explanation offered in the study for the wage differences was that there may have been a lag of up to 6 months between actual wage rate changes and the time the rates were published in the Federal Register by Labor.

Another possible explanation for the Davis-Bacon Act rates being lower than the average rates was the fact that there were problems with the cost estimates used in the study. These problems were acknowledged by the Council, which said the estimates should be used with caution. The Council said there were two major categories of problems--one involved the appropriateness of the survey for measuring actual wage rates. To illustrate, the special survey (1) did not include firms with fewer than eight employees, although many construction firms are very small, (2) was for 19 cities listed as Standard Metropolitan Statistical Areas, whereas the Davis-Bacon Act rates do not necessarily encompass an entire Standard Metropolitan Statistical Area, and (3) counted as a nonunion wage rate a wage paid to a nonunion worker on a Davis-Bacon Act job. This meant that measured nonunion rates overstated the "actual" nonunion rate to the extent that nonunion workers worked on Davis-Bacon projects paying wages based on negotiated (union) rates.

The Council said the second major category of the problem involved the appropriateness of wage differences as a substitute for real cost differences. The Council said, for example, its wage comparisons did not include fringe benefits, which are likely to be larger for union than nonunion workers. (Such fringe benefits for union workers can range from 10 to 20 percent of the basic hourly rate.

Nevertheless, the Council concluded that, although the data are somewhat ambiguous and perhaps unreliable, its analysis seems to imply that Labor should study further the advisability of changing to an average calculation, since it appeared there may be potential cost savings in some localities, occupations, and classes of construction.

In a letter dated June 23, 1976, to the Secretary of Labor, the Council, based on its study, recommended that Labor develop the capability and the data bases necessary for periodically assessing the possible inflationary consequences of the administration of the Davis-Bacon Act. A Council representative advised us on January 4, 1979, that no response to the Council's letter and recommendation had been received from Labor.

Commission on Federal Paperwork

As part of its review of Federal paperwork requirements, the Commission on Federal Paperwork reviewed how the Government uses the procurement process not only to obtain the supplies and services it needs but also to implement various social and economic programs which have been enacted into law. The Commission identified the Davis-Bacon Act as one of a number of labor standards statutes whose social and economic objectives must become part of the terms and conditions included in Government contracts.

In a report issued in June 1977, ^{1/} the Commission stated that the threshold (minimum contract cost subject to wage determinations under the act) currently in effect for the Davis-Bacon Act is wholly inappropriate. It said inflation in the years since the original level was established renders insignificant the contracts exempt from the act.

The report stated:

"To permit the thresholds to remain unchanged is inconsistent with past practice and imposes a paperwork burden of considerable magnitude upon the Government and industry, particularly small business, which does not command the resources available to larger firms and often cannot afford to hire additional clerical help, let alone maintain a staff of legal, fiscal, and accounting experts to provide advice on statutory and contractual requirements."

^{1/}"A Report to the Commission on Federal Paperwork-- Procurement," June 10, 1977.

* * * *

"The inadequate thresholds currently in effect under the labor standards laws [includes Davis-Bacon Act] increases administrative costs, delays the time required for award, and entails the use of additional personnel to implement the requirements."

The Commission recommended that OMB sponsor an amendment to increase the threshold limit to \$10,000. The question of increasing the threshold limit for the act was under consideration by OMB's Office of Federal Procurement Policy at December 1978.

Building and Construction Trades Department,
American Federation of Labor-Congress of
Industrial Organizations

The Building and Construction Trades Department issued a report on the Davis-Bacon Act in December 1977. ^{1/} The report included sections providing a brief legislative history and a discussion regarding attacks on Davis-Bacon Act problem areas. These included such problems as the importation of wage rates from adjacent areas, Labor's use of the 30-percent rule for determining wage rates, and the inflationary effect of the act because of the use of union wage rates.

The report discounted the arguments against the Davis-Bacon Act, and it concluded that the act is still needed to prevent wage-cutting competition for large Federal construction activity. The report stated:

"The Davis-Bacon law is needed to prevent competition for such business--serving as a vehicle for perpetual wage-cutting throughout the nation. Given the fact that Government construction activity is so large in volume and so widespread, few communities

^{1/}"In Defense of Davis-Bacon," prepared for the 59th Convention of the Buildings and Construction Trades Department, American Federation of Labor-Congress of Industrial Organizations, Dec. 1977, by the firm of Ruttenberg, Friedman, Kilgallon, Gutchess and Associates, Wash., D.C.

would be invulnerable to the economic and social instability that would ensue, were the Davis-Bacon requirements to be removed."

The report also stated that there is a need to strengthen the Davis-Bacon Act. It said that the administration of the act--and most particularly the enforcement of the wage determinations--leaves much to be desired because violations are quite common.

Massachusetts Institute of Technology

On June 1, 1978, the Department of Civil Engineering, School of Engineering, Massachusetts Institute of Technology, published a research report entitled "A Comparison of Wages and Labor Management Practices in Union and Nonunion Construction." The study was performed in cooperation with the Associated Builders and Contractors, the Associated General Contractors, and the National Association of Homebuilders and was funded by HUD. 1/

The Institute's study was based on a sample of firms in the construction industry in eight standard metropolitan statistical areas (Boston, Baltimore, Atlanta, New Orleans, Grand Rapids, Kansas City, Denver, and Portland). The survey compared the wages and work practices in all types (residential, commercial and industrial, heavy, and highway) of union and open shop (i.e., nonunion) construction. Pertinent excerpts from the study follow.

Wages and the Davis-Bacon Act--Commenting on its comparison of wages, the Institute's report said two results stand out:

"First, for commercial construction, nearly all of the Davis-Bacon rates are identical to the union rates in each area. 2/ Significantly, in metropolitan areas like Grand Rapids, Baltimore,

1/See Ibid, p. 81.

2/"A few, about 10 percent, are slightly lower than the union rate, but this is probably due to lags in reporting union wage increases or new contract terms."

Atlanta, and New Orleans, where there is a significant amount of open-shop commercial construction, this is not reflected in the prevailing wages. Since the open-shop wages in these areas are, on average, substantially lower than union rates, the use of average wages rather than Davis-Bacon prevailing wages would lower nominal labor costs. Of course, due to the dispersion of wage rates in the open-shop sector, reliance on the 'thirty-percent rule' virtually guarantees that the union rate will become the prevailing wage even in relatively strong open-shop areas. 1/

"Second, for residential construction, the results of the wage comparison are much more varied. Three different patterns are evident in the eight cities:

- "(1) The two cities with relatively low open-shop activity, Boston and Kansas City, have prevailing wages for residential work which are identical to union commercial rates;
- "(2) in two cities with moderate open-shop activity, the residential prevailing rates are higher than the open-shop average wages but significantly lower than the union commercial rates; and
- "(3) in four cities with a large nonunion sector, the residential prevailing rates are lower than the average open-shop rate.

"With this kind of diversity in results, it is obviously hard to generalize about the impact of Davis-Bacon on wages in residential construction. Clearly, the law and its administration do not tend to raise wages in this sector in some cities. On the other hand, in cities which are largely union, the union commercial building rate does

"1/The 'thirty-percent rule' states that if 30% or more of the mechanics practicing a given trade are paid a single wage, then that shall be considered to be the prevailing wage. This obviously discriminates in favor of unions who set a single wage for all union journeymen."

tend to spread over all public construction--even when considerable residential work is apparently open-shop."

Indirect cost impacts of Davis-Bacon--The report also commented on the indirect labor costs borne by contractors--and passed on to taxpayers--which arise in the administration of the act. It stated, for example, the following paperwork costs:

"Record keeping and reporting costs The paperwork involved in the Davis-Bacon reporting requirement seems both onerous and nonsensical. Contractors are required to continually submit payroll data to the local Employment Standards Office as evidence that they are indeed paying the 'prevailing wage.' Contractors normally keep fairly complete labor cost records, even on private work, for use in future estimating. However, the necessity to report these to the Department of Labor, along with the multi-occupational record keeping alluded to above, certainly results in additional inconvenience and cost to builders of public housing * * *."

Conclusion--The Institute's report presented several conclusions. In regard to increased productivity of union workers, it said that economic forces in the construction industry may tend to produce some productivity increase to compensate for the higher Davis-Bacon rates; however, the indirect nonwage costs under the act tend to increase its cost effect beyond any increase in hourly wage cost. The report stated:

"In sum, the key issue in any Davis-Bacon analysis is the extent to which increased productivity levels offset the higher wages and indirect costs which arise due to prevailing wage laws. While it may be obvious in some cases that they do not, this issue has never been systematically addressed. * * * While our study did not generate any detailed data on individual worker productivity, it did find that there were tremendous variations in skills and types of workers within and between the union and open-shop sectors. These findings preclude wholesale assumptions or allegations about relative union productivity. Thus, the impact of Davis-Bacon

on construction costs really needs to be studied on the basis of an unbiased sample of the unit labor costs and final costs of particular construction projects, both union and open shop, before any general conclusions can be made."

The Institute said that, in lieu of any new research, however, its study does show that there is no evidence of a "prevailing wage" in nonunion labor markets. Due to dispersion of open-shop wages, almost any attempt to discover a prevailing wage will tend to favor the choice of union rates, simply because they are uniformly set by contract. The use of an average rate, particularly where this can be identified for different sectors of construction, may be the best administrative compromise in markets where there is a combination of union and open-shop activity. Of course, the costs of sample surveys to determine a true average and the problems of reconciling occupational and skill definitions are substantial.

The report said that, since there is considerable variety in residential work, for example, with different degrees of union or open-shop activity in each of the different areas, these categories are too broadly defined. Yet the reporting, surveying, and administrative costs could become enormous if an attempt were really made to respond to the complexities of wage levels in different submarkets within the construction industry.

The Institute's report concluded by stating:

"The obvious alternative to changing the administration of the Act is, as is continually suggested, to repeal it or reform it to the point of repeal. Those who believe that the Act gives a competitive advantage to the unions and raises construction costs obviously favor repeal. Those who believe in freely competitive, but not necessarily non-union, labor markets may also feel that the government has no need to regulate wages and would also support repeal. Certainly, the fact that most open-shop construction wages are, on the average, higher than local manufacturing wages vitiates any argument that wage regulation in construction is necessary on the grounds of equity or income distribution, as in the case of minimum wage laws.

"Nonetheless, the issue which opponents of the Act overlook is that the law does not simply reflect the remains of an idiosyncratic response to Depression-era problems in the construction industry, which is now maintained solely by union political power; rather, it represents one particular philosophy of government. Some supporters of the Act see it not as a crass attempt to protect union construction, but as the reflection of a principle; that the price of labor should not become an element in the competition for government construction costs-- typically from 25% to 50%--and the act may therefore have a significant impact on construction wages and costs. But regardless of its impact, as it is administered now or after revisions, it is this principle which must also be explicitly attacked or defended in discussion and debate on Davis-Bacon."

National Academy of Sciences

In 1978 the Federal Construction Council of the National Academy of Sciences issued a report entitled "Federal Procurement Policy for Construction." ^{1/} The report was a critique of the recommendations by Study Group #13c (Construction) of the Commission on Government Procurement issued in February 1972. (See p. 85.) The review was undertaken at the request of the Office of Federal Procurement Policy and was performed by the Council's Standing Committee on Procurement Policy.

The Council's report agreed with the Study Group's recommendations that the threshold should be increased. It stated that the recommended \$25,000 threshold would be desirable but that in no case should the amount be lower than \$10,000.

The Council did not agree that the Davis-Bacon Act should be repealed; it believed that the original rationale for the act remains valid and that the act had contributed to labor

^{1/}"Federal Procurement Policy for Construction," Building Research Advisory Board, National Research Council, National Academy of Sciences, Federal Construction Council Technical Report No. 70, 1978.

peace on Federal projects. The Council also disagreed that the weekly payroll recordkeeping requirements should be eliminated; it believed any monetary savings would be offset by the increased administrative costs of construction agencies investigating complaints of Davis-Bacon violations.

The Council, recognizing the validity of some past criticisms of the act, recommended that the act be reviewed in light of current conditions and that the Congress revise the act, as necessary, to eliminate undesirable aspects that tend to increase Government administrative costs unnecessarily and tend to cause inflation.

The Council agreed that some changes in program administration should be made; in particular, the 30-percent rule should be abandoned. The Council's report said the 30-percent rule has resulted in the determination of minimum wage rates that were significantly higher or lower than the rates actually paid to the majority of workers engaged in similar construction in the area. The Council said a fairer approach would be to use a statistical mean of wages paid in a given area for a given classification. This, the Council said, would serve to counteract the frequently heard charge that the Davis-Bacon Act wage determinations are biased in favor of labor unions.

Congressional Research Service

In July 1978 the Congressional Research Service issued a report on the history and administration of the Davis-Bacon Act. ^{1/} The report said that the Davis-Bacon Act is little known to the general public, but it has engendered considerable controversy over the years. It said part of the controversy deals with the administration of the law, but the debate extends beyond that, questioning the philosophy of the act and the need for its continued existence.

The Service's report summarized the act's pros, cons, and its need, but without critical comments or evaluation. Arguments opposed to the Davis-Bacon Act concept were:

^{1/}"The Davis-Bacon Act: History, Administration, Pro and Con Arguments, and Congressional Proposals," Congressional Research Service, Library of Congress, report 78-161E July 11, 1978.

"(1) The act was a depression measure which has long since outlived its usefulness, (2) it interferes with the workings of a free competitive market, (3) it is inflationary because it results in Federal and federally assisted construction contracts costing more than other construction contracts, (4) it gives an unfair advantage to union employers over nonunion employers in bidding for Government construction contracts, and (5) it impedes entry of minority groups into the construction industry."

Comments concerning inflation were:

"The act is inflationary because it results in Federal and federally assisted construction contracts costing more than other construction contracts. Partly this is because Labor Department procedures for determining prevailing wage rates help assure that the union pay scale--generally higher than nonunion pay--will be selected."

"But the law itself is inflationary because of its provision requiring payment of at least prevailing local wages. Where there are construction wages in a locality below the prevailing ones, and where a contractor paying those lower wages would win the contract in a free competitive market--both plausible assumptions--then the difference between his competitive market bid and the bid actually winning the contract measures the extent to which the law increases costs to the Government and the taxpayer."

* * * *

"The suspension of the Davis-Bacon Act by President Nixon on February 23, 1971 (by Presidential Proclamation 4031) is further evidence that the law is an 'engine of inflation,' as it has been called."

Arguments sympathetic to the purposes of the Davis-Bacon Act were presented:

"(1) The act is more than a depression measure, and is needed now as much as ever, (2) it prevents cutthroat competition and promotes fair competition based on decent labor standards, (3) it follows established Federal Government policy to pay prevailing wages, (4) it is not inflationary and in the long run it may reduce costs, and (5) its repeal or weakening would adversely affect apprenticeship programs in the construction industry and hurt minority groups."

The Service took no position regarding the validity of the arguments.

CONCLUSION

Most studies on the inflationary effect of the Davis-Bacon Act limit themselves to an attempt to measure (1) the amount by which Labor's wage determinations have exceeded the actual prevailing wage in the survey area and (2) the act's administrative cost.

Critics of the 30-percent rule for determining the prevailing wage suggest that much of the inherent bias of the rule could be eliminated if a true average method of the prevailing wage were used instead of the current procedures, which consistently favor union rates. Although using an average mean method for determining the prevailing wages on a Davis-Bacon project could result in substantial wage cost savings, even perfect administration of the prevailing wage determination procedures using the averaging method would not in itself be sufficient to completely remove its inflationary effect.

Even at its theoretical best, the prevailing wage determination procedure takes the average wage in the survey area and turns it into the minimum wage for the proposed work. Except in the special case of a single existing rate, where the average and minimum are the same, by definition the average will always be higher than the minimum. This average minimum wage is often highly correlated with union wage scales. For the nonunion contractor, where skill levels within crafts are recognized, this puts pressure on the non-Davis-Bacon wage rates when they are below the average minimum. Removal of the prevailing wage determination procedure from Davis-Bacon would return the determination of wage rates to the free market, and only in this way could the act's inherent inflationary effect be eliminated.

Improving the administration of the Davis-Bacon prevailing wage determination procedures may slightly lessen, but not eliminate, the act's inflationary effect. Only the repeal of the Davis-Bacon Act would return the determination of labor costs on federally funded or assisted construction projects to the forces of the competitive market place.

LABOR COMMENTS AND OUR EVALUATION

Labor stated that our findings regarding the effect of the Davis-Bacon Act on construction industry costs and the economy as a whole were not based on sufficient evidence, and our estimates of increased construction and administrative costs have major flaws and were not on a sound basis. Labor also took issue with the studies mentioned in the report that comment on the inflationary effect of the act and stated the studies have flaws and are inconclusive.

Increased construction costs caused by Davis-Bacon Act

Labor said we have major flaws in our estimates primarily because we (1) have an insufficient sample size, (2) used different criteria in our survey because we excluded Federal projects and eliminated duplicative counting of workers, (3) failed to consider the extent higher wage costs were offset by increased productivity, and (4) assumed that there is a correlation between wages and contract costs to the Government--that contract costs would necessarily be higher if a wage determination is high or that there would have been a proportional savings in contract costs had wage rates been lower.

As discussed in chapter 2, we recognize that our sample size was insufficient for projecting the results to the universe of construction costs during the year with any statistical validity. However, because of the nature of our selection process, we have no reason to believe that our sample of projects was unrepresentative of the universe. Therefore, we believe that our cost estimates are a useful indicator of the order of magnitude of the increased construction costs resulting from Davis-Bacon Act wage determinations.

We followed Labor's rules when making our wage surveys except we (1) excluded Federal projects and (2) eliminated the multiple counting of workers. Federal projects were excluded because we believe that the legislative history of the

act intended that the wage rates be based on those that prevailed in private construction. Excluding Federal projects also eliminated any bias of incorrect rates that may have been issued on earlier Davis-Bacon projects.

Labor stated that eliminating Federal projects is not realistic for some types of construction (such as roads and dams). We disagree. One of the 30 projects we surveyed, project determination 76-NY-89, was a highway reconstruction project in Otsego, New York. During our survey we were able to gather data on private construction projects in the area on which to base our wage survey results. These included small projects (such as paving and grading driveways and roadways). Moreover, including small projects is in line with the Wage Appeals Board's decision (case no. 66-4, Sept. 22, 1966), in which the Board said that a criteria of size does not have significance in a county in terms of the local prevailing wage. The Board said that Labor, in issuing wage determinations on paving projects, must consider wages paid on all paving projects in the county, notwithstanding their small size.

We considered the inclusion of the same employees working on different projects--multiple counting--to be a questionable practice which distorts survey results. For example, it seems to us that using a rate paid to one worker on several projects could bias survey results when that worker's wages are given the same weight as a group of workers working on only one project if the wages of the one worker and the group of workers varies significantly.

Labor said we failed to consider the extent that its higher wage costs under the Davis-Bacon Act were offset by increased productivity. Labor offered as support the (1) study by the Massachusetts Institute of Technology, which states that wage costs may be reduced by using workers who have more training and/or experience; contractors choose better workers and supervisors who pay more attention to training and managing them, (2) comment by the Council on Wage and Price Stability that "union and nonunion workers may differ systematically in skill level within the same occupation," and (3) comment from a 1972 study by (Professor) D. Quinn Mills that a poorer quality of work may result without Davis-Bacon determinations by facilitating awards to incompetent contractors competitive only by virtue of low wages and resulting in great long-term costs through higher maintenance and repair costs.

Worker productivity and contract awards to incompetent contractors are procurement and contracting issues, and have little to do with Labor's administration of the Davis-Bacon Act. As Labor is undoubtedly aware, the Federal Government and its contracting agencies must follow well-established and longstanding procurement rules and regulations to assure that contracts are awarded to responsive and responsible bidders. Labor's function is to issue accurate wage rates.

Although the Massachusetts Institute of Technology study stated that wages under the Davis-Bacon Act may tend to produce a higher productivity rate, the study said also that these higher rates were more than offset by the increases in wage costs resulting from certain occupational structures, legal and skill level requirements in the construction industry, and costs of inappropriate or redundant training and record-keeping under the act. The Institute said its findings precluded wholesale assumptions or allegations about relative union productivity, and concluded that further study is needed before any general conclusion can be made.

In regard to the study by the Council on Wage and Price Stability, Labor failed to include the entire Council statement that "many observers claim that union workers are on average more highly skilled and therefore more productive. On the other hand, union work rules and jurisdictional lines may increase labor costs." In addition, Labor fails to mention that Professor Mills in his 1972 study also stated that the act tended to spread union scales to Federal work and this does tend to increase costs by certifying higher wages and fringe rates in some areas, than the Government would have to pay under open competition. The Professor also noted in his study that most attempts to study productivity and work rules in the construction industry "have been hardly more than a list of alleged practices or rules with which the surveyed employers expressed unhappiness."

We noted another significant point on worker productivity in the report "In Defense of Davis-Bacon," which Labor says is carefully researched and contains important insights into the complex issues surrounding the Davis-Bacon Act. The report, in discussing Professor Mills and other studies, states:

"Having presented these views [regarding productivity] one must readily acknowledge that they do not represent a body of data. That body of

data--either to prove or disprove any generalization about productivity in construction-- simply does not exist. There are measurement problems which have not yet been solved by experts in the field, including those in Government."

It seems to us that these comments, along with those in other studies, refute Labor's conclusion that the higher union wages are offset by greater productivity. It appears to us, on the basis of the studies we reviewed, that conclusive evidence on this point does not exist.

Finally, in attacking our cost estimates, Labor says there is no exact correlation between wages and contract costs to the Government that contract costs would necessarily be higher if a wage decision is high or that there would have been a proportional savings had wage rates been lower. Neither assumption, according to Labor, is correct. It cites as support (1) a case in Washington, D.C., involving subway construction in which union contractors paid higher wage rates than the union rate--which Labor would have determined had it issued a wage determination based on union rates, (2) a Wage Appeals Board (WAB No. 78-50) decision involving the construction of the subway in Atlanta, Georgia, where the contracting agency (the Metropolitan Atlanta Rapid Transit Agency (MARTA)) declined to join in the appeal based on its observation that lower wage rates were not reflected in lower contract costs, and (3) the assertion that, when a contractor pays low wages and the wage determination is also low, the contractor will bid only low enough to undercut other bidders who pay higher wages and any difference will go to his profits; thus, the contract price bears no exact relationship to wage levels issued.

We do not believe that the subway case in Washington necessarily shows a lack of correlation between wages and contract costs. This may be similar to the 18 examples found in our review and supports our conclusion that low rates accomplish the act's intent best--local contractors and workers got the contract and paid prevailing wages. Labor's wage determination apparently had no significant effect on the bidding process.

The Atlanta subway case cited by Labor involved a \$860,000 contract for construction of site improvements for a subway station site, and the issue raised was whether building or heavy construction rates should be used. An official of the Atlanta subway's contracting agency stated that the agency declined to join in the appeal because the wages involved were such an insignificant portion of the project that the total costs were virtually unaffected. He said the project's costs were mostly for installing materials and equipment rather than labor.

We believe that Labor's comment that there is no direct relationship between wages and contract prices is speculative and unsupported. Others believe that lower wages should result in lower contract costs. For example, in a report we issued on June 20, 1978, on the Mobile River Project in Alabama (see app. XIV), we showed that the Wage Appeals Board directed Labor to perform another survey because the original rates issued were inaccurate. As a result, Labor issued revised rates which were substantially lower. Alabama State officials have indicated that they anticipate savings in contract costs--because of the lower wage rates--for completion of the remaining portion of the project.

We also noted in one example in this report (see p. 176) that contractors told us that their bids would have been lower if the wage rates were lower. Other contractors told us they refused to bid when wage rates were too high.

Labor estimated construction cost savings by using more accurate wage rates

In prior years Labor has estimated that significant savings could result through the use of more accurate wage rates.

In five reports we issued between August 13, 1964, and September 13, 1968, we discussed how the inaccurate wage rates issued by Labor were causing increased construction costs on residential housing projects. As a result of our recommendations, Labor performed more onsite surveys to verify data used to determine prevailing rates, and changed its practice of prescribing commercial building construction wage rates for housing construction. During fiscal year 1971 appropriation hearings held on May 14-20, 1970, Labor officials advised the House Subcommittee on Appropriations of its actions and stated that, where Labor made more onsite surveys, it found that Labor's wage determinations were in error by using the union or commercial rates on residential housing.

Labor officials told the House Subcommittee that it estimated a potential savings of \$60 million annually could be realized by the Federal Government by using the residential wage rates instead of commercial rates for federally financed housing construction. This potential savings, according to Labor officials, was based on an estimate of \$3 billion of federally financed public housing construction. We noted that Labor's estimate was calculated based on the \$4 million excess wages on projects totaling \$50 million, as shown in our five prior reports, which we attributed to Labor's inaccurate rates.

Estimates of unnecessary
administrative costs

Labor believes that our estimates of administrative costs of contractors are overstated, primarily because it questions the study made by the Association of General Contractors-- which is the basis of our estimate. According to Labor, the Association is opposed to the payroll requirements of the Davis-Bacon Act and reiterated this opposition in its letter soliciting data for the study from its chapter members. As a result, this was an open invitation to build a case against the act. Thus, Labor asserts it was reasonable to infer that those who presented cost estimates were more strongly impelled to make a case against the act than those who did not respond and that, therefore, a biased self-selected sample was collected.

Labor did not provide any evidence or support for its conclusion that the Association's study was biased or slanted to present a case against Davis-Bacon Act payroll requirements.

Labor questioned the Association's study because (1) there was a small response from the membership, (2) the questions were not clearly stated, and, as a result, many answers were not responsive, (3) there was a wide variance in the responses, and (4) there were few responses for computing the average cost of compliance.

The Association believed that the response to its survey was excellent and the quality of the information received was very good. The Association said that many of the comments received were helpful in understanding the sense of futility on the part of contractors preparing the weekly payroll report. It said many members believed that no use had ever been made of the payroll data and that the added cost of preparation produced no useful results. This is illustrated in samples of comments:

"Payroll records must be kept for review by the Federal Government at any given time. Why submit a separate report when they have this right at any time?"

"We feel that in many cases, the reports are filed and not even reviewed. We have purposely made errors on reports to check this out, and they have never been brought to our attention."

The Association acknowledged the shortcomings in its response rate, in the differences in the way the contractors reported the cost and contract data, and in the lack of responsiveness from some chapters and members. As a result, it said a thorough statistical analysis was impossible. Nevertheless, the Association said the survey indicated the cost of complying with the Davis-Bacon reporting requirement ranged from less than .5 percent to 5 percent of the total value of the contract. It said that generally, the larger the contract, the smaller the percentage.

In its letter to the Commission on Government Procurement, the Association did not claim that the survey was scientifically designed or statistically valid. It said the survey results gave an indication of the costs of complying with the act's requirements. Moreover, it took an extremely conservative posture and estimated the cost at the low end of the range--.5 percent of the contract cost.

The weekly submission of certified payrolls is not required under other laws, including those containing labor standard provisions, such as the Service Contract Act. As our report and other studies have shown, these weekly payroll requirements burden the contractor and contribute to increased construction costs.

We do not believe, as Labor stated, that the payroll requirement is vital to enforcement. Studies by the Commission on Government Procurement and other agencies (such as Commerce's Economic Development Administration) showed that the weekly payroll requirement contributes little to enforcement of the act. Our review showed similar results.

In conclusion, we believe that the evidence shows that the weekly payroll records required by the act are an unnecessary burden on both the contractors and contracting agencies, and that they serve very little purpose. There is no question that it is costing contractors--and ultimately the Government--a substantial amount; the only question is how much.

Other studies on the Davis-Bacon Act's
inflationary aspects

Labor took issue with the eight studies cited in this report and stated that we did not cite, nor could it find substantial evidence from these studies, that Davis-Bacon has a significant inflationary impact on the economy as a whole. Labor also stated that the studies are inconclusive and flawed, as described in the report issued by the Massachusetts Institute of Technology.

We were aware of the Institute's study and have included a discussion of the Institute's report, beginning on page 92. The Institute's study does state that there are no serious studies of the actual cost effect that the Davis-Bacon Act has had. It is interesting to note that the Institute mentions only one of the eight studies--the study of the Council on Wage and Price Stability--and that, in referring to that study's description of the small percentage increases in wages due to the Davis-Bacon Act, the Institute said

"* * * Although these margins are small enough to be considered insignificant--due to statistical error and to differences in worker productivity * * * the COWPS [Council on Wage and Price Stability] authors nonetheless go on to compute a possible savings of \$200 to \$600 million in Federal construction costs by adopting an averaging rule."

Thus, contrary to Labor's assertions, the studies, (at least the Council's) do discuss the act's inflationary effect.

The Institute's study also commented on some problems in the administration of the act similar to those we found. For example, the Institute said that (1) for some construction, nearly all Davis-Bacon Act rates were identical to union rates in the area, (2) Labor's reliance on the 30-percent rule virtually guaranteed that the union rate would become the prevailing wage rate even in relatively open-shop areas, and (3) the act's reporting requirements seem both onerous and a nonsensical burden on contractors.

Labor questions the inflationary cost estimates included in the Wharton School study and indicates it was merely a study of 914 contracts during the suspension of the Davis-Bacon Act in 1971.

We believe Labor's reference is misleading. The Wharton study is much more than a study of 914 contracts. It is a comprehensive study on what the Davis-Bacon Act is, what it is supposed to do, how it is administered, its administrative problems, and how contractors feel about the act. In addition, the study discusses the costs that are associated with the act and the act's effect on the economy.

The quote cited by Labor from the Wharton study is correct, but it gives a false impression of the author's conclusion. As shown in the following quote, the author believes that, despite the limitations of the study, it is the most direct comparison of costs with and without the act:

"Many of the effects of competitive pressures disappear when only the lowest initial bid and lowest rebid are considered. * * * for most categories except heavy construction, the low rebids were less than the low original bids. In heavy construction they averaged 4.33 percent higher, almost offsetting the decreases in building, highway, residential, and other types of construction. Nevertheless, the difference between the original low bids and the low rebids amounts to 0.63 percent, exclusive of any factor to account for the inflationary impact of the delay between bids and rebids. This percentage is probably a fair representation of actual savings to the government as a result of the suspension. Projected over the estimated current government spending total of \$38 billion for construction work, it represents a savings of about \$240 million a year. In other words, by this estimate, the cost to the government of the Davis-Bacon Act is \$240 million a year. Corrected for expected price rise due to inflation during the bidding period, the figure would rise to between \$620 million and \$1 billion.

"Naturally, this figure, too, must be interpreted with some care. These low bids are also subject to competitive and gamesmanship pressures, although they are less influenced by them than are the aggregated figures previously presented. Nevertheless, it is probably the most direct comparison of costs with and without Davis-Bacon rates that could be produced."

Labor's assertion that the Council on Wage and Price Stability study showed some Davis-Bacon Act rates as lower than average rates in commercial construction and higher for residential construction is correct. Labor's comment that the study arrived at a modest conclusion that the Council's analysis does not support the contention that the present Davis-Bacon procedures do produce rates typically higher than actual rates is only part of the story, however. The Council's study concluded that, if the average rates were used instead of Labor's procedures, there may be potential cost savings in some localities and cities.

In addition, the Massachusetts Institute of Technology study states that although margins are small enough to be considered insignificant the Council on Wage and Price Stability authors nonetheless go on to compute a possible savings of \$200 to \$600 million in Federal construction costs by adopting an average rule.

CHAPTER 7

SCOPE OF REVIEW

We performed our review to determine whether

- Labor's regulations, practices, and procedures to develop and issue wage determinations under the Davis-Bacon Act provide assurance that wage rates issued are those that actually prevail on similar private construction projects in the area of proposed Federal construction;
- the act is meeting its original intent without adversely affecting construction costs; and
- the act is currently relevant and still needed to accomplish the purposes intended at the time it was passed in 1931.

Our earlier reports resulted from either specific congressional inquiries or from self-initiated reviews of questionable wage determinations issued by Labor; they primarily covered only residential construction projects located in Southern and Eastern States. In this review we expanded our coverage to include all sections of the country and wage determinations published for the major types of construction. We selected and included in our review Labor regions that included

- areas with high construction activity (in terms of dollars),
- areas with large numbers of construction workers,
- both industrial and rural States, and
- areas with both high and low union representation.

We performed our review at Labor headquarters in Washington, D.C., and at the following regional Labor offices:

<u>Region</u>	<u>Location</u>	<u>States in the region</u>	<u>Number of counties</u>
2	New York City, New York	New York and New Jersey	83
4	Atlanta, Georgia	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee	736
5	Chicago, Illinois	Illinois, Indiana, Mich- igan, Minnesota, Ohio, and Wisconsin	524
6	Dallas, Texas	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	502
9	San Francisco, California	Arizona, California, Hawaii, and Nevada	94

At each location we randomly selected for review 10 project determinations, proportional to the number issued in each region for various types of construction, during the period January 1 through June 30, 1976. We also randomly selected 23 area determinations. We evaluated Labor's development and issuance of the wage rates in these 73 determinations.

We also made 30 surveys of the wage rates being paid by private contractors in locations covered by area and project determinations in each selected region and compared the results with the wage rates issued by Labor and, when practicable, being paid to workers on construction projects in progress. A listing of selected wage determinations, localities where we made surveys, and the related construction projects are shown in appendix XIII.

At Labor's regional offices and headquarters we interviewed officials and staff at all levels and reviewed data supporting the development and issuance of wage rates. We also reviewed applicable regulations, procedures, and the legislative history of the Davis-Bacon Act.

We interviewed contracting agency officials responsible for the administration of Davis-Bacon Act provisions in the

30 selected projects and reviewed related contract administration files. We also interviewed officials from companies constructing projects and employees at the construction sites, and we reviewed related contract and payroll records.

WEAKNESSES IN ADMINISTERING THE
DAVIS-BACON ACT NOTED IN OUR PRIOR
REPORTS TO THE CONGRESS

In a series of seven reports to the Congress issued between June 1962 and August 1970, we commented on the manner in which Labor--under the Davis-Bacon Act and related acts--had made minimum wage rate determinations for selected major federally financed construction projects. The reports pointed out that the prevailing rates prescribed by Labor were significantly higher than wage rates prevailing in the areas and had substantially increased the costs of construction to the Federal Government.

The findings in the seven reports to the Congress are summarized in a report, "Need for Improved Administration of the Davis-Bacon Act Noted Over a Decade of General Accounting Office Reviews" (B-146842, July 14, 1971). ^{1/} Our findings, recommendations, and the actions that have been taken on them are briefly summarized below.

--Our reviews covered wage rate determinations for 29 selected construction projects, including military family housing, low-rent public housing, federally insured housing, and a water storage dam. We estimated that, as a result of minimum wages being established at rates higher than those actually prevailing in the area of the project, construction costs increased 5 to 15 percent. We concluded that the Federal Government and beneficiaries of federally financed projects had obtained less construction per dollar than had builders of projects not financed with Federal funds.

--We reported that our information indicated that the determination of wage rates higher than those prevailing in the industry had discouraged some contractors from bidding on Federal construction contracts and had reduced competition. Some private contractors stated that they would not bid on federally financed construction projects because of the higher wage rates they would be forced to pay.

^{1/}See page 115, app. I for a list of the eight prior reports.

--We stated that prescribing minimum wage rates higher than those prevailing for similar construction in an area not only increased the cost of federally financed construction, but also, because of the large volume of such construction, tended to have an inflationary effect on the construction industry and the national economy as a whole.

We concluded that the act's objectives can be achieved through improvement in the administration of the wage determination process so that minimum wage rates were prescribed for federally financed construction based on actual prevailing rates determined in accordance with the act's requirements. We recommended to Labor that needed improvements included, in particular, issuing explicit guidelines and criteria covering the principal elements of an adequate determination of minimum wage rates and fringe benefits and the establishment of adequate, up-to-date, and accurate information based on prevailing wages.

Labor stated that action on the improvements we suggested had been or would be taken. Labor also stated that explicit guidelines and criteria covering the principal elements of a wage determination would be set forth in a manual of instructions as soon as possible. In February 1972 Labor issued an "Interim Manual of Operations for Making Wage Determinations under the Davis-Bacon and Related Acts." Labor also revised its regulations in 29 C.F.R., Part 1, "Procedures for Pre-determination of Wage Rates," and 29 C.F.R., Part 5, "Labor Standards Provisions." The Interim Manual continued in use for 5 years--until August 1977, when Labor issued a permanent manual "Construction Wage Determinations Manual of Operations."

Issuance of the Interim Manual and revised regulations did result in more explicit guidelines. However, as we point out in this report (see chs. 2, 4, and 5) the guidelines (1) are still not adequate, (2) have not been adhered to, and (3) have not resulted in more accurate wage determinations.

Following is a list of our reports to the Congress on reviews of wage determinations under the Davis-Bacon Act.

1. "Review of Wage Rate Determinations for Construction of Capehart Housing at the Marine Corps Schools, Quantico, Virginia" (B-145200, June 6, 1962).
2. "Wage Rates for Federally Financed Housing Construction Improperly Determined in Excess of the Prevailing Rates for Similar Work in Southeastern Areas of the United States" (B-146842, Aug. 13, 1964).
3. "Wage Rates for Federally Financed Building Construction Improperly Determined in Excess of the Prevailing Rates for Similar Work in New England Areas" (B-146842, Jan. 26, 1965).
4. "Wage Rates for Federally Financed Housing Construction Improperly Determined in Excess of the Prevailing Rates for Similar Work in the Dallas-Fort Worth, Texas, Area" (B-146842, Mar. 26, 1965).
5. "Review of Determinations of Wage Rates for Construction of Carters Dam, Georgia" (B-156269, Dec. 14, 1966).
6. "Need for More Realistic Minimum Wage Rate Determinations for Certain Federally Financed Housing in Washington Metropolitan Area" (B-164427, Sept. 13, 1968).
7. "Construction Costs for Certain Federally Financed Housing Projects Increased Due to Inappropriate Minimum Wage Rate Determinations" (B-146842, Aug. 12, 1970).
8. "Need for Improved Administration of the Davis-Bacon Act Noted Over a Decade of General Accounting Office Reviews" (B-146842, July 14, 1971).

THE HISTORY OF THE DAVIS-BACON ACT

The history of the Davis-Bacon Act has been one of controversy, from its inception nearly 50 years ago to the present. Federal contracting agencies, contractors, contractor associations, unions, and the Department of Labor have all been dissatisfied with one aspect or another of the wage rates issued, enforcement under the act, or both. With the numerous extensions of the act's prevailing wage concept to other legislation, State and local governments have been affected by the act. Interestingly, much of this controversy and dissatisfaction was predicted by the Secretary of Labor in 1932, when an amendment requiring predetermination of wage rates was vetoed by the President. (See p. 121.)

EVENTS LEADING TO ORIGINAL ACT

In 1927 Congressman Robert L. Bacon of New York introduced a bill in the 69th Congress to require contractors on Federal projects to comply with State laws, if any, regulating wages of employees. The Congressman was concerned over construction contractors bringing nonunion workers into New York and paying them at lower rates than those that prevailed locally. State law in New York protected State construction projects from such competition, because prevailing wage rates were required to be paid on all State-funded construction projects.

To support the need for his bill Congressman Bacon cited the following:

"I want to cite the specific instance that brought this whole matter to my attention. The Government is engaged in building in my district a Veterans' Bureau hospital. Bids were asked for. Several New York contractors bid, and in their bids, of course, they had to take into consideration the high labor standards prevailing in the State of New York * * *. The bid, however, was let to a firm from Alabama who brought some thousand non-union laborers from Alabama into Long Island, N.Y., into my congressional district. They were herded onto the job, they were housed in shacks, they were paid a very low wage, and the work proceeded. Of course, that meant that the labor conditions in that part of New York State where this hospital was to be built were entirely upset. It meant that the neighboring community was very much upset, * * *.

"In the case that I have cited, the New York contractors were at a great disadvantage because they could not have brought in nonunion cheap labor. They could have done it legally, but they would then have lost their position and standing in the trade in New York State for future jobs." 1/

Later hearings indicate that this project was actually started in 1921 and, according to testimony by Congressman Bacon, the contractor had "done good work at least I am so informed." This project continued to be cited as the major example to support the need for the bill until the law was passed in 1931. 2/

From 1927 until the enactment of the original act in 1931, 14 bills were introduced (4 in the Senate, 10 in the House). It was 1930, however, before any real momentum began in support of the legislation. At that time the depression was increasing--resulting in mass unemployment. The conditions which produced the first proposed legislation were said to be increasing. The Government, to help alleviate the economic conditions, had initiated a massive construction program. Contractors eager for business were taking advantage of the unemployed job market to hire employees who were willing to work at any wage.

The 71st Congress became concerned that these practices would further degrade economic conditions by depressing the wage standards of the local communities in which the Federal projects were to be constructed. The Federal Government was involved with complaints that itinerant contractors on Government projects were employing aliens and taking advantage of the unemployment situation to cut wages below locally prevailing rates by transporting itinerant cheap labor to jobs, to the detriment of local labor and contractors. 3/

1/See hearings on House bill 17069 before the House Committee on Labor, 69th Cong., 2d sess., pp. 2-3 (1927).

2/See hearings on House bills 7995 and 9232 before the House Committee on Labor, 71st Cong., 2d sess., p. 6 (1930).

3/See hearings on House bills 7995 and 9232 before the House Committee on Labor, 71st Cong., 2d sess., pp. 5-65 (1930).

However, the argument that itinerant contractors were transporting cheap labor to jobs to the detriment of local labor and contractors was not well supported at that time, and may have been an exaggeration. The Treasury Department had tabulated a list of 26 Federal building projects under construction in 1930, showing the number of alien, local, and outside workers employed on each project. The tabulation showed that the itinerant problem was overstated. Of the 1,724 workers on these projects, only 21 and 2 percent, respectively, were outside and alien workers.

The tabulation also showed that more than half of the outside workers were employed on projects in four localities where the local labor forces would not be expected to be as extensive as in large metropolitan centers--Boise, Idaho; Fargo, North Dakota; Tuscon, Arizona; and Juneau, Alaska. Also, no outside workers reportedly were employed on projects in the larger metropolitan areas such as Brooklyn, Milwaukee, New Orleans, San Francisco, and Seattle.

The President proposed to resolve the issue administratively by providing in the notice to bidders on Federal construction projects that contractors must maintain local wage scales. The Comptroller General ruled, however, that the proposal violated existing law, and he suggested that legislative action was necessary.

Thus, with the pressure of the depression and unemployment, complaints of contractors transporting workers at low wages, and the adverse decision of the Comptroller General on an administrative attempt at a solution, the stage was set for legislative action.

A proposed bill calling for the prevailing wage theory to be applied to Federal contracts for construction of public buildings was drafted by an interdepartmental committee from the Labor, War, and Treasury Departments. Identical bills were introduced in the 71st Congress by Senator Davis of Pennsylvania and Congressman Bacon. The Senate and House debates and hearings on the bill treated the unemployment situation as an emergency, and the measure was passed by the Congress and enacted into law as the Davis-Bacon Act on March 3, 1931 (Public Law 71-798).

THE ORIGINAL ACT

The initial act required that contracts over \$5,000 for the construction, alteration, and repair of public buildings shall contain a provision that the rate of wages for all

laborers and mechanics employed by the contractor or sub-contractor on public buildings covered by the contract shall not be less than the prevailing rate of wages for work of a similar nature in the city, town, village, or other civil subdivision of the State (or District of Columbia) in which the buildings are located. It also provided that, in case any dispute arose as to what the prevailing rates of wages were for work of a similar nature applicable to the contracts and if the dispute could not be adjusted by the contracting officer, the matter would be referred to the Secretary of Labor for determination. The Secretary's decision would be conclusive on all parties to the contract.

The Senate and House Committee reports ^{1/} on the Davis-Bacon Act commented on the need for and objectives of the act:

"The Federal Government has entered upon an extensive public building program throughout the United States and in the District of Columbia. This program will continue for a period of 8 or 10 years and will result in the expenditure of approximately a half a billion dollars for the construction, alteration, and repair of Federal buildings. It was intended that this vast sum of money should be expended not only to properly house Federal offices in their own buildings, but also to benefit the United States at large through distribution of construction throughout the communities of the country without favoring any particular section.

"The Federal Government must, under the law, award its contracts to the lowest responsible bidder. This has prevented representatives of the departments involved from requiring successful bidders to pay wages to their employees comparable to the wages paid for similar labor by private industry in the vicinity of the building projects under construction. Though the officials awarding contracts have faithfully endeavored to persuade contractors to pay local prevailing wage scales, some successful bidders have selfishly imported labor from distant localities and have exploited this labor at wages far below local wage rates.

^{1/}S. Rept. 1445, 71st Cong., 3rd sess., 1, 2 (1931), and H.R. 24533, 71st Cong., 3rd sess., 1 (1931).

"This practice, which the Federal Government is now powerless to stop, has resulted in a very unhealthy situation. Local artisans and mechanics, many of whom are family men owning their own homes, and whose standards of living have long been adjusted to local wage scales, can not hope to compete with this migratory labor. Not only are local workmen affected, but qualified contractors residing and doing business in the section of the country to which Federal buildings are allocated find it impossible to compete with the outside contractors, who base their estimates for labor upon the low wages they can pay to unattached, migratory workmen imported from a distance and for whom the contractors have in some cases provided housing facilities and food in flimsy, temporary quarters adjacent to the project under construction."

The legislative history of the act shows that the Congress intended that wage determinations should be based on the wage rates established by private industry for construction of a similar character and that no new wage scale be established. Both the Senate and the House reports on the act 1/ contained the following statements:

"The purpose of this measure is to require contractors and subcontractors engaged in constructing, altering, or repairing any public building of the United States or of the District of Columbia situated within the geographic limits of the United States to pay their employees the prevailing wage rates when such wage rates have been established by private industry." (Underscoring supplied.)

* * * * *

"This measure does not require the Government to establish any new wage scales in any portion of the country. It merely gives the Government the power to require its contractors to pay their employees the prevailing wage scales in the vicinity of the building projects. This is only fair and just to the employees, the contractors, and

1/Ibid, p. 119.

the Government alike. It gives a square deal to all." (Underscoring supplied.)

Also, throughout the debates on the bills, there were statements and assurances from the sponsors that the bills did not require that new rates be established, but that the bills merely required contractors to pay the rates which had been established by private industry for construction of a similar character.

The act did not establish what should constitute a prevailing wage rate in a given locality, nor did it prescribe any definite rule showing how it could be impartially and accurately determined. From the outset two distinct theories on what constituted a prevailing wage were evident. Organized labor contended that the prevailing wage was that arrived at through collective bargaining between employers and employees--the union wage. Government contracting officers and contractors held to the theory that the prevailing wage was the rate paid to the largest number in a particular locality at a given time. ^{1/}

EVENTS LEADING TO THE PROPOSED AMENDMENTS OF 1935

Dissatisfaction arose over the act almost immediately after its enactment. During the first 9 months the law was in effect approximately 200 specific disputes concerning wage rates paid to workers on public building projects were submitted to the Department of Labor, in addition to scores of union disputes involving only a single craft. This dissatisfaction centered around two main elements--the post determination of the prevailing wage and the lack of an effective enforcement mechanism.

The desire to correct the problem by legislation continued, and after hearings in early 1932 the 72d Congress passed Senate bill 3847, an amendment to the act which (1) called for the Secretary of Labor to predetermine prevailing wages, (2) made provisions for stronger enforcement (including fines), and (3) authorized the Comptroller General to deduct amounts from any sum due to defaulting contractors to reimburse the workers the amounts due to them.

^{1/}See hearings on Senate bill 3847 before the Senate Committee on Education and Labor, 72d Cong., 1st sess. (1932), pp. 6, 7, 15, 19, and 20.

This bill was vetoed by the President on July 1, 1932. In returning it to the Senate he included a memorandum from the Secretary of Labor which stated:

"The bill should not be approved. It is obscure and complex and would be impracticable of administration. It would stretch a new bureaucracy across the country * * *."

The Secretary also pointed out that the

"existing law of March 3, 1931, should not be scrapped for this proposed amendatory bill with its complexities and obscurities, the results of which could only be dissatisfaction, endless controversy in enforcement, and great increase in expense to the taxpayer."

Many of the provisions of the vetoed Senate bill 3847 then became the subject of renewed congressional hearings in 1934. The hearings discussed the abuses in payment, the practices of Government contractors, and the inadequacy of existing law to remedy these problems.

In 1935 the Congress made major modifications to the Davis-Bacon Act by enacting Public Law 74-403 on August 30, 1935, which:

1. Provided for the predetermination of wages by the Secretary of Labor.
2. Lowered the dollar threshold of contracts covered by the act from \$5,000 to \$2,000.
3. Added painting, decorating, and public works, in addition to public buildings, under the coverage of the act.
4. Required contractors to pay wages not less than once a week at wage rates stated in the specifications, regardless of any contractual relationships between employees and employers.
5. Provided that the wage scales be posted in a prominent and easily accessible place at the work site.

6. Gave the contracting officer the authority to
 - (a) withhold from the contractor an amount to cover the difference between the wage rates required by the contract and the wage rates received by the laborers and mechanics and (b) terminate the contract if the laborers and mechanics receive wages lower than the prevailing wages stipulated in the contract; the contractor would be liable for any excess costs.
7. Authorized and directed the Comptroller General to
 - disburse from sums withheld any wages found to be due to workers with wage claims and
 - circulate a list to all Government departments of the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors, thereby declaring them ineligible for Government contract awards for 3 years.

These basic provisions have remained unchanged, except for a few amendments discussed in the next section.

CHANGES IN THE LAW SINCE 1935

There have been four amendments to the act since 1935. The act was extended to Alaska and Hawaii in 1940, but later (1960), when each received statehood, specific reference to them was dropped. ^{1/} In 1941, an amendment (Public Laws 77-22, Mar. 23, 1941, and 77-241, Aug. 21, 1941), made clear that the act applied to contracts awarded by methods other than advertising for proposals (i.e., negotiated contracts). In 1964, the act was amended to include fringe benefits as a part of wages (Public Law 88-349, July 2, 1964).

During 17 years (1942-1959), 40 other bills were introduced in the various Congresses to amend the Davis-Bacon Act, but none ever reached the hearing stage. Congressional interest during this period centered around extending the coverage of the act and creating better methods to administer and enforce the act.

In early 1962 the Special Subcommittee on Labor, House Committee on Education and Labor, 87th Congress, held hearings on a bill to amend the act to include fringe benefits when

^{1/}See public laws 76-633, June 15, 1940; and 86-624, July 12, 1960.

determining the prevailing wages. Initial efforts were not successful, but a similar bill was later introduced in the 88th Congress; it passed and was signed by the President on July 2, 1964, as Public Law 88-349. The term "prevailing wage" now includes such fringe benefits as medical or hospital care, pensions on retirement or death, compensation for occupational injury or illness, unemployment benefits, et al.

In the 1960s and early 1970s inflation and unemployment were growing concerns, resulting in high unemployment. The concern over the inflationary effect of the Davis-Bacon Act on federally funded construction led to the introduction of legislation to repeal the act. From 1971 to March 1979 there have been at least 27 bills introduced in the Congress to repeal the act or its provisions from related acts. The most recent was House bill 3155, introduced in the 96th Congress. None of these bills had been passed by the Congress at March 31, 1979.

STATUTES RELATED TO THE DAVIS-BACON ACTREQUIRING PAYMENT OF WAGES AT RATESPREDETERMINED BY LABOR (note a)

1. Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113(a), as amended), see particularly the amendments in the Federal-Aid Highway Act of 1968 (Public Law 90-495, 62 Stat. 815).
2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246 by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c) and repeatedly amended.
3. Federal Airport Act (sec. 15, 60 Stat. 178; 49 U.S.C. 1114(b)).
4. Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).
5. School Survey and Construction Act of 1950 (sec. 101, 72 Stat. 551, 20 U.S.C. 636(b) (1) (E), Public Law 85-620).
6. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307, 42 U.S.C. 15921).
7. U.S. Housing Act of 1937 (sec. 16, 50 Stat. 896, as amended, 42 U.S.C. 1416).
8. Federal Civil Defense Act of 1950 (sec. 3(c), 72 Stat. 533; 50 U.S.C. App. 2281, Public Law 85-606).
9. Health Professions Educational Assistance Act of 1963 (sec. 2(a), 77 Stat. 164; 42 U.S.C. 292d (c) (4) and 42 U.S.C. 293a(c)(5), Public Law 88-129).
10. Mental Retardation Facilities Construction Act (sec. 101, 122, 135; 77 Stat. 282, 284, 288, 42 U.S.C. 295(a)(2)(D), 2662(5), 2675(a)(5), Public Law 88-164).
11. Community Mental Health Centers Act (sec. 205, 77 Stat. 292; 42 U.S.C. 2685(a)(5), Public Law 88-164).

a/As of April 30, 1977.

12. Higher Educational Facilities Act of 1963 (sec. 403, 77 Stat. 379; 20 U.S.C. 753, Public Law 88-204).
13. Vocational Educational Act of 1963 (sec. 7, 77 Stat. 408; 20 U.S.C. 35f, Public Law 88-210).
14. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), Public Law 88-269).
15. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; 49 U.S.C. 1609, Public Law 88-365).
16. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947, Public Law 88-452).
17. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5), Public Law 88-443).
18. Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f), Public Law 88-560).
19. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b), Public Law 88-309).
20. Nurse Training Act of 1964 (sec. 2, 78 Stat. 909; 42 U.S.C. 296a(b) (5), Public Law 88-581).
21. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402, Public Law 90-103).
22. Act to provide Financial Assistance for Local Educational Agencies in areas affected by Federal activities (64 Stat. 1100, as amended by sec. 2, 79 Stat. 33; 20 U.S.C. 2411, Public Law 89-10).
23. Elementary and Secondary Education Act of 1965 (sec. 308, 79 Stat. 44; 20 U.S.C. 848, Public Law 89-10).
24. Cooperative Research Act of 1966 (sec. 4(c), added by sec. 403; Public Law 89-750, 79 Stat. 46; U.S.C. 332a (c)).

25. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496; 42 U.S.C. 1500c-3, Public Law 86-117).
26. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492; 42 U.S.C. 3107, Public Law 89-117).
27. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575; 42 U.S.C. 3222, Public Law 89-136).
28. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846; 20 U.S.C. 954(k), Public Law 89-209).
29. Federal Water Pollution Control Act as amended by sec. 4(g) of the Water Quality Act of 1965 (79 Stat. 910; 33 U.S.C. 466e(g), Public Law 89-234).
30. Heart Disease, Cancer and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b) (4), Public Law 89-239).
31. National Capital Transportation Act of 1965 (sec. 3(b) (4), 79 Stat. 644; 40 U.S.C. 682(b)(4), Public Law 89-173) Note: Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code.
32. Vocational Rehabilitation Act (sec. 12(b), added by sec. 3, 79 Stat. 1284; 29 U.S.C. 41a(b)(4), Public Law 89-333).
33. Medical Library Assistance Act of 1965 (sec. 2, adding sec. 393 of the Public Health Service Act, 79 Stat. 1060; 42 U.S.C. 280b-3(b)(3), Public Law 89-291).
34. Solid Waste Disposal Act (sec. 207, 79 Stat. 1000; 42 U.S.C. 3256, Public Law 89-272).
35. National Technical Institute for the Deaf Act (sec. 5(b) (5), 70 Stat. 126; 20 U.S.C. 684(b)(5), Public Law 89-36).
36. Demonstration Cities and Metropolitan Development Act 1966 (sec. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1416, Public Law 89-745).

37. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1028, Public Law 89-695).
38. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Public Law 87-328) (considered a statute for purposes of the plan.)
39. Alaska Purchase Centennial (sec. 2(b), 80 Stat. 8, Public Law 89-375).
40. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 895, 49 U.S.C. 1636(b), Public Law 89-220).
41. Allied Health Professions Personnel Training Act of 1966 (80 Stat. 1222; 42 U.S.C. 295h(b)(2)(E), Public Law 89-751).
42. Air Quality Act of 1967 (Sec. 307 added by sec. 2, 81 Stat. 506; 42 U.S.C. 1957j-3, Public Law 90-148).
43. Elementary and Secondary Education Amendments of 1967 (81 Stat. 819; 20 U.S.C. 880b-6, Public Law 90-247).
44. Vocational Rehabilitation Amendments of 1967 (81 Stat. 252, 29 U.S.C. 42a (c)(3), Public Law 90-391).
45. National Visitors Center Facilities Act of 1968 (sec. 110, 82 Stat. 45; 40 U.S.C. 808, Public Law 90-264).
46. Juvenile Delinquency Prevention and Control Act of 1968 (sec. 133, 82 Stat. 469; 42 U.S.C. 3843, Public Law 90-445).
47. New Communities Act of 1968 (sec. 410 of Public Law 90-448, 82 Stat. 516; 42 U.S.C. 3909).
48. Alcoholic and Narcotic Addict Rehabilitation Amendments of 1968 (sec. 243(d) added by sec. 301, 82 Stat. 1008; 42 U.S.C. 2688h(d), Public Law 88-164).
49. Vocational Education Amendments of 1968 (sec. 106 added by sec. 101(b), 82 Stat. 1069, 20 U.S.C. 1246, Public Law 90-576).
50. Postal Reorganization Act (39 U.S.C. 410(b)(4)(c), Public Law 91-375).

51. Developmental Disabilities Services and Facilities Construction Amendments of 1970 (84 Stat. 1316, 42 U.S.C. 2675, sec. 135(a)(5), Public Law 91-517).
52. Rail Passenger Service Act of 1970 (84 Stat. 1327, 45 U.S.C. 565, sec. 405(d), Public Law 91-518).
53. Housing and Urban Development Act of 1970 (84 Stat. 1770, Sec. 707(a) and (b), Public Law 91-609, 42 U.S.C. 1500c-3).
54. Airport and Airway Development Act of 1970 (84 Stat. 219, sec. 22(b), Public Law 91-258, 41 U.S.C. 1722(b)) (this act provides for wage determination by the Secretary of Labor but does not subject the act to Reorganization Plan No. 14).
55. Elementary and Secondary Education Amendments (84 Stat. 121, sec. 423, Public Law 91-230, 20 U.S.C. 1231 et seq.).
56. Housing Act of 1959 (73 Stat. 681, Public Law 86-372, 12 U.S.C. 1701q(c)(3), Public Law 86-372).
57. Housing Act of 1950 (64 Stat. 78, 12 U.S.C. 1749a(f)).
58. Area Redevelopment Act of 1961 (75 Stat. 61, Public Law 87-27, 42 U.S.C. 2518).
59. Mental Retardation Facilities and Community Mental Health Centers Construction Act Amendments of 1965 (79 Stat. 429, Public Law 89-105, 20 U.S.C. 618(g)).
60. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, Public Law 88-450, 38 U.S.C. 5035(a)(8)).
61. Education Amendments of 1972 (86 Stat. 331, Public Law 92-318).
62. Juvenile Delinquency Prevention and Control Act of 1968, amendment (86 Stat. 532, Public Law 92-381).
63. State and Local Fiscal Assistance Act of 1972 (Public Law 92-512, Oct. 20, 1972, 86 Stat. 919).
64. Rehabilitation Act of 1973 (Public Law 93-112, 87 Stat. 355).

65. Domestic Volunteer Service Act of 1973 (Public Law 93-113, 87 Stat. 394).
66. Comprehensive Employment and Training Act of 1973 (Public Law 93-203, 87 Stat. 839).
67. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (Public Law 93-353, 88 Stat. 362).
68. Safe Drinking Water Act (Public Law 93-523, 88 Stat. 1660).
69. Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2206).
70. National Health Planning and Resources Development Act (Public Law 93-641, 88 Stat. 2225).
71. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (Public Law 93-644, 88 Stat. 2291).
72. Special Health Revenue Sharing Act of 1975 (Public Law 94-63, 89 Stat. 304).
73. Developmentally Disabled Assistance and Bill of Rights Act (Public Law 94-103, 89 Stat. 486).
74. Public Works Employment Act of 1976 (Public Law 94-369, 90 Stat. 999).
75. Energy Conservation and Production Act (Public Law 94-389, 90 Stat. 1125).
76. Indian Health Care Improvement Act (Public Law 94-437, 90 Stat. 1400).
77. Health Professions Educational Assistance Act (Public Law 94-484, 90 Stat. 2243).

EXAMPLES OF LABOR'S
PROBLEMS IN OBTAINING WAGE DATA THROUGH
ITS VOLUNTARY SUBMISSION PROGRAM

Labor's difficulties in obtaining wage data voluntarily from contractors and others are highlighted in interviews with the Labor staff and memorandums accompanying the regional staffs' wage surveys.

ONONDAGA COUNTY, NEW YORK

A New York regional office wage analyst, after a survey in Onondaga County, noted that:

"Although letters and forms were sent to general contractors and subcontractors of each project for which any information was available, much of the wage data gathered had to be obtained by extensive phone contact. In some cases it took three calls to the same contractor to obtain a response, often negative."

DICKSON COUNTY, TENNESSEE

In the Atlanta region, a Labor compliance officer told us that numerous problems were encountered during the survey in this county because many contractors refused to provide information. Both union and open shop contractors refused to identify their competitor organizations because it would bias the survey results in their favor. Other contractors stated that they were tired of having to comply with the Government's rules and regulations and simply refused to cooperate.

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Compliance officers conducting surveys noted the following difficulties in the San Francisco region.

COCHISE COUNTY, ARIZONA

"Approximately 90 WD-12's [requests] were mailed to sub-contractors to obtain their wage rates. Less than half of them responded. This is not a good method of conducting a wage survey."

"This CO [compliance officer] has encountered increasing resistance to wage surveys from sub-contractors * * *. A number of these contractors flatly refused or were reluctant to furnish the data until a combination of cajolery, flattery, logic, and endless explanation of the purposes of the survey was brought into play. The only tactic not employed was downright begging * * *. Given the deadline that is norm for completion of a survey (because some agency has requested a wage determination and is awaiting the results of an approved survey), it is an absolute impossibility to do a competent job within the time frame expected."

The compliance officer stated further that he had completed four wage surveys within the past year and met the deadline only once. That was accomplished by calling sub-contractors at nights and on weekends in addition to the contacts during normal working hours.

CARSON CITY COUNTY, NEVADA

Another San Francisco compliance officer's memorandum stated:

"Many of the general-contractors and most of the sub-contractors operate out of their residences and could not be contacted directly. Where contacts were made, the parties preferred to answer questions from memory rather than research records, being indefinite as to pay period dates."

KINGS AND TULARE COUNTIES, CALIFORNIA

"Although the data collected is quite accurate there could be questions as to the validity of certain rates for certain trades. * * * In many trades, the majority of employees are paid on a salary or piece rate basis or are owner-operator type businesses. The excluding of these employees sometimes result in just one or two hourly employees being recorded in a particular trade."

LABOR COMMENTS AND OUR EVALUATION

In its comments, Labor stated that the voluntary submission program works effectively--that it has found no significant problems, and it comports with administration policy for voluntary participation in Government programs. Labor also stated that, to insure a representative sample, it makes successive contacts of potential survey respondents by mail, telephone, and even personal visits. Data submitted voluntarily is checked against other objective data available. Labor further stated that Department personnel who make wage surveys are currently being provided with intensive training to assure a uniform approach, and that manuals and procedural regulations are being revised.

Labor believes that the five examples cited in this appendix are only subjective expressions by 5 out of a staff of about 1,000 who might undertake surveys in any one year. Labor said these examples cannot be viewed as definitive judgments on the adequacy of the voluntary data collection system.

Several of the memorandums we reviewed transmitting survey data to headquarters had similar data on the futility and inability to obtain data on a voluntary basis--even after all types of followup. Labor's implication that about 1,000 field staff might make surveys in any one year is a gross exaggeration. With few exceptions, surveys are conducted by the wage determination branch in the regional offices consisting of about 26 staff members nationwide. Also, we asked for, but Labor could not provide, examples of "other objective data available" when surveys produced limited wage information in the locality.

Further, after Labor's response to our draft report we contacted five regional offices to determine the scope and extent of the intensive training Labor stated was currently being provided to the staff. None of the specialists or analysts in the five regional offices were aware of any recent training in the conduct of surveys. Notwithstanding the validity of whether additional training is being provided, it is questionable in our opinion whether additional staff training or revisions to regulations and manuals can increase the voluntary participation of contractors in the data collection function. Contractors who are unwilling to participate will not provide data regardless of how well trained the staff may be.

We believe that our examples represent the total problem in the data collection function. Further, the examples on pages 45 and 46 represent data collection problems observed in most surveys. If data had been obtained on the many unreported workers in each locality, a more accurate prevailing rate may have been issued.

In our opinion it is questionable as to whether Labor can ever fulfill the intent of the act to issue an accurate prevailing wage rate for every classification of worker, for all types of construction, in every locality, within the constraints of the voluntary data collection system.

EXAMPLES OF DIFFERENCES IN WAGE RATES AND WORKERCLASSIFICATIONS WE NOTED IN VERIFYING DATALABOR OBTAINED FROM CONTRACTORS AND OTHERSPROJECT DETERMINATION GA-75-1039,
MUSCOGEE COUNTY, GEORGIA

Rates in this determination dated April 11, 1975, for a building project were based on a Labor survey completed in January 1975. We were able to contact 23 of the contractors from whom Labor had obtained wage data. Our comparison of data provided Labor with data that we obtained showed differences for 16 contractors and no differences for 2. The remaining five contractors did not have the data available for us to make comparisons.

In most cases these contractors could not explain the differences; some did not even remember providing data to Labor. Examples of explanations we obtained are noted below:

<u>Differences noted</u>	<u>Contractor's comments</u>
Labor data included rates for four crafts which the contractor did not employ.	An official classified some laborers in different crafts because they did a limited amount of work in those crafts. Another official said they were laborers.
Labor data included higher wage rates and more employees.	An official did not recall providing data. He said the general contractor may have provided data; but if so he guessed.
Labor data included wage rates never paid by the contractor.	An official stated that, when he provided data, he averaged the rates of his two highest paid employees.

During Labor's survey for the project, wage data from both the contractor and a contractor association representative were used by Labor for the same project. The sets of data for the same project were sometimes different, and we obtained still different data from the contractor's records:

<u>Classification</u>	<u>Hourly rates from association to Labor</u>	<u>Hourly rates given by contractor to Labor</u>	<u>Hourly rates obtained by us from contractor's records</u>
Bricklayer	1 @ \$6.85 1 @ \$6.35	1 @ \$6.85 1 @ \$6.35	2 @ \$6.10
Laborer	2 @ \$2.30	2 @ \$2.30 2 @ \$2.35 1 @ \$2.50	2 @ \$2.35 3 @ \$2.40 1 @ \$2.50
Truck driver	2 @ \$2.35 1 @ \$2.50	None	None
Roofer	None	3 @ \$3.75	1 @ \$3.75 1 @ \$3.50 1 @ \$3.25 1 @ \$2.75
Sheetmetal worker	None	2 @ \$4.50	1 @ \$4.25 1 @ \$5.35 1 @ \$5.75

PROJECT DETERMINATION 76-TN-88,
DICKSON COUNTY, TENNESSEE

Prior to the expiration of this project determination Labor conducted a building survey in Dickson County. We were able to verify several rates and classifications obtained from contractors in the survey and noted the following differences.

<u>Contractor</u>	<u>Classification</u>	<u>Hourly rates contractor furnished to Labor</u>	<u>Hourly rates obtained by us from contractors' records</u>
A	Air-conditioning mechanic helper	1 @ \$4.25 1 @ \$3.50	None during pay period specified by Labor
B	Laborer	1 @ \$6.25	1 @ \$6.00
C	Plumber Backhoe operator	2 @ \$4.50 None	1 @ \$4.50 1 @ \$5.00
D	Pan operator Dozer operator Truck driver Backhoe operator	1 @ \$4.25 1 @ \$4.25 1 @ \$3.25 1 @ \$2.50 None	None 2 @ \$4.25 None 1 @ \$4.00
E	Bricklayer	10 @ \$8.25	7 @ \$8.00 3 @ \$8.50
F	Sheetmetal mechanic	2 @ \$10.22	3 @ \$9.77
G	Truck driver Cement mason Laborer Carpenter Carpenter helper	1 @ \$3.25 3 @ \$4.50 1 @ \$3.50 4 @ \$2.50 None None	None None None None 1 @ \$4.50 1 @ \$3.50 1 @ \$3.25
H	Electrician Electrician helper Laborer	2 @ \$4.00 None 2 @ \$3.00	3 @ \$5.00 1 @ \$2.30 None

Contractor A stated that no workers were employed on the project during the pay period specified by Labor. He said that he did not provide any data to Labor, but one of his temporary secretaries may have.

Contractor B (the company president) said the difference resulted because fringe benefits were included in the \$6.00 rate, not in addition to the rate, as reported in Labor's wage rate.

Contractor E's secretary said that the data provided to Labor was furnished by the owner of the company, who probably averaged the rates.

PROJECT DETERMINATION 76-WI-41,
ROCK COUNTY, WISCONSIN

Labor's rates issued in the determination for this residential construction project were based on a survey conducted by the HUD and Labor staffs. We obtained data from 25 contractors who had provided data for the survey and found differences in data furnished by 16. Some examples of differences were:

<u>Classification</u>	<u>Hourly rates per Labor survey</u>	<u>Hourly rates obtained by us from contractors' records</u>
Carpenter	3 @ \$6.50	1 @ \$5.75 1 @ \$6.00
Electrician	2 @ \$8.96 1 @ \$5.00	2 @ \$9.66 2 @ \$6.10
Painter	1 @ \$3.50	1 @ \$5.00

PROJECT DETERMINATION 76-NV-16,
CARSON CITY COUNTY, NEVADA

Wage rates for this residential project were based on data received by Labor from contractors and subcontractors who had furnished data to both HUD and Labor on the same projects. During our survey we found that the data provided to both Labor and HUD differed in several instances, and we obtained still different rates from contractors' records:

<u>Contractor</u>	<u>Classifi- cation</u>	<u>Hourly rates from contractors</u>		<u>Hourly rates obtained by us from contractors'</u>
		<u>Furnished to HUD</u>	<u>Furnished to Labor</u>	<u>records</u>
1	Carpenter	3 @ \$9.00	3 @ \$9.00	2 @ \$ 8.75
	Laborer	1 @ \$6.70	1 @ \$6.70	1 @ \$ 6.00
				1 @ \$ 4.50
	Painter	2 @ \$8.50	2 @ \$8.50	1 @ \$ 7.80
	Truck driver	None	None	1 @ \$ 6.00
2	Bricklayer	None	None	2 @ \$14.06
	Carpenter	None	3 @ \$8.00	6 @ \$15.17
				1 @ \$ 8.00
	Laborer	None	1 @ \$4.00	1 @ \$ 4.00
			1 @ \$3.50	1 @ \$ 5.00
	Roofer	None	None	1 @ \$ 5.25
3	Drywall hanger	2 @ \$9.00	2 @ \$8.50	2 @ \$ 7.14
	Drywall taper	2 @ \$9.00	2 @ \$8.50	2 @ \$ 7.96
4	Electrician	3 @ \$7.50	1 @ \$8.00	2 @ \$ 7.50
		2 @ \$5.25		1 @ \$ 5.50
				1 @ \$ 5.25
				1 @ \$ 6.50
5	Drywall hanger	None	2 @ \$10.00	6 @ \$11.00
	Drywall taper	None	1 @ \$12.00	6 @ \$11.00

LABOR COMMENTS AND OUR EVALUATION

Commenting on a draft of this report, Labor stated that its practices provide for verification of data. Where data are questionable for any reason, Labor stated that it is not used unless the questions can be resolved after due consideration. Labor also stated that the discrepancies cited in this appendix do not support our contention that Labor accepted inaccurate data. Labor said that there was a considerable lapse between the time it and our office gathered the data, and that some contractor records are not maintained well for any considerable period. Labor did not believe the few examples we cited were representative of the construction industry.

We disagree with Labor that the examples are not representative. As we stated previously, our sample of wage determination projects were selected for review on a random basis, and we believe they are representative of construction projects in regions we reviewed. The four Labor surveys where we verified the data are part of this random sample. These were selected because they were the most recent of Labor's surveys for which we could reasonably expect contractor records would still be available.

The lapse between our review and Labor's surveys was reasonable, ranging from 4 to 14 months. Moreover, in the four cases we reviewed, the contractors' records were adequate and the data readily available.

On the surface, none of the wage rates, classifications, or numbers of workers furnished Labor for the four cases appeared questionable. Notwithstanding, we identified discrepancies between data accepted and used by Labor and data in the contractors' payroll records.

In our opinion, any data collection system must be subjected to some sort of verification program, if only to assure that respondents understand what has been requested. As our review shows, this is not the case in Labor's data collection program.

EXAMPLES SHOWING THAT LABOR DELETED,
ADDED, AND CHANGED WAGE DATA RECEIVED IN SURVEYS
WITHOUT ADEQUATE REASON OR RATIONALE

Presented below are examples from the five regions we visited that illustrate how the Labor headquarters and regional staffs adjusted wage data and worker classifications without adequate reason or rationale.

PROJECT DETERMINATION 76-NY-237,
ORANGE COUNTY, NEW YORK

Labor's regional staff obtained data on 12 classifications for this residential construction project. All but one rate was lower than union-negotiated rates. The headquarters staff, however, added 11 classifications on which no data was received in the survey and issued union rates on all 23 classifications. Following is one example of an adjustment to the survey data received on this project:

<u>Classifica- tion</u>	<u>Survey rate</u>	<u>Rate issued</u>	<u>Basis for omissions or change</u>
Bricklayer	\$7.80	\$11.90	Average rate for each was combined as bricklayer-cement mason and calculated at a minimum rate of \$6.69, but the region recommended that a union rate be used. Headquarters updated the rate to the current union rate of \$11.90 for this determination.
Cement mason	6.11	11.90	

Labor comments and our evaluation

Labor stated that the reason for the change cited above is in error and irrelevant to the decision. Rather, the change resulted from Labor's decision to update a union rate determined in a 1973 survey; the union dominance found then still prevailed.

The survey data obtained in 1973 did support a union rate as prevailing for the bricklayer classification at \$7.80 plus fringe benefits. However, varying nonunion rates were

paid to 16 of the 22 cement masons in the survey. Since no single rate was paid to more than 30 percent of the workers in this classification, the average of the rates should have been issued at \$6.11.

Labor also stated that the other 11 classifications were added because of information available to the National Office which had not been available to the New York Region. During our review, the regional wage specialist contacted the National Office for any additional information that might be available to support the rates issued. He was advised that no other data was available. After receiving Labor's comments, we also asked for the additional information they cited, but were advised that the file could not be located.

PROJECT DETERMINATION GA-75-1039, MUSCOGEE
AND CHATTAHOOCHEE COUNTIES, GEORGIA

Labor's regional staff obtained wage data on 137 projects--126 located in Muscogee County and 11 in Chattahoochee County--for this building project. Ten of the 11 in Chattahoochee were located at Fort Benning, an Army installation where all projects were federally funded and required Davis-Bacon Act rates.

The regional staff combined the data from both counties and recommended one rate for each craft, with the exception of plumbers. The business agent from the Plumbers and Steamfitters Local in Columbus, Georgia, requested that separate county rates be issued for plumbers. He told Labor in a telephone call and letter that, if the rates were separated, the union-negotiated rate for plumbers would prevail on a large amount (about \$20 million worth) of work coming up in the Chattahoochee section of Fort Benning. Accordingly, Labor's regional staff separated the non-union rate determined for plumbers of \$6.40 and recommended a union-negotiated rate for Chattahoochee County of \$7.30 and a nonunion rate for Muscogee of \$6.12.

Following are the reasons why the survey rate for truck drivers was adjusted and rates for nine other classifications not issued:

<u>Classification</u>	<u>Survey hourly rate</u>	<u>Hourly rate issued</u>	<u>Basis for omissions or changes</u>
Finishing machine operator	\$4.95	None	Reason not explained.
Truck driver	2.25	\$2.32	Raised to laborer rate.
Drywall hanger	6.50	None	Based on 3 employees and higher than most other rates.
Mortar mixer	2.25	None	Lower than laborer rate.
Marble setter	4.50	None	Based on 2 employees and lower than previous rate of \$5.60.
Plasterer	3.60	None	Reason not explained.
Pump operator	2.00	None	Based on 1 employee and lower than laborer rate.
Hoist operator	3.60	None	Based on 1 employee.
Terrazo worker	4.50	None	Based on 1 employee and lower than previous rate of \$5.60.
Air compressor operator	2.25	None	Lower than laborer rate and lower than previous rate issued of \$4.98.

Labor comments and our evaluation

Labor stated that its investigation showed that this determination was properly made. It said that survey data from adjoining counties having similar economic characteristics are analyzed both separately and together and, if the data are similar, they are combined into a single schedule. When they are different, there are separate rates. In this case Labor stated that the rates for plumbers in the two counties were substantially different.

It also stated that the change in the truck driver's rate was based on the general knowledge that no skilled classification on the project is paid less than the laborers. It stated

that no rates were issued for the other nine classifications because the survey resulted in too little information for an accurate finding, and the data were sufficiently inconsistent with other information in the survey to raise substantial questions as to their validity.

Labor contends that only the plumbers' rate was issued with separate rates for each county because of the substantial difference between the two (amounting to \$1.18), but Labor avoids comment on the obvious pressure from the union representative. However, rates for classifications with even more substantial differences were not similarly separated, but issued on the basis of the combined rates. For example:

	<u>Survey rate prevailing in</u>		<u>Differ- ence</u>	<u>Combined rate issued</u>
	<u>Muscogee</u>	<u>Chatta- hoochee</u>		
Iron worker, reinforcing	\$4.13	\$5.74	\$1.61	\$4.29
Lather	6.00	2.75	3.25	6.00
Soft floor layer	3.50	4.75	1.25	4.24
Backhoe operator	3.75	5.00	1.25	3.75
Blade grader	3.75	5.00	1.25	3.75

The general knowledge that no skilled classification is paid less than laborers is not based on the factual data obtained in the survey. Data from projects in the locality showed many examples where truck drivers were paid less than laborers on the same projects. In fact, Labor has issued wage determinations where the laborer rate was higher than some of the skilled classifications. For example, wage determinations issued for residential projects in Saratoga County, New York, specified \$7.92 an hour for laborers, \$5.67 for electricians, \$4.65 for painters, and \$6.85 for plumbers.

We agree that rates based on only one, two, or three workers in a survey are hardly indicative that they prevail. However, in this same survey rates were issued based on only three rates for pipelayers and distributor operators. In other surveys we reviewed in this region, the wage specialist recommended omitting some of the rates based on only one employee, but headquarters issued some of the rates (Burke County, North Carolina, and Ware County, Georgia). This illustrates again Labor's inconsistency in the application of its own practices and rules and, ultimately, in the administration of the act.

Labor explained the conformance procedures set out in its regulations in those situations where it is unable to include a specific craft. Under these procedures, agency contracting officers and contractors agree to a wage rate and advise Labor of the result. However, a regional wage specialist recently told us that he recommended that rates be issued based on as few as one rate in the survey so that the conformance procedures would not have to be applied by contracting agencies.

AREA DETERMINATION AR-3147,
POLK COUNTY, MINNESOTA

This project involved heavy and highway construction. In this survey the laborer's rate of \$4.37 prevailed, based on payment evidence received by Labor's regional staff. The regional wage specialist noted that this was lower than the previous issued rate of \$4.75 per hour, and he recommended that headquarters delete all payment data in the survey that was lower than \$4.75. Headquarters accepted the recommendation and, after deleting the data, a rate of \$5.29 per hour was issued.

Labor comments and our evaluation

Labor stated that its review of this determination indicated that the payments were correctly deleted because they were illegal payments as a result of rates issued under previous determinations.

Labor's contention that the payments deleted from the survey were illegal appears to be in error. The projects and related wage rates deleted from the survey did involve a federally assisted construction contract. However, it was advertised during the period of suspension of the act by the President in 1971. General Addendum "A" to the Invitation for Bids provided that:

"In compliance with the President's proclamation of February 23, 1971, the Wage Rate Determination decisions and schedules of wages provided therefore are hereby declared null and void."

Accordingly, the deleted payments, rather than being illegal, were not subjected to the wage determination mechanisms of Labor's administration of the act and may have been the most representative of the rates that prevailed in the locality.

PROJECT DETERMINATION 76-TX-89, ECTOR
AND MIDLAND COUNTIES, TEXAS

Labor's regional staff made numerous changes and additions to survey data for this building project. Some examples are:

<u>Classification</u>	<u>Survey hourly rate</u>	<u>Hourly rate recommended</u>	<u>Basis for omissions or changes</u>
Asbestos worker	\$8.00 plus fringes	\$8.45 plus fringes	Union-negotiated rate of prior year updated to the current rate issued. Headquarters issued \$9.50 plus fringe.
Boilermaker	None found	\$9.28	Statewide union-negotiated rate issued.
Ironworker, structural and ornamental	\$8.00	\$7.03 plus fringes	Rate higher than union-negotiated rate. Combined with ironworker, reinforcing data and reduced to union rate plus fringe benefits.
Tilesetter helper	\$2.50	None	Omitted because lower than the \$3.07 laborer rate.
Air conditioning mechanic	\$5.00	None	Omitted because plumber rate was higher.

Labor comments and our evaluations

Labor stated that its review of this determination indicates that for all five classifications the rates issued were correct. It commented that

--a union-negotiated rate for asbestos workers was updated and issued, rather than using survey data, because it was independently found that the union rate prevailed;

- rates for tilesetter helper and air-conditioning mechanic were deleted because the survey provided too little data for an accurate finding and were inconsistent with other data (raising questions as to their validity);
- the boilermaker rate was added to the determination because the prevailing rate was a union rate, again independently found to be prevailing in the county; and
- fringe benefits were improperly included by us in the hourly rates for ironworkers.

The bases for omission or change in each example cited above were obtained from the regional wage specialist's memorandum which transmitted the survey to headquarters. While headquarters has final approval authority, Labor's comments are inconsistent with the actions taken in the survey.

Asbestos worker--Labor stated that, since the union-negotiated rate was found to prevail, it was updated and issued. However, in the same survey a negotiated rate was paid to 42 percent (97 of 231) of the carpenters, but at more than one rate because of the extended period covered by the survey. These were not similarly updated to the current union rate and, since no one single rate was paid to more than 30 percent of the carpenters in the survey, rates were averaged and a nonunion rate was issued. Under the 30-percent rule, and to be consistent with Labor's comments above, the negotiated rate should have been updated and issued, but it was not.

Tilesetter helper and air conditioning mechanic--Labor explained that these crafts were deleted because too little data was obtained in the survey to issue an accurate rate or that the data might not be valid. Rates were obtained on 28 tilesetter helpers and 25 air conditioning mechanics--the majority in each classification were paid at the rate shown on page 146. In the same survey, rates were issued for other classifications on the basis of far less than 25 rates. For example,

	<u>Number of rates</u>
Boilermaker	0
Bulldozer operator	1
Backhoe operator	2
Foundation drill operator	5
Painters, spray	4
Painters, tape and bed	8

Labor's survey files did not indicate any followup to question the validity of the rates deleted. If they were substantially questionable, they should have been verified. In our opinion, they were deleted on the basis of the regional wage specialist's comments above (i.e., lower than the laborer rate or another rate was higher), but were representative of those prevailing in the locality and should have been issued.

Boilermaker--No rates were obtained on this classification in the survey. This is an example of using the jurisdictional coverage of a union collective bargaining agreement to search for a rate even though the rate may never have been paid to workers in the locality, and may never be paid except on Federal or federally assisted projects. The conformance procedures explained in Labor's letter (see p. 242) should have been applied in this case. We asked Labor officials how it was independently determined that the rate prevailed, and we were furnished a manual citation which said that collective bargaining agreements may be used.

Ironworker--We did not improperly include fringe benefits in the hourly rate for ironworkers. The contractor, whose rates at \$8 an hour prevailed in the survey, told us that this was his basic hourly rate on both the federally funded and the private projects included in the survey. He had simply advised the wage analyst in the telephone survey that his basic hourly rate was more than the union-negotiated rate, including fringe benefits, required of a nonunion contractor on Davis-Bacon Act projects in the survey.

Only 5 of the 98 rates in the survey were paid at the union-negotiated rate of \$7.03 plus fringe benefits (the rate issued), while 30 were paid at \$8 (more than 30 percent). In our opinion, the wage specialist's reason to reduce the rate (i.e., it was higher than the union-negotiated rate) was controlling in this instance and resulted in the issuance of an inaccurate rate.

PROJECT DETERMINATION 76-CA-33,
STANISLAUS COUNTY, CALIFORNIA

This was a residential construction project, and it illustrates several deletions and changes made by Labor. The survey for this project was conducted by a regional compliance officer. In a memorandum to the wage specialist, he stated that many nonunion contractors pay more than one rate to workers in some classifications and that the lower rates obtained do not necessarily mean the employee is a helper rather than journeyman. The wage specialist, however, eliminated from the wage compilation most of the lower rates obtained in the survey. The specialist also excluded, or did not recommend a rate, for the following classifications:

<u>Classifica- tion</u>	<u>Survey data omitted</u>		<u>Hourly rate rec- ommended</u>	<u>Basis for omission</u>
	<u>Number of em- ployees</u>	<u>Hourly rates</u>		
Carpenter	19	\$2.50	\$6.54	Apparently too close or below the laborer rate. If these rates had been considered, the prevailing rate would have been \$4.85--\$1.69 less than the recommended rate of \$6.54. Deletion of these rates was not always consistent since some were included from other projects (e.g., 4 at \$4.00, 1 at \$4.10, 2 at \$4.25, and 11 at \$4.50).
	7	3.00		
	3	3.25		
	11	3.50		
	33	3.75		
	25	4.00		
	2	4.10		
	4	4.25		
	9	4.50		

Plumber	2	3.75	6.50	Again, apparently judged too low. However, as above, the \$5.75 rate was not always deleted--19 were included in the wage compilation.
	1	4.00		
	2	5.75		
Helper rates:				
Elec- trician	2	3.00	None	Region never recommends helper rates.
	2	2.75		
Tilesetter	4	6.99		
	1	3.40		
	1	2.90		
Carpet layer	1	2.75		
	1	2.50		
Plumber	2	3.50		
Plasterer	8	4.75	None	No explanation.
	4	5.00		
	3	5.50		
Soft floor layer	3	None	\$9.00	The region recommended a rate of \$9 based on two out of three craftsmen in the survey. Headquarters deleted this craft with no reason given.

During the survey the compliance officer developed some of the wage data for several classifications on a piece-rate basis, but, contrary to Labor's regulations (which provide for the piece-rate data to be used), the wage analyst deleted all except some of the data reported on cement masons.

<u>Classification</u>	<u>Number of projects reporting classification at piece rates</u>
Painter	2
Roofer	9
Carpenter	4
Plasterer	3
Drywall hanger	1
Bricklayer	5
Cement mason	5
Soft floor layer	4
Stone mason	1

For cement masons, the compliance officer had converted the piece rates paid to 5 employees to \$10.62 per hour, which was used in his overall compilation of data:

4 @ \$ 3.50 =	\$14.00
3 @ \$ 5.00 =	15.00
5 @ \$10.62 =	53.10
<u>12</u>	<u>\$82.10</u>

In accordance with Labor's regulations, the rate was initially determined on the work sheets to be \$10.62 under the 30-percent rule (5 of 12 = about 42 percent). However, the wage specialist later recomputed the rate under the weighted average rule and recommended a rate of \$6.84. If the wage specialist had excluded this piece-rate data (similar to those excluded in other classifications), the majority rate of \$3.50 would have been recommended.

Labor comments and our evaluation

Labor stated that its analysis showed proper use was made of all data obtained in this survey and that

--rates for a number of workers in carpenter and plumber trades were deleted because they showed an unusually broad range; this was an indication that the lower paid workers were generally trainees, not journeymen;

--our reason for the refusal to issue helper rates is erroneous; Labor does issue helper rates under appropriate circumstances, when it is clearly shown that such a classification exists in a particular craft in an area;

--no wage determination was made for soft floor layers because of scant information; and

--piece-rate data on eight classifications was not used because the survey did not include the number of hours each piece-rate worker worked at that piece rate; except for the cement masons, where such data was furnished.

Labor's comments on its use of data obtained in this survey differ from what we found during our review.

Carpenters and plumbers deleted--As we noted in the report, the compliance officer, who performed the onsite survey and normally has direct contact with the contractors and workers and knowledge of practices in the locality, advised the wage specialist that the lower rates did not indicate the workers were other than journeymen craftsmen. However, the wage specialist, without further verification with the compliance officer, unilaterally deleted most of the low rates.

Labor stated that the unusually broad range of rates received on these two classifications indicates that some were not journeymen. Carpenter rates in the survey ranged from \$2.50 to \$8.44, a difference of \$5.94; plumbers ranged from \$3.75 to \$7.35, a difference of \$3.60. However, no adjustments were made in data with similar or even more substantial differences on the following crafts--all rates received in the survey were used in computing the rate issued:

<u>Classification</u>	<u>Range of rates</u>	<u>Differences</u>
Laborer	\$3.00 to \$10.00	\$7.00
Painter	4.00 to 8.63	4.63
Sheet metal worker	a/4.25 to 10.99	a/6.74
Electrician	3.00 to 8.00	5.00
Cement mason	3.50 to 10.62	7.12

a/Fringe benefits additional.

The laborer rates at \$10.00, above, would on the surface appear as questionable as the low rates. They were not adjusted or verified in this survey. However, in a survey of Carson City County, Nevada, laborer rates of \$8.25 and \$7.39 were considered too high by the wage specialist. They were reclassified as plumber rates and included in the data base for that classification. Most of the surveys we reviewed in this region contained similar examples of unilateral adjustments and deletions without adequate justification or documentation.

Helper rates not issued--Our comment that the region never recommends rates for a helper classification was not erroneous. The regional wage specialist told our staff that helper classifications are omitted from survey data obtained in the region. In this survey, six tilesetter journeymen rates were obtained along with six tilesetter helper rates, indicating a substantial use of this classification in the locality. However, in accordance with the wage specialist's stated regional policy, no helper rate was recommended, and the headquarters staff approved the deletion.

Soft floor layer deleted--This rate was deleted because of scant information (three rates); however, rates for other classifications with as little or less data were recommended by the region, and approved and issued by headquarters. For example, the tractor driver classification, with only two rates, and the drywall classification, with three rates, were issued.

Piece-rate data deleted--Labor's comments do not agree with the data in the regional survey files. In this region it was the practice not to use piece-rate data in the computation of prevailing wage rates, although survey results showed this to be the prevailing form of payment for certain crafts in the locality. The regional wage specialist stated that piece rates are always excluded from wage rates because it would increase hourly rates paid and favor younger employees. The contractor who reported the piece-rate information on the cement masons also reported four other classifications with similar information identified also as piece-rate data on bricklayers, roofers, plasterers, and stone masons. In each instance, this data was excluded from the wage computation.

It appears that the cement mason data was used in the wage determination computation through oversight. As we stated, if the wage specialist's policy had been followed, a \$3.50 rate would have been determined as prevailing.

EXAMPLES SHOWING LABOR'S
USE OF WAGE RATES PAID ON FEDERAL PROJECTS
WHEN DETERMINING WAGE RATES

Although the legislative intent of the Davis-Bacon Act provided that rates issued should be based on those that prevailed in similar private construction, presented below are examples where Labor obtained and used rates from Federal projects on which Davis-Bacon Act rates had been previously required.

PROJECT DETERMINATION SURVEY 76-TN-88,
DICKSON COUNTY, TENNESSEE

Within 3 months after issuing project determination 76-TN-88 in Dickson County, Tennessee, Labor's wage determination staff surveyed 12 projects in the county. Three involved Federal funds with wage rates previously stipulated by Labor. The three projects were

- (1) a County office building,
- (2) Interstate rest areas, and
- (3) a National Guard Armory.

When rates on these federally financed projects were deleted from the surveys for the following worker classifications, we determined that wages prevailing in the private sector were:

<u>Classification</u>	<u>Hourly rate issued by Labor</u>	<u>Our computed rate without Federal projects</u>	<u>Difference (Labor rates lower)</u>
Carpenter	\$7.91	\$6.00	\$1.91
Electrician	5.83	4.95	.88
Laborer	4.65	3.58	1.07
Mason tender	4.80	5.00	(.20)
Sheetmetal worker	8.37	9.62	(1.25)
Tilesetter	5.50	5.09	.41
Bulldozer operator	7.30	4.93	2.37

One contractor in Labor's survey stated on the data sheet that Labor should use his full-time employment rate, which he cited as \$5.25 per hour plus some side benefits for his craftsmen. He noted that he only paid the rate reported of \$7.97 (union-negotiated including fringe) because he had been required to under the Davis-Bacon Act on that project.

PROJECT DETERMINATION 76-LA-122,
RAPIDES PARISH, LOUISIANA

Two of six projects surveyed by Labor were federally financed and required payment of Davis-Bacon Act rates. Deleting wage rates reported on those two projects resulted in the following:

<u>Classification</u>	<u>Hourly rate issued by Labor</u>	<u>Our computed hourly rate without Federal projects</u>	<u>Difference (Labor rates lower)</u>
Cement worker	\$5.00	\$5.70	(\$.70)
Laborer	3.54	3.40	.14
Roofer	5.23	5.40	(.17)
Sheetmetal worker	6.67	7.07	(.40)
Forklift operator	5.00	3.75	1.25

PROJECT DETERMINATION 76-CA-33,
STANISLAUS COUNTY, CALIFORNIA

Labor completed a survey in this county in 1972. Wages for all classifications surveyed were issued at union-negotiated rates. A memorandum accompanying the survey stated that "The union rates paid on HUD jobs were only paid because they were required by the WD's [wage determinations], since all of the contractors on the five projects are nonunion according to HUD."

In 1975 the wage specialist, recognizing that the 1972 survey data was outdated and that the HUD projects, which required the union-negotiated rates, had "affected the survey rates to a large extent," completed another survey. The rates, compared with rates issued on a determination before the survey, were all nonunion and lower, with one exception, as follows:

<u>Classification</u>	<u>Labor hourly rates issued in January 1974 based on 1972 survey</u>	<u>Hourly rates in September 1975 survey</u>	<u>Difference</u>
Drywall taper	\$ 7.42	\$ 6.00	1.42
Drywall hanger	10.31	7.50	2.81
Bricklayer	9.25	11.35	(2.10)
Carpenter	10.02	6.54	3.48
Electrician	8.99	5.58	3.41
Laborer	7.795	3.88	3.915
Painter, brush	7.42	5.00	2.42
Plumber and pipefitter	9.91	6.50	3.41

LABOR COMMENTS AND OUR EVALUATION

Labor stated that it properly includes data from federally financed construction projects in its surveys, and that this has been a practice in its wage surveys since the inception of the program 47 years ago. It agreed that there was some reference to surveying private construction in a 1931 report. However, it believes that the absence of any language in subsequent amendments or hearings which does not support this practice expresses a more complete congressional intent. Labor stated that, as a practical matter, federally financed construction must be included in wage surveys to provide realistic data for several types of construction when there is little or no private construction of such items.

Labor's comments, in our opinion, do not give sufficient weight to the preenactment legislative history of the act. Reference to paying rates on Federal projects at "not less than the rate of wages for comparable work prevailing in private industries in the immediate vicinity" were incorporated in earlier legislation. 1/ Labor's statement that there was some reference to surveying private construction in a 1931 report apparently refers to the identical House and

1/See hearings on House bills 7995 and 9232 before the House Committee on Labor, 71st Cong., 2d sess. p. 2 (1930).

Senate committee reports on the bills enacted as the Davis-Bacon Act. Both show clearly that the sponsors and the committees responsible for the bills intended that wages on Federal projects be based on the wage rates established by private industry. (See pp. 120.) Subsequent House floor debate on the bill confirmed this legislative intent. 1/

Labor's statement that, as a practical matter, it must use federally financed projects in its survey highlights the dilemma of Labor in attempting to carry out the intent of the act. Very large, one-time, Federal projects in a rural nonunion locality can result in a wage determination requiring payment of union-negotiated wages to workers. In the absence of projects of a similar character, Labor uses the collective bargaining agreement rates covering the locality, although such rates may never have been paid except for the wage determination. On completion of the project, the locality cannot revert to the normal prevailing wage if Labor conducts a survey that includes workers on the Federal project. Thus, State and local projects and other Federal agency projects will continue to require the higher rates. Where the initial rates were not those actually prevailing in the locality, Labor's continued use of these rates compounds the problems.

If Labor's rates were accurate initially, deletion of these projects from surveys would have no effect on the resulting rates prevailing in the locality. We did not find this to be the case. In the Stanislaus County example above, rates had been increased as much as 100 percent over those rates prevailing in the locality because of inaccurate rates previously issued on Davis-Bacon Act projects.

Thus, it is our opinion that, if Labor is to issue wage rates that reflect prevailing wages in the locality on similar private construction, its surveys should not include wage data on previous Davis-Bacon projects.

1/See Congressional Record--House, pp. 6505, 6515, Feb. 28, 1931.

EXAMPLES SHOWING LABOR'S USE
OF PROJECTS NOT OF A CHARACTER SIMILAR TO THE
FEDERAL CONSTRUCTION WORK

Presented below are examples where Labor's surveys included wage data from projects that were not always of a character similar to the proposed projects.

PROJECT DETERMINATION 76-NC-29,
CUMBERLAND COUNTY, NORTH CAROLINA

This wage determination was issued to the U.S. Postal Service for a project to overhaul an air-conditioning unit, with the type of construction listed under the "building" category. The wage rates were based on a survey by Labor obtained from wage data on 53 projects ranging in costs from \$663 to \$59,250,000. The following schedule shows the range of costs and variety of projects included:

<u>Description</u>	<u>Amount</u>
Sprinkler system in a formal men's wear shop	\$ 681
Department store remodeling	2,262
Remodel steam bath	5,935
Install controls in a boiler plant	31,052
Alterations and additions-- bus garage	65,893
Construction of junior high school	1,300,000
Construction of enlisted men's barracks	19,904,976
Construction of a synthetic fibers plant	59,250,000

We compared rates paid to three classifications on the alterations and additions on a bus garage with those on the synthetic fibers plant and noted:

<u>Classification</u>	<u>Bus garage hourly rates</u>	<u>Synthetic fibers plant hourly rates</u>	<u>Difference</u>
Carpenter	\$3.75	\$6.05	\$2.30
Electrician	4.75	6.50	1.75
Laborer	2.75	3.25	.50

While nonunion rates were paid on both projects, the differences in these craft rates indicate a different wage structure on the dissimilar projects.

PROJECT DETERMINATION 76-GA-247,
FULTON COUNTY, GEORGIA

This determination was listed by the agency as a heavy construction project, and was described as crushing and back-filling 500 linear feet of brick sewer and installing pipe.

During the survey supporting the rates issued, Labor obtained wage data on 49 projects, some of which were identified as:

<u>Description</u>	<u>Cost</u>
Airport project	\$4,400,000
19 projects involving railroad track, siding, and spur construction	\$150 to \$900,975
Viaduct	\$250,000
2 projects--swimming pools	\$200 to \$250,000
9 projects--tennis courts	\$1,800 to \$30,000
5 projects--Metropolitan Atlanta Rapid Transit Authority	\$1,417,389 to \$10,231,059

None of these appear to be similar to the HUD construction project for which Labor set prevailing wages.

OTHER EXAMPLES

Other examples of the application of rates to projects not of a similar character were:

<u>Project determination number</u>	<u>Description of Federal project</u>	<u>Projects surveyed by Labor</u>
76-WI-41 (Wisconsin)	Single family residence	Construction of new apartment buildings
76-FL-262 (Florida)	Add laundry and storage rooms to housing units-- remodel kitchens and bathrooms	Construction of new apartment buildings
76-FL-345 (Florida)	Building, access road, install generator, fuel tank, 2 antenna support towers and coaxial cables	No survey--Labor issued Florida State rates from a project identified as "construction of storm sewers"
76-CA-26 (California)	Replace counter tops in family housing units.	Construction of new apartment building, duplexes, and residences
76-AZ-4 (Arizona)	Modernization of single family housing	Construction of new apartment buildings, student housing, condominiums, and townhouses

LABOR COMMENTS AND OUR EVALUATION

Labor stated that it properly selects projects of a similar character for its surveys. It commented that, in following the decision of the Wage Appeals Board in WAB-77-23 (issued on Dec. 30, 1977), it goes to great lengths to check local practices, including wages paid, construction techniques, and classification of workers required by the projects in resolving questions as to what constitutes similar projects. It stated that the examples cited above have been examined and found to not support our criticism on this issue.

Labor stated that it generally classifies projects as building, heavy, highway, or residential. Instructions provided to agencies in All Agency Memorandum 130 and 131, issued in March and July 1978, respectively, show examples of projects within each of the broad categories. While heavy construction is included in these instructions as one group, Labor concedes that it is a catchall classification and recognizes that not all heavy projects are of a similar character. Labor states that, in implying that projects considered in a survey should be only those virtually identical to the proposed project, we are suggesting a standard which is impossible to achieve and at variance with both the legislative history and its 47-year administrative practice.

Labor specifically commented on five of the seven examples cited above. It stated that, in four examples, the projects surveyed and the related Federal projects using the wage rates both fell within the Department's Residential Construction classification. In the other example it said that construction of a storm sewer was similar to construction of a building, antenna support towers, an access road, etc., since these are expressly included as examples of heavy construction projects in its manual.

Labor's comments, in our opinion, are not consistent with Wage Appeals Board decisions on similar cases or with Labor's own actions in other cases. For example, the work related to wage determination 76-NC-29 involved no construction--only repair of mechanical equipment. Bearings, a shaft, and miscellaneous parts of the main pump unit were replaced, yet Labor's comments imply that "wages paid," "construction techniques," and "classification of workers" as prescribed by the Wage Appeals Board decision were similar to those in the building construction category involved in such projects as remodeling a steam bath for \$5,935, or constructing a \$59 million synthetic fibers plant. We do not agree that the projects surveyed were always of a similar character nor similar to the agency project. Our example shows different wage rates on those projects within the survey involving one for alteration and additions and another for new construction.

Further, in the second example (76-GA-247) we do not agree that construction of airports, railroads, subways, viaducts, swimming pools, and tennis courts are all projects of a character similar to the sewer construction to which the wage determination was applied.

The two examples are similar to projects which were the subject of Wage Appeals Board decisions. (See pp. 54 and 55.) These related to surveys involving dissimilar projects; their resulting rates were applied to yet other dissimilar projects. The Board advised Labor that its actions did not conform to the plain language of the act--the projects were similar only in the broadest sense of the term. The Board stated that Labor's attempts to standardize procedures have resulted in introducing new rates into the applicable area rather than reflecting those wage rates already there. These two examples, which Labor did not comment on, follow the Board's criteria.

Three of the other examples involve rehabilitation and repair projects. Union collective bargaining agreements recognized this as a new area of construction and agreed to work on such projects, if federally financed, at rates that are up to 25 percent below rates for new construction. Labor recognizes and publishes these rates where they have been negotiated and union rates are assumed to prevail, but has yet to recognize this as a separate type of construction in its surveys.

In our opinion, publishing lists of broad groups of projects in its manual and memoranda to agencies do not necessarily make them projects of a character similar to all projects for which Labor determines prevailing wages. Labor states, and we tend to agree, that strict compliance with the act may be a standard that is impossible to achieve.

EXAMPLES SHOWING LABORSTILL EXTENDING WAGE RATES TO ADJACENTAND NONADJACENT COUNTIES

Our review showed that wage rates determined for several counties, both supported and not supported by surveys, were extended to and issued for projects in adjacent and nonadjacent counties, even though an adequate basis generally existed for issuing prevailing rates based on the labor force and construction data in the locality. Examples are listed below.

PROJECT DETERMINATION 76-TN-88,
DICKSON COUNTY, TENNESSEE

Rates for building construction were issued in this determination for a project in Dickson County (population 26,000) on May 4, 1976. They were based on a 1972 wage survey of projects located in nonadjacent Davidson County (population 447,000). Within 3 months of issuing this determination Labor completed a survey in Dickson County. Of 14 comparable crafts surveyed, Labor determined that seven rates were lower than those previously issued from the nonadjacent county, three were higher, and four were the same. For example:

<u>Classification</u>	<u>Hourly rate in 76-TN-88</u>	<u>Survey hourly rate</u>	<u>Difference (rate lower)</u>
Carpenter	\$8.26	7.91	\$.35
Electrician	8.65	5.83	2.82
Painter	6.95	5.14	1.81
Roofer	7.15	5.50	1.65
Plumber	8.94	10.31	(1.37)

PROJECT DETERMINATION 76-TN-92,
MONTGOMERY COUNTY, TENNESSEE

Labor also used Davidson County rates in this determination for a building project in nonadjacent Montgomery County, Tennessee (population 73,000). A survey had been conducted by Labor in Montgomery County in May 1973, and the data, generally lower and mixed union-negotiated and nonunion rates, were forwarded to headquarters for review and approval.

However, the headquarters staff, without explanation, instructed the region to continue using the Davidson County rates for future determinations.

LABOR COMMENTS AND OUR EVALUATION

Labor said that our finding repeats a confusion found in our previous reports. It stated that we assume that union rate information from an urban area has been used as a basis for wage determinations in rural areas, but that this is an error that arises from a lack of understanding of shorthand terminology used by persons in the program. The fact that Labor has determined a union rate to prevail in one county, although it was negotiated by a local in another, does not mean that the rates were "extended" from the other county. It only reflects Labor's information that the union rate is prevailing in the county where the project is to be constructed. Labor contends this was the situation in the counties in our examples.

Dickson County, Tennessee--Labor said it would not apply a negotiated rate to a county unless it finds as a fact that the rate is prevailing in that county. In this case, while the union office was located in nonadjacent Davidson County, the wages were "independently determined" to be prevailing also in Dickson County and others as well.

We asked for the data to support the independent determination at headquarters. None could be located. Labor did not comment on its survey data from Dickson County, obtained within 3 month after issuing the wage determination, which showed that half of the rates issued were higher than those rates prevailing in the locality.

Montgomery County, Tennessee--Labor did not comment on our point that an earlier survey in the county showed that union-negotiated rates did not prevail, but headquarters staff refused to publish the data. Again we asked for, but were not furnished, data to support the independent determination that union rates from an adjacent urban county prevailed in this rural county. The regional wage specialist similarly was not furnished any information on why the survey data would not be used. In two memorandums accompanying wage determinations sent to headquarters for approval, the regional wage specialist stated:

"As you are aware, the proposed rates * * * are union rates and are, for the most part, higher than the rates developed by the survey * * * I * * * do not understand why the survey rates are being ignored.

"I am sure you will understand my frustration when, on one hand, NO [national office] officials are continually pounding us with the need for efficient utilization of time and money and then, on the other hand, throw both away on this survey."

In a later memorandum:

"A survey of Montgomery County * * * revealed mixed rates prevailing but for some reason unknown to me it was concluded that union rates prevailed in Montgomery."

In our opinion, both examples highlight the inappropriate use of the multicounty jurisdictional coverage of a union collective bargaining agreement to establish prevailing rates in a locality without regard to (1) the similarity of economic characteristics or wage patterns in each locality or (2) whether the union rates actually prevailed in the locality.

Furthermore, it seems to us to be a most inefficient use of resources to conduct wage surveys, ignore the data obtained when it indicates that nonunion wages prevail for some worker classifications, and issue wage rates on the basis of rates established for a different county.

EXAMPLES SHOWING HOW LABOR'S
DUPLICATIVE COUNTING OF THE SAME WORKERS
DISTORTS THE WAGE SURVEY RESULTS

Presented below are examples illustrating Labor's questionable practice of duplicate counting of the same workers.

ECTOR AND MIDLAND COUNTIES, TEXAS

Labor received wage rates on 110 sheetmetal workers in a survey of 40 construction projects in these two Texas Counties. The prevailing rate issued, a union-negotiated rate of \$7.695 per hour including fringe benefits, was determined under the 30-percent rule by 50 of the 110 craftsmen paid at that rate.

However, the data on the 50 craftsmen which determined the rate was obtained from one contractor who had reported 25 sheetmetal workers on each of two projects. He noted on the data submitted that two crews were the same 25 individuals. Thus, there was a total of 85 sheetmetal workers in the survey and only 25 of the sheetmetal workers were paid at the union-negotiated rate. Neither the majority nor the 30-percent rule should apply (25 of 85 = 29 percent), and the weighted average rule would result in a rate of \$5.97, or \$1.725 per hour less than the rate issued.

STANISLAUS COUNTY, CALIFORNIA

In a survey in this county 25 of the 53 contractors surveyed by Labor provided wage data that generally had the same number of workers at the same rates on more than one project--one on eight projects, another on nine. To illustrate, the wage analyst obtained wage rates on six tilesetters. One contractor reported one worker on four projects paid at \$9.92 per hour. Another contractor submitted data on two tilesetters on one project, both at rates of \$5.15 per hour.

The wage analyst's compilation sheets showed that a majority--four of the six rates--were at \$9.92 per hour, and Labor issued the rate at this amount. If the duplication were deleted, the rate of \$5.15 (\$4.77 less per hour) would have prevailed.

CARSON CITY COUNTY, NEVADA

In this Nevada County a plumbing contractor reported wage rates paid to a two-man team employed on five different projects. The wage analyst compiled the data as 10 plumbers. By counting the team as 10 craftsmen, the wage analyst recommended a prevailing wage rate of \$9.00 an hour. If they had been counted as two, the prevailing wage would have been \$8.21.

LABOR'S COMMENTS AND OUR EVALUATION

Labor stated that, as a practical matter, it has not found that the duplicate counting of workers causes significant distortion of survey results. It cites our hypothetical example on page 51 as "extreme," but does not comment on the examples in this appendix based on actual survey data and rates issued. Labor contends that data collection on a project basis is a nonburdensome system that does not require contractors to identify workers--only occasionally the rate of one worker will be reported in a survey more than once. But Labor also comments that it is aware of the problem, that its present practices can cause a distortion of the survey results, and that it has taken action in one type of construction (residential) to eliminate problems arising from duplicate counting by adopting the "scattered sites" procedure, where a number of single-family homes being constructed by a single contractor are grouped together and considered as a single project to eliminate counting the crew over and over as they move from house to house. It stated that it is also studying the feasibility of other changes to minimize or eliminate problems which may arise from potential duplication.

While Labor stated that it has not found duplicate counting of workers to be a problem, it apparently agrees with the principle of our point and has taken some action to eliminate the problems on one type of construction. We cannot agree that there is little distortion in the rates issued--our review of surveys showed otherwise. Union and association representatives who are knowledgeable of Labor's practice can, and do, bias results of surveys by furnishing data on as many projects by the same contractor employees as possible within the period of the survey. We found that multiple submissions on the same work force are commonplace, and are accepted without question by the Labor staff, except for the "scattered sites" procedure noted above. We do not agree that a prevailing rate is appropriately determined on the basis that it is

paid to one worker on several projects in succession:
rather, the rate should be based on the wages paid to
the majority of workers in the locality.

EXAMPLES WHERE LABOR
ISSUED INCORRECT WAGE DETERMINATIONS TO
CONTRACTING AGENCIES

WORK NOT COVERED BY
THE DAVIS-BACON ACT

Rates were requested by agencies and issued by Labor for the following projects:

<u>Project determination number and date</u>	<u>Type of construction</u>	<u>Agency</u>	<u>Project description</u>
76-NC-29, Feb. 3, 1976	Building	U.S. Postal Service	Overhaul air-conditioning unit
76-SC-9, Feb. 4, 1976	Building	Spartanburg County, South Carolina	Install carpet or vinyl covering in offices
76-NV-12, May 10, 1976	Residential	Navy	Hot water tank replacement (apartments)

In our opinion, none of these project descriptions involve construction, alteration, or repair of a public work requiring Davis-Bacon Act wage determinations as defined in Labor's regulations.

RATES FURNISHED FOR WRONG
TYPE OF CONSTRUCTION

Labor issued project determination 76-AL-15 with building construction rates rather than water and sewer rates for work described by the Army as a wastewater treatment project. An Army official stated that about 80 percent of the project costs involved water and sewer construction; the balance was for construction of three small pump buildings and pump installation. Differences in wage rates furnished and available water and sewer rates that should have been used were substantial in some crafts.

For example:

<u>Classification</u>	<u>Hourly building rate</u>	<u>Hourly water and sewer rate</u>	<u>Difference</u>
Bricklayer	\$6.50	\$ 3.65	\$2.85
Carpenter	6.65	4.50	2.15
Electrician	9.94	10.35	(.41)
Ironworker	8.21	5.80	2.41
Laborer	3.00	2.60	.40

LABOR COMMENTS AND OUR EVALUATION

Labor commented that we were mistaken in all four cases cited above--in the first three examples the work performed is covered by the express terms of the act, and in the fourth example Labor provided the type of determination requested by the agency, which later turned out to be an erroneous request and an erroneous application of the wage determination to the type of construction involved.

Our analysis, considering the applicability of other minimum wage legislation, Labor's own regulations, and the scope of work provided in each of the agency contracts, showed that the work in the first three examples did not come under the Davis-Bacon Act. None involved construction, alteration, or repair of a public building or work as defined by Labor's regulations. In the last example, the description of work provided in the request for rates showed that the building rates would not be appropriate for the work described.

Labor's regulations, 29 C.F.R. 5.2(f), Definitions, provide that the terms "building" or "work" generally include construction activity, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work.

Also, in its rulings and interpretations issued under the Walsh-Healey Public Contracts Act, Labor provides that contracts ordinarily awarded for the manufacture or furnishing of articles or equipment are subject to the Walsh-Healey Public Contracts Act, even though such contracts call for the erection or installation of the articles or equipment after delivery. Only if it involves more than an incidental amount of installation work may it also be subject to the Davis-Bacon Act.

The Solicitor of Labor has long held that carpet or vinyl installation is subject to the Davis-Bacon Act only when it is performed as an integral part of a Federal or federally assisted construction project. However, where it is installed on finished floors independently of a construction project it is subject to the Service Contract Act.

The following shows that the scope of work in each of the first three projects did not conform to Labor's definitions and rulings for coverage as a Davis-Bacon Act project.

Overhaul air-conditioning unit--U.S. Postal Service

This contract involved the repair of equipment. The initial scope was to replace bearings in the main pump, but as this progressed several other parts, including the shaft, were also repaired or replaced. A Postal Service official told us that the project did not involve any construction.

Installation of carpet or vinyl floor covering

This contract involved the installation of carpet or vinyl floor covering in existing county highway department offices. A county official told us that the work was not performed as an integral part of a construction project--installation was on existing, finished floors. As such it would have been subject to the Service Contract Act, except that this act applies only to direct Federal contracts. It cannot be applied to federally funded projects of State and local agencies.

Hot water tank replacement (apartments)

This project involved the acquisition of two large hot water tanks. Each was free standing (on legs on the tank) and set on the existing concrete floor. An agency official told us that no construction was involved--installation may have included minor plumbing which was incidental to the procurement of the tanks.

Building rates vs. water and sewer rates

The agency did request only building rates; however, it furnished Labor with a description one of the projects to be covered by the rates as a wastewater treatment project. Labor's staff should have recognized that building rates only might not be appropriate and contacted the agency for

additional details or furnished the appropriate wage determination, in this case a water and sewer schedule. This should be a normal practice in reviewing every agency request for rates. Labor issued rates substantially in excess of those that should have been required.

EXAMPLES SHOWING THE EFFECTS OF LABORDEVELOPING AND ISSUING INACCURATE WAGE RATESINCREASED COSTS AND EFFECTS ON COMPETITION
WHEN LABOR'S RATES ARE HIGHER THAN THOSE
PREVAILING IN THE LOCALITY

Presented below are three examples of prevailing rates determined in our survey, which were substantially lower than those issued by Labor.

Project determination 76-NY-89,
Otsego County, New York

This determination was used on a project that involved reconstruction (paving, grading, and drainage) of an existing highway at a cost of \$577,253. The contractor was from a city located in an adjacent county about 70 miles from the project. Work was about 50-percent complete at the time of our fieldwork.

Labor issued union-negotiated rates not supported by a survey in the locality for each of the 9 classifications of workers we compared on the determination. With one exception we obtained substantially lower nonunion rates in our survey of wages paid on similar private construction in the county. For the exception, our survey showed a union-negotiated rate about \$2.00 an hour higher for cement masons than the rate issued by Labor. Following are the differences we noted:

<u>Classification</u>	<u>Labor hourly rate issued</u>	<u>Prevailing hourly rate locality</u>	<u>Difference</u>
Backhoe operator	\$10.70	\$ 5.87	\$4.83
Roller operator	10.40	4.50	5.90
Bulldozer operator	10.40	4.75	5.65
Paver operator	10.70	6.58	4.12
Truck driver	8.44	5.72	2.72
Carpenter	11.25	7.85	3.40
Asphalt raker	8.99	5.49	3.50
Laborer	8.59	3.48	5.11
Cement mason	9.70	11.71	(2.01)

For nearly all of the classifications the nonlocal contractor paid workers at precisely the amounts required by Labor.

Labor costs paid on the project at the rates required by Labor amounted to \$84,302--123 percent more than those prevailing in the locality. Labor costs at prevailing rates would have totaled \$37,865. Total construction costs may have been increased by nearly 9 percent because of these higher rates.

Project determination 76-TN-88,
Dickson County, Tennessee

This determination was used on a project for construction of a chlorine room addition to the City of Dickson's domestic water treatment plant. Construction costs amounted to \$44,130.

Labor had never made a survey of prevailing wages paid in this county. Instead, Labor adopted construction union wage rates from Nashville, Tennessee, as the prevailing rates for Dickson County--which is a rural noncontiguous county about 30 miles from the Nashville metropolis.

Also, four of the seven bidders (including the successful bidder) were from the nonadjacent county--none were from Dickson. One of the three subcontractors was local, the other two were from communities about 24 and 28 miles, respectively, from Dickson.

All but 4 of the 32 rates issued by Labor were union-negotiated rates based on a survey, completed in 1972, of projects in the nonadjacent county. Our survey in Dickson County showed that nonunion rates prevailed and that all were substantially lower. The following are some examples of differences we noted:

<u>Classification</u>	<u>Labor hourly rates issued</u>	<u>Prevailing hourly rates in locality</u>	<u>Difference</u>
Bricklayer	\$8.00	\$4.50	\$3.50
Carpenter	8.26	4.50	3.76
Electrician	8.65	5.00	3.65
Laborer, unskilled	4.65	2.50	2.15
Painter, brush	6.95	3.88	3.07
Plumber	8.94	4.50	4.44
Truck driver	4.90	3.75	1.15
Bulldozer operator	8.15	4.25	3.90

Labor costs paid on the project at the rates required by Labor amounted to \$10,546--about 36 percent more than those prevailing in the locality. Labor costs at prevailing rates in the locality totaled \$7,759. Total construction costs may have been increased by about 6.7 percent.

Project determination 76-CA-7,
Kings County, California

This determination was used on two exterior painting contracts at the Naval Air Station at Lemoore, California. The total costs of the two projects amounted to \$286,352. Although the invitation for bids was sent to local contractors, the majority of the bidders (six of eight on one contract and all the bidders on the other) were located 180 miles or more from the air station. The successful bidders were from the Los Angeles area (200 miles away) and the San Francisco area (180 miles away). Each employed some local workers, but most were from Los Angeles, San Francisco, Arizona, Nevada, and one was even from New York.

Labor had made a survey of Kings and adjacent Tulare counties in 1974. The wage specialist recommended to the Washington headquarters that the rate for painters not be issued, since the nonunion rate determined was higher than the current union basic rate and appeared out of line with rates paid to other crafts. However, the wage specialist later recommended, and headquarters issued, rates obtained from this survey on these projects.

Following are the differences between the rates obtained in our survey and those issued by Labor.

<u>Classification</u>	<u>Labor hourly rate issued</u>	<u>Prevailing hourly rate in locality</u>	<u>Differences (Labor rate lower)</u>
Painter	\$8.80	\$7.27	\$1.53
Laborer	3.50	4.19	(.69)

While Labor's rates were both higher and lower than prevailing rates, total wage costs on the contract were increased from \$71,821 to \$83,379--16 percent. Total construction costs were increased by about 4 percent.

We asked both contractors what effect a lower wage rate by Labor would have had on their bids. Both stated that if the wage rates had been lower their bids would have been correspondingly lower, because lower rates would be paid to their workers.

EFFECTS WHEN LABOR RATES ARE LOWER
THAN THOSE PREVAILING IN THE LOCALITY

Following are three examples where Labor's rates issued were lower than those prevailing.

Project determination 76-NJ-20,
Monmouth County, New Jersey

This project involved interior painting and floor and stair refinishing in two-story family quarters at Fort Monmouth, New Jersey, at a total contract cost of \$74,890. The Government estimate for this project was \$100,465. Four bids were received, ranging from \$74,890 to \$143,700. The two lowest bidders were from the area and the highest was from the New York City area--about 60 miles from the locality.

The prime contractor, from Allenhurst, New Jersey, (about 15 miles from Fort Monmouth) performed the painting portion of the contract, and the balance was subcontracted.

A comparison of the rate issued by Labor for painters in the locality with the rate determined by us as prevailing showed:

<u>Classification</u>	<u>Labor hourly rate issued</u>	<u>Prevailing hourly rate in locality</u>	<u>Difference (Labor rate lower)</u>
Painter	\$5.00	\$6.11	(\$1.11)

Our review of the payroll showed that the prime contractor paid his employees higher rates than those stipulated by Labor or determined to be prevailing in our survey. The contractor stated that he could not get adequate help at the \$5 per hour rate, and he paid his painters \$8.55 per hour, which we verified by his payroll records. He explained that he could not lower his workers' pay to the minimum permitted under Labor's rate because they might leave to work for another contractor.

Labor's wage survey data could not be located by us. Labor's regional wage analyst stated that surveys were performed in 1972 and 1973, which showed that nonunion rates prevailed for all residential construction in Monmouth County. He said that the wage rates established then were issued because Labor had received no information to indicate that the rates should be changed.

Project determination 76-AL-15,
Calhoun County, Alabama

Labor issued this project determination for construction of an industrial and domestic wastewater treatment facility at Fort McClellan, Alabama. The contract was awarded to a local contractor from Heflin, Alabama, in March 1976 for \$143,413. Subsequent changes increased the price to \$149,800. Eleven bids ranging from \$143,413 to \$500,000 were received on this project; the Government estimate was \$173,795.

Our comparison of the rates issued by Labor and those we determined were prevailing on similar private projects showed:

<u>Classification</u>	<u>Labor hourly rate issued</u>	<u>Prevailing hourly rate in locality</u>	<u>Difference (Labor rate lower)</u>
Laborer	\$3.00	\$2.50	\$.50
Trenching machine	3.00	3.45	(.45)
Asphalt spreader	3.00	5.00	(2.00)
Motor patrol	3.60	3.45	.15
Roller	2.63	5.00	(2.37)

For two of the classifications used on the project by the prime contractor we determined that he paid his employees:

<u>Classification</u>	<u>Labor hourly rates issued</u>	<u>Hourly rate paid by contractor</u>	<u>Difference</u>
Laborer	\$3.00	\$3.25 to \$5.00	\$.25 to \$2.00
Trenching machine operator	3.00	5.00 to 6.25	2.00 to 3.25

Area determination IN-75-2089,
Lake County, Indiana

The rates in this determination were used on a heavy construction project for a wastewater treatment plant. The \$1,549,000 contract was awarded to a local contractor

in November 1975; the scheduled completion date was in March 1977. Three of the four subcontractors were local. Four bids, all from local contractors, ranged from the lowest above to \$1,887,078--the Government estimate was \$1,792,400.

This area determination was not supported by a survey of prevailing wage rates paid in this locality--union-negotiated rates were issued. We confirmed that union rates prevailed in our survey; however, at the time the rates were used by Labor, they were not current and were lower than those prevailing. The following schedule shows a comparison of some rates used and those we determined to be prevailing on similar private construction in the locality, and amounts paid by the private contractors to employees.

<u>Classification</u>	<u>Labor hourly rate issued</u>	<u>Prevailing hourly rate in locality</u>	<u>Amounts paid employees by contractors</u>
Bricklayer	\$9.65	\$10.55	\$10.80 to \$12.30
Carpenter	9.76	10.50	11.94
Cement mason	9.47	10.71	10.32 to 11.85
Laborer	6.60	7.15	7.70 to 9.10
Truck driver	7.10	8.35	7.95

LABOR COMMENTS AND OUR EVALUATION

Labor stated that we failed to establish that local workers were not employed on Davis-Bacon Act sites or protected by the act. Labor contended that our argument that the purpose of the act is not being achieved because contractors from outside the locality are performing work on about one-third of the projects examined (where rates were higher than those prevailing) is not persuasive for two reasons.

Labor said that, first, we did not establish that no local subcontractors were involved or that construction workers were imported from outside the locality. Second, the number of projects reviewed was too small a sample to provide a statistically valid basis for a projection of the effects of the administration of the act.

Although we did not take a statistically valid sample, we believe that our sample identified problems representative of Labor's administration. All problems identified were repetitive and occurred with high frequency in all regions included in our review.

Labor also stated that we did not indicate how much its rates exceeded the rates we found to be actually prevailing. Labor contended that, if its predetermined rates are not identical to the going rates in the locality, at most the variance is minimal. It believed that a wage determination slightly below the level actually prevailing offers considerable protection to workers. Without such a floor, some contractors would pay well below the norm for the locality. It concluded that, without the Davis-Bacon Act, construction contractors would revert to the severe hourly wage competition characterized in the pre-Davis-Bacon act days.

We cited on page 74 that the prime contractor on the Dickson County, Tennessee, project imported all his workers from outside the locality. Our review showed that the two nonlocal subcontractors also imported all their workers from outside the locality. We also cited in app. XII, page 175, that the prime contractors on the Kings County, California, projects did employ some local workers, but that most were imported from outside the locality. There were no subcontractors on these projects. We did not include this type of data on the Otsego County, New York, project; however, our review showed that only 1 of the 15 workers interviewed by the agency staff or us was from the local area. One was from a locality about 122 miles from the location of the project and another was 97 miles from the project. Subcontracts had been awarded to nonlocal subcontractors, but they had not yet started work on this project at the time of our fieldwork.

We also showed the average difference between Labor's rates and those we found prevailing in the localities surveyed (both where they were higher and lower). Page 69 shows that 35 percent of the rates issued by Labor were too high by about \$2.00 an hour; about 50 percent were too low by about \$1.00 per hour. Also, in each of our examples where Labor's rates were too low, on pages 176, 177, and 178, we show the differences on some of the classifications used on these projects. These data show clearly that they were not the same, or had only a minimal variance. In one example, rates were lower than those prevailing by more than \$2 an hour; all averaged more than \$1 per hour. Since each of these contractors paid some of their workers more than we found prevailing in the locality, we cannot conclude that, without the Davis-Bacon Act wage determinations, one can expect contractors to revert to the severe hourly wage competition which characterized the pre-Davis-Bacon act days.

On the contrary, our review showed that, when Labor's wage rates were low, wages became an important bidding factor and local contractors and local workers got the jobs. The examples show also that local contractors paid local workers at or above the prevailing rates in the community.

WAGE DETERMINATIONS AND RELATED CONSTRUCTION PROJECTS INCLUDED IN OUR REVIEW

Determination number and date	Agency	Type of construction (note a)	Project description	Location		Estimated cost
				City	State	
Region 2--New York:						
Project determinations:						
1. 76-NY-251 6/1/76	Navy	R	Storm and weatherproof 511 housing units	East Meadow	Nassau New York	\$ 116,215
2. 76-NJ-20 4/19/76	Army	R	Interior painting, refinish floors and stairs in family housing	Pt. Monmouth	Monmouth New Jersey	74,890
3. 76-NY-89 3/17/76	Department of Transportation	Rw	Highway reconstruction	Otaego	New York	177,253
Area determinations:						
4. NY76-3126 1/23/76	HUD	B, H, Hw	Landscaping and site improvements at city park	White Plains	Westchester New York	159,960
5. NY75-3045 4/11/75	U.S. Postal Service	E, H, Hw	Construct post office	Huntington Station	Suffolk New York	1,023,900
6. NJ76-3128 2/27/76	Environmental Protection Agency	B, Hw	Install sewer pipe	Fairfield	Essex New Jersey	337,560
Subtotal--New York						\$2,349,779
Region 4--Atlanta:						
Project determinations:						
7. 76-FL-262 5/19/76	Navy	R	Remodel kitchens and baths	Cecil Field	Duval Florida	\$ 803,093
8. 76-TN-88 5/4/76	HUD	B	Chlorine room for domestic wastewater treatment plant	Dickson	Dickson Tennessee	44,130
9. 76-AL-10 1/22/76	Army	B	Industrial and domestic wastewater treatment plant	Ft. McClellan	Calhoun Alabama	149,800

Determination number and date	Agency	Type of construction (note a)	Project description	City	Location County	State	Estimated cost
Region 4--Atlanta: (Continuing)							
Area determinations:							
10. GA-75-1039 4/11/75	Department of Health, Education, and Welfare	B	Addition to Voc-Tech School	Columbus	Muscogee	Georgia	\$2,624,490
11. AR-4037 9/20/74	HUD	R	50 low-rent housing units	Waycross	Ware	Georgia	783,165
12. AO-4105 4/24/74	Treasury (Revenue Sharing)	B	Renovate 4 cottages, repair roof on 7 buildings	Morganton	Burke	North Carolina	89,607
Subtotal--Atlanta							\$5,304,285
Region 5--Chicago:							
Project determinations:							
13. 76-WI-14 3/18/76	HUD	H, S, T, & W	Demolition, excavation, landscaping for pedestrian mall	Sheboygan	Sheboygan	Wisconsin	\$ 125,589
14. 76-WI-41 4/5/76	HUD	R	Construct duplex and 13 single-family homes	Beloit	Rock	Wisconsin	290,000
15. 76-IN-60 4/8/76	U.S. Postal Service	B	Roofing, painting, and miscellaneous repair	Scottsburg	Scott	Indiana	29,000
Area determinations:							
16. AR-3152 10/11/75	Department of Health, Education, and Welfare	B	Construct 2 buildings for vocational, technical, and adult education school	Rice Lake	Barron	Wisconsin	2,684,021
17. AR-3147 10/11/74	Department of Transportation	H	Grading, concrete and bituminous surfacing		Polk	Minnesota	2,312,255
18. IN75-2089 7/3/75	Environmental Protection Agency	H	Expand wastewater treatment plant	Schererville	Lake	Indiana	1,549,400
Subtotal--Chicago							\$6,990,266

Determination number and date	Agency	Type of construction (note 2)	Project description	Location			Estimated cost
				City	County	State	
Region 6--Dallas:							
Project determinations:							
19. 76-TX-99 4/26/76	HUD	H	Sewer line construction	Nederland	Jefferson	Texas	\$ 80,891
20. 76-AR-43 3/5/76	Treasury (Revenue Sharing)	B	Addition and alteration to courthouse	Ashdown	Little River	Arkansas	142,264
Area determinations:							
21. AR-1 7/5/74	HUD	R	Modernize and site work at two housing projects	Austin	Travis	Texas	971,217
22. OK-76-4022 2/6/76	Air Force	B	Alteration of aircraft overhaul facility	Oklahoma City	Oklahoma	Oklahoma	181,577
23. OK-76-4016 2/6/76	Army	B	Construct shower and toilet building	Ft. Gibson Lake	Wagoner	Oklahoma	23,894
				Subtotal--Dallas			\$1,399,842
Region 9--San Francisco:							
Project determinations:							
24. 76-CA-6 3/5/76	HUD		Construct a water well	Farmersville	Tulare	California	\$ 12,891
25. 76-CA-7 3/9/76	Navy	R	Exterior painting of family housing	Lemoore	Kings	California	286,352
26. 76-NV-16 6/23/76	HUD	R	116 moderate income rental units	Carson City	Carson City	Nevada	2,530,000
Area determinations:							
27. CA75-SI41 1/23/76	Navy	B	Construct bachelor enlisted quarters	Miramar	San Diego	California	2,421,392
28. NV76-5004 1/16/76	HUD	B	112 low income rental units	Reno	Washoe	Nevada	3,385,791
29. CA76-5019 3/5/76	Air Force	B, H	Commissary	Merced	Merced	California	813,916
30. CA76-5019 3/5/76	Navy	B, H	Commissary	Stockton	San Joaquin	California	274,549
				Subtotal--San Francisco			9,824,891
				Total--All regions			\$25,869,063

a/R = residential, HW = highway, B = building, H = heavy, S, T, & W = sewer, tunnel, and water.

OUR REPORT ON "INACCURATE DAVIS-BACON ACT WAGE DETERMINATION APPLICABLE TO
ALABAMA MOBILE BAY BRIDGE PROJECT (I-65-1(85)23) OVERRULED BY THE WAGE APPEALS BOARD"



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20540

HUMAN RESOURCES
DIVISION

B-146842

June 20, 1978

Secretary to the late
Senator James S. Allen
United States Senate

Dear Mr. Mitchell:

In the letter to the Comptroller General of June 21, 1977, from the late Senator Allen and in subsequent agreements with his office, we were asked to review, and provide a report on, the matters discussed in a May 31, 1977, letter from the Executive Director, Alabama Road Builders' Association, Inc. The Executive Director's letter refers to certain wage determinations issued by the Department of Labor under the Davis-Bacon Act (40 U.S.C. 276(a)) regarding Federal or federally assisted highway construction activities in the State of Alabama.

The Davis-Bacon Act requires that laborers and mechanics employed on Federal construction projects costing more than \$2,000 be paid minimum wage and fringe benefits and that these wages and benefits be based on rates the Secretary of Labor determines as prevailing on similar projects in the area in which the contract work is to be performed. The wages and benefits are set forth in wage determinations issued by Labor. Contracting agencies are required to include the determinations in their construction contracts, including highway construction projects. The Wage and Hour Division in Labor's Employment Standards Administration is responsible for conducting wage surveys and issuing wage determinations under the Davis-Bacon Act.

The Executive Director complained that a Wage and Hour Division area determination, number AL77-1042, issued on April 1, 1977, was arbitrary, irrational, did not reflect the area practice for bridge construction in Alabama, and was an attempt by Labor to raise wage rates in the State. Under the determination the State would in effect have to use heavy construction wage rates rather than the lower highway construction wage rates for bridge construction over navigable waters.

HRD-78-128
(20155)

B-146842

The Executive Director said that the decision would have a drastic effect on Alabama because (1) it would substantially increase the cost of constructing bridges over non-navigable waters, (2) future wage determinations would reflect the higher rates and inflate the basic highway rate determinations, and (3) projects involving the paving of airport runways and taxiways, rest areas, and railroad projects would likewise be affected.

The Executive Director also referred to the Wage and Hour Division's determination, number 77-AL-45, issued for the construction of dual bridges over Mobile Bay on I-65 (Interstate Project No. I-65-1(85)23) which requires the use of heavy construction rates on the span of the bridge crossing the Mobile River. He stated that this project set a precedent for the Wage and Hour Division to use when reviewing future bridge projects.

BACKGROUND

Wage determinations AL77-1042 and 77-AL-45 are applicable to a project awarded by the Alabama State Highway Department under the Federal-aid Highway Act. The State highway department is the contracting agency for Interstate Project No. I-65-1(85)23--which involves construction of dual bridges, costing about \$53 million, over the Mobile River and Little Lizard Creek in Mobile and Baldwin Counties, Alabama.

On December 22, 1976, the State highway department requested permission from the Wage and Hour Division to use highway rates for project I-65-1(85)23. The State highway department furnished wage payment data from an \$80 million interstate highway bridge project over Mobile Bay which was awarded in 1974 with highway wage rates and was still under construction. The project is only 15 miles south of the I-65-1(85)23 project.

On January 25, 1977, the Wage and Hour Division issued wage determination 77-AL-45 which directed the State highway department to use dredging rates for dredging work on the project as set forth in area determination AL76-5090 and the highway construction rates in area determination AL76-1082 for the approach spans and the span over Little Lizard Creek, which is navigable. However, the Wage and Hour Division directed the State highway department to use heavy construction rates in project decision 77-AL-45 for the tied arch center span across the Mobile River, which is also navigable. The heavy construction wage rates are about twice the highway rates.

B-146842

The Wage and Hour Division subsequently superseded determination AL76-1082 with area determination AL77-1042 dated April 1, 1977. The only difference between the two was in the type of projects which could not use highway rates. The superseded determination contained rates for all highway construction in Alabama except airports. The new determination, AL77-1042, excluded the use of highway rates for construction of (1) airport runways and taxiways, (2) bridges over navigable waters, (3) tunnels, (4) rest areas that include building structures, and (5) railroads. The new determination required contracting agencies to request project wage rates from the Wage and Hour Division when they planned to construct these excluded types of projects.

The then Assistant Administrator of the Wage and Hour Division stated that the new language was added to area determination AL77-1042 because some contracting agencies had incorrectly used published general highway area determinations.

Wage and Hour Division's area determinations apply to certain geographical areas, such as counties or States, and are required to be used on all projects to be constructed in the covered area. They are published in the Federal Register and are in effect until superseded. Project determinations, on the other hand, are issued for a specific project and are effective for 120 days from the date issued.

APPEAL OF WAGE AND HOUR DIVISION'S
DETERMINATION ON PROJECT I-65-1(85)23

The State highway department opened bids for project I-65-1(85)23 on February 4, 1977, and awarded the contract on March 11, 1977, with construction to begin in early April. However, prior to bid openings, on February 2, 1977, five general contractors who bid on the project petitioned the Wage Appeals Board for a review of wage determination 77-AL-45.

The Wage Appeals Board is appointed by the Secretary of Labor to hear and decide appeals concerning questions of law and fact on wage determinations issued under the Davis-Bacon Act and its related acts, such as the Federal-aid Highway Act. The contractors were joined in their appeal by the Alabama State Highway Department and the Alabama Road Builders' Association.

B-146842

The Alabama groups stated in their appeal that the Wage and Hour Division's determination was arbitrary and capricious because it had no foundation in fact. They said that the extra cost of using heavy construction rates instead of highway rates for the center span work, which comprises about 30 percent of the project, would eliminate a number of highways and bridges planned to be built and hurt employment.

They based their appeal on several factors, including the following:

- Bridges over navigable waters in Alabama, and in particular in Mobile County, have always been built using highway construction wage rates approved by the Wage and Hour Division.
- Heavy construction rates have never been used to build bridges in Alabama.
- Highway rates were used on an interstate highway project which is being built over the same river delta 15 miles to the south of project I-65-1(85)23.
- The determination is inconsistent because it approved heavy construction rates for a portion of the bridge over the Mobile River, which is navigable, and highway rates for the other portion of the bridge, including the portion over Little Lizard Creek which also is navigable.

The petitioners also objected to the fact that the Wage and Hour Division, in determining the wage rates applicable to the project, did not consider wages being paid on an \$80 million bridge (project I-10-1(35)) near the I-65 project in Mobile County and wage rate information from two other bridges constructed in Mobile County. The two other bridges--the Theodore Industrial Terminal Canal Bridge and a bridge over the Intracoastal Waterway at Gulf Shores--are both over navigable waters.

For the purpose of showing past history, the State highway department also advised the Wage and Hour Division of eight other large bridges--ranging in cost from \$3,900,000 to \$16,200,000--that had been built in Alabama between 1969 and 1975 with highway construction rates. The petitioners contended that since these bridges were built at the highway rates, these wage rates should also apply to all of the construction of the I-65 bridge, not just the approaches.

B-146842

The Wage and Hour Division said it characterized the tied arch center span of project I-65-1(85)23 as heavy construction and issued wage rates which resulted from a survey of various heavy construction projects in Mobile County. Its survey included wage rate information from eight railroad construction projects, nine dock or waterfront construction projects, three industrial site construction projects, one dam repair, three duct bank projects, and a few unrelated miscellaneous projects.

The Wage and Hour Division said it specifically rejected wage data from the I-10 bridge project because it had been awarded using the highway wage rates. The Wage and Hour Division contended that these rates should not be considered in connection with that portion of project I-65-1(85)23 which it characterized as heavy construction and thus it declined to consider the payroll data in its survey.

WAGE APPEALS BOARD RULES AGAINST
WAGE AND HOUR DIVISION

The Wage Appeals Board held a hearing on August 31, 1977, and issued its decision on October 21, 1977. The Board ruled that the heavy construction wage rates issued in wage determination 77-AL-45 for the tied arch span over the Mobile River did not reflect wages prevailing on similar construction in Mobile and Baldwin Counties. The Board said that:

"It appears to the Board that the projects used as a basis for the wage rates determined to be prevailing for the heavy portion of the contract are not projects of a character similar, except in the broadest sense of the term.

"This has particular significance when there are three very similar bridge projects located in Mobile County. With reference to the Department's exclusion of these bridges from the survey, the Department cannot be allowed to disregard wage rate data from the bridges, as the record shows it did with respect to I-10, because it disagreed with the use of the highway wage determination by the State Highway Department. It seems to the Board that when the Department gave contracting agencies the right to obtain the required wage determinations from the Federal Register and to exercise their judgment as to the appropriate schedule for a particular project, the Department should give due weight to the agency's decision.

B-146842

"Furthermore, it appears to the Board that in this project, as in most bridges, there are elements of both highway and heavy construction contained in the contract. Since the contract falls into a questionable area between heavy construction and highway construction it would have been appropriate for the Department to look to the three bridges recently or currently under construction in Mobile County to determine the prevailing wage rates from them. This would be more consistent with the past practices of the Department with regard to bridges, dams, dredging and flood control projects than to have based its determination on a survey of numerous unrelated and dissimilar heavy construction projects as was done in this case."

In view of the above, the Board directed the Wage and Hour Division to issue a new wage determination on project I-65-1(85)23, to the State highway department as soon as possible. The new determination is to reflect the wage and payment practices found prevailing on bridge construction in Mobile and Baldwin Counties in conformity with the Board's decision.

**BOARD DENIES WAGE AND HOUR'S
APPEAL TO RECONSIDER ITS DECISION**

On December 7, 1977, the Wage and Hour Division filed a motion requesting the Board to reconsider its decision on the basis that (1) the case is moot because the contract had been awarded and construction had begun when the Board considered the case, (2) the Board's action in ruling on the merits of the case lacks any legal basis and is contrary to a well-established legal precedent and prior decisions of the Board, and (3) the Board's decision is contrary to Labor's regulations and Federal procurement principles and it may be viewed as legitimizing the unprecedented and unsettling principle that a wage determination is subject to challenge after contract award.

On January 30, 1978, the Board denied the Wage and Hour Division's motion to reconsider the case. The Board stated that normally it would not consider a petition to review wage rates after a contract has been awarded but it appeared that (1) some general guidance for the future was needed and (2) the wage determination should not be left

B-146842

standing so as to be considered a precedent for the future or so as to preclude the parties themselves from possibly renegotiating the contract.

The Board stated that the purpose of its order is to have a new determination outstanding, and although it did not and could not direct its use, it did not preclude the parties themselves from making use of the determination if that was possible. The Board said that if the parties can make any use of the corrected wage determination within the restrictions of the Federal procurement statutes, it is their prerogative to do so and they should not be precluded from doing so by the absence of a correct wage determination.

On February 8, 1978, the Wage and Hour Division submitted a request to the Board for clarification of its order denying its motion for reconsideration of its decision. Wage and Hour said it wanted to know how the Board's decision conforms to the Secretary of Labor's regulations permitting modification of a project wage determination only up until the time of contract award.

In its March 6, 1978, reply to the Wage and Hour Division, the Board conceded that it had no authority to take any action with respect to the contract in question and could not order that a corrected wage determination be substituted for one already in the contract. The Board opined, however, that--since the original determination was "clearly erroneous"--a corrected wage determination should be provided to the petitioners to show, as a matter of record, what the wage rates should have been. The Board also concluded that its actions were consistent with Labor's regulations.

NEW WAGE SURVEY IN ALABAMA
RESULTS IN LOWER WAGE RATES

Even though it appealed the Wage Appeals Board's decision, the Wage and Hour Division did, as directed by the Board, conduct a new wage survey of bridge construction work in Mobile and Baldwin Counties. During its survey in November 1977, the Wage and Hour Division obtained wage data on two bridges completed in 1976, the Intracoastal Waterway bridge at Gulf Shores in Baldwin County and the Theodore Industrial Canal Bridge in Mobile County, Alabama. Both were built at highway rates. The Wage and Hour Division also obtained data on two other projects involving work for the Army Corps of Engineers in Baldwin County.

B-146842

As a result of the new survey, the Wage and Hour Division issued a wage determination for bridge construction work in Alabama which contained wage rates considerably lower than its previous determination.

The effect of the new survey is illustrated by the Wage and Hour Division's December 15, 1977, project determination 77-AL-432, which covered the construction of dual bridges carrying interstate highway I-65 over the Middle River, Mifflin Lake, and Tensaw River in the Mobile River Delta, Baldwin County, Alabama. The determination included wage rates for 11 jobs and crafts, and in all cases the rates established were substantially less than those in project determination 77-AL-45. For example, the wage rates for electricians were reduced from \$10.49 to \$5.80 per hour.

In addition, in reviewing the survey data, we found clerical errors in the rates established for carpenters and concrete finishers in project determination 77-AL-432. The carpenter's rate should have been \$4.50 instead of \$5.00 and the concrete finisher's rate \$4.68 instead of \$4.86. After we brought these errors to the attention of Wage and Hour Division officials, they issued a modification to the wage determination with the corrected rates.

LOWER WAGE RATES TO BE USED
ON PROJECT I-65-1(85)23

After the Wage Appeals Board denied its appeal, the Wage and Hour Division issued a new project determination for the Mobile Bay Bridge project, I-65-1(85)23. The determination, 78-AL-75, was issued on March 16, 1978, and contained the same wage rates included in amended project determination 77-AL-432, originally issued on December 15, 1977.

The new rates are substantially lower than those in the original decision (77-AL-45), ranging from \$0.87 to \$5.34 an hour less, as shown in the following table.

B-146842

<u>Worker classification</u>	<u>Project determination</u>		<u>Amount of decrease</u>
	<u>77-AL-45</u>	<u>78-AL-75</u>	
Carpenters	\$ 9.32	\$4.50	\$4.82
Concrete finishers	9.09	4.68	4.41
Electricians	10.49	5.80	4.69
Ironworkers:			
Structural	9.73	8.66	.87
Reinforcing	9.73	6.00	3.73
Laborers:			
Unskilled	6.00	3.30	2.70
Concrete	None	3.50	None
Powdermen and blasters	None	4.60	None
Piledrivermen	9.59	4.25	5.34
Power equipment operators:			
Cranes	9.77	5.00	4.77
Piledriver operator	9.77	5.10	4.67

On May 2, 1978, the contracting officer for the State highway department told us he is negotiating with the contractor to amend the contract for project I-65-1(85)23 to incorporate wage determination number 78-AL-75. The contracting officer believes that the State will realize some savings in construction costs by use of the new lower wage rates to complete the remaining work on the project.

- - - -

The contents of this report were discussed with officials of the Department of Labor, and their views were considered in preparing the report.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,


 Gregory J. Hart
 Director



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

FEB 1973

Mr. Allen R. Voss
Director, General Government
Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Voss:

This is in response to a GAO draft report entitled "The Davis-Bacon Act should Be Repealed" which was furnished to OMB for comment prior to final issuance. The effort of your office in conducting this study is appreciated. The data and information developed will be useful in an on-going Administration review chaired by OMB's Office of Federal Procurement Policy. We seek early resolution of some of the difficulties being experienced by both procuring agencies and the Labor Department in the implementation of this and other contract wage laws.

The findings contained in the draft report are similar to views expressed in previous GAO reports which have criticized the interpretations and implementing regulations made by the Department of Labor. However, we have not concluded that the public interest would be served by repeal of the Davis-Bacon Act, and therefore do not endorse your recommendation. In our view, problems in the implementation of the Davis-Bacon Act can be resolved through administrative action including, where appropriate, modification of the implementing regulations of the Department of Labor.

Thank you for the opportunity to review the draft report. We look forward to receiving the final report at an early date.

Sincerely,

W. Bowman Cutter
Executive Associate Director
for Budget

cc:
Gregory J. Ahart, GAO

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

JAN 15 1979

Honorable Elmer B. Staats
The Comptroller General of
the United States
Washington, D.C. 20548

Dear Mr. Staats:

This is in response to your request for comments on the November 14, 1978, draft report entitled "The Davis-Bacon Act Should be Repealed".

The draft report recommends the elimination of an important set of protective labor laws primarily on the basis of its assertion that they are inflationary and have outlived their usefulness.

One of the most difficult and important tasks of government today is to search successfully for the significant causes of inflation and to eliminate them. This task is among the Administration's highest priorities. So we share concerns on this subject. However, repeal of the Davis-Bacon Act, as recommended by GAO, would provide no real hope of significantly reducing inflationary pressures.

Repeal of the Davis-Bacon Act would undermine a basic legal protection of the wages of American workers in one of the largest, most economically unstable, and complex industries. The importance of this law to American workers was not seriously

GAO note: Page references in this appendix may not correspond to pages of the final report.

dealt with in the draft report. Furthermore, contrary to the draft report's conclusions, Federal and Federally assisted construction wages are not a vital inflationary force today. In the last seven years construction wages have been lagging behind all-industry wage figures, and the gap has widened in the past year. In the construction industry itself, the cost of land, materials and interest is rising at a much higher rate than wages.

If this report becomes final, it will also raise the specter among American workers that, in the good name of the fight against inflation, there will be an open season on the protective labor legislation for which they have fought for half a century.

The potential impact of the draft report is of particular concern to us because the report's conclusions have little foundation. The report's basic premise is that the Davis-Bacon Act was simply a Great Depression measure which is now irrelevant because we no longer have those economic conditions. As the attached detailed response spells out, this law was originally enacted for much broader purposes. In 1964 Congress reaffirmed its belief in the law by further strengthening it. In so doing, Congress stated that "...The Davis-Bacon Act was designed to provide equality of opportunity for contractors, to protect prevailing living standards of the building tradesmen, and to prevent the disturbance of the local economy." The Davis-Bacon requirements have continued to be extended to most Federally financed and assisted construction since then. Forty-one States also now have similar legislation. The basic rationale for this legislation is that the Federal Government should not use taxpayers' money, which includes that from one million construction workers, to undercut construction wages on government construction projects.

In my view the Davis-Bacon and related acts continue to provide a much needed wage protection program for American workers and business opportunity for local contractors in an industry characterized by highly uncertain employment conditions. Unfortunately many of the conditions which led to these laws still exist.

On the basis of an examination of 73 of about 10,000 Department wage determinations which were made in the first six months of 1976, or applicable during that period, the GAO review team found "inadequacies" and "problems" in the Department's program and concluded that it is ineffective. About 30 examples of the team's judgments were included in the draft's Appendices. In almost all 30 examples the Department found the alleged inadequacy or error to be that of the review team, rather than the Department. The reasons in most cases were a failure to conduct an in-depth analysis of the presumed errors and a lack of understanding of the industry terms and practices. The Department's wage determination procedures, as the enclosed detailed response points out, have been adopted as a result of a long experience in dealing with the particular characteristics of the various segments of the construction industry.

Another important aspect of the Department's wage determination procedures, which was unfortunately ignored by the review team, is that contracting agencies, contractors, and employees, or their representatives, have a right to seek a review of any wage determination in which they are interested parties. Under this procedure the program officials reconsider the decision. If the party is still unsatisfied, an appeal is available to an impartial Wage Appeals Board.

We are keenly aware that the administration of this law, like that of most others, is a complex task, and that errors can occur in implementing it. After having examined the record carefully, however, I am satisfied that on balance these laws are being competently and effectively administered. At the same time, the Department is continuing to explore methods to improve its wage determination process and to strengthen the enforcement of these laws by all Federal agencies. We are also working with the various procurement agencies to identify problems arising from the various labor standards statutes, and we hope to resolve such issues.

The draft report states that these Federal laws have an inflationary cost of 715 million dollars. However, the report candidly states that over two-thirds of this estimate is based upon data which have no statistical validity (see page 93). In fact, the estimate is based upon wage surveys and cost calculations of only 12 projects carried out in 1976. The Federal laws cover about 120,000 projects a year. The inadequacy of the sample is obvious. In addition to an inadequate sample, there are three equally important flaws in this calculation.

(1) The GAO wage surveys were conducted under different rules from those of the Department, thus insuring different results. (2) The analysis failed to include productivity as a variable. (3) The money an employer saves by paying lower wages is not necessarily passed on to the government in its contract bid price.

Most of the rest of the 715 million dollar estimate is based upon a 1972 survey taken by the Associated General Contractors of American (AGC) of its members. The result, an AGC official

pronounced at that time, was that the costs of Davis-Bacon payroll requirements amount to about one-half of a percent of the contract price. What was not indicated, nor apparently considered by those preparing the draft report, are the circumstances under which the information was collected, or the nature of the sample. Our inquiry to AGC, in evaluating this draft report, revealed that, of the nine to ten thousand employer members at that time, only 276 responded to an AGC call to 125 Chapters to "help document the case against the weekly Davis-Bacon payroll requirements." Of the 276 responses, only 41 were used to provide the cost estimate. Moreover, AGC's survey analysis states that "some of the responses appear to be reporting on their total payroll costs" and, because of the condition of the data, "thorough statistical analysis is impossible".

In addition to its cost estimates of inflationary impact based upon the 12 projects studied and the 1972 survey of the Associated General Contractors of America, the draft report makes two general arguments. First, it views one of the Department's determination procedures, the so-called "30 percent-rule", as inflationary. It supports the argument with one "illustrative" example of a prevailing wage that was higher than others surveyed.

Results of the Department's recent study of the 1,609 craft classifications for which surveys were made in FY 1978, enclosed with the attached detailed

response, showed that the overall difference, which resulted when the so-called "30 percent rule" was applied and that which occurred when the "average rule" standard was used, was small and would have no inflationary effect. Second, the draft report discusses, in support of its conclusions, eight selected studies by others regarding the Act's inflationary effect. However, it does not cite, nor could we find from these or any other studies, substantial evidence which supports such a thesis. Two studies are based upon some quantitative evidence, but they are very inconclusive. The General Accounting Office itself said in 1972 that one of these studies is inconclusive. Our enclosed detailed response discusses this literature.

For these reasons, we must conclude that the assertions in this draft report are unsupported. I cannot believe that the American people would strip away this long established and historically supported wage protection program from one million workers for inadequately supported reasons.

We are glad to have had this opportunity to study and to comment upon this draft report. The enclosed detailed response provides our comment upon each theme raised in the draft, to the extent that availability of some of your material enables us to complete our comment at this time. Because of the importance and complexity of the issue of repeal of the Davis-Bacon Act, I urge that, if you do decide to publish this report, you include with it not only this letter but also our attached detailed response, so that the American people will have full statements of both sides of this issue.

Our comment is not yet as complete as we wish to make it. The GAO staff has agreed to make available to us the basis for the cost calculations of the review team, including the wage survey data on the calculations for the cost estimates of the 12 projects upon which the impact estimates are based. We will have to reserve our comments upon these aspects of the draft report until the material is made available to us for review. In the meantime, please let us know if we may be of any further assistance.

Sincerely,

Ray Marshall

Secretary of Labor

Enclosures

DEPARTMENT OF LABOR'S COMMENTS UPON GAO
DRAFT REPORT ON DAVIS-BACON AND RELATED ACTS

TABLE OF CONTENTS

I.	The DBA continues to be necessary	
	A.	Its purpose still needs to be served.....3
	B.	Other laws cannot substitute.....4
	C.	Repeal of the Davis-Bacon Act would risk serious economic and social costs..... 7
II.	GAO's analysis of the Department's administra- tion of the DBA contains fundamental misconceptions and errors.....9	
	A.	Parties have a right to seek a review of wage determinations.....10
	B.	The Department conducts surveys wherever and whenever needed.....11
	C.	Department decisions as to whether union rates prevail are based upon substantial information and experience.....12
	D.	The percentage of determinations which are current is constantly increasing.....13
	E.	The voluntary submission program works effectively and is in line with the Administration's policy of voluntary participation by the citizenry in govern- mental programs.....14
	F.	The Department verifies data when necessary.....15
	G.	The Department's analysis of raw wage data is consistent with the Act.....16
	H.	The Department properly includes data from Federally financed construction.....17
	I.	The Department properly selects projects of a similar character for its surveys.....18

J.	In its surveys the Department focuses upon the locality.....	19
K.	The Department's experience is that the "duplicate count" does not cause significant distortion of survey results.....	20
L.	The "30 percent rule" is not established as being inflationary.....	22
M.	GAO errs in describing Department determinations as incorrect.....	24
N.	GAO fails to establish that local workers are not employed on DBA sites or protected by the DBA.	24
O.	The Department's management of the program is constantly being improved.....	25
III.	GAO's findings regarding the impact of the DBA, like those of previous studies, are not based upon sufficient evidence to support the findings. This applies to GAO's findings as to:	
A.	Estimate of construction costs.....	26
B.	Estimate of contractors' administrative costs.....	29
C.	Estimates of the impact upon the economy.....	34
D.	Inconclusive economic studies.....	34
	Enclosure 1 - List of States with "Davis-Bacon" Laws, with Year of First Enactment	
	Enclosure 2 - Excerpts From the Legislative History	
	Enclosure 3 - Correction of Materials in GAO's Appendices	
	Enclosure 4 - Davis-Bacon and Related Acts Wage Determinations Procedures, Now and With Automation	
	Enclosure 5 - Comparison of DB rates based on 30 percent rule with average rates paid for corresponding crafts, Fiscal Year 1978	
	Enclosure 6 - Discussion of Literature on Economic Impact of Davis-Bacon	

I. The Davis-Bacon Act continues to be necessary.

A. Its purpose still needs to be served.

The GAO finding, on page 22, that DBA is no longer needed depends in large part on the theme that "the Act was enacted to slow the downward trend in construction industry wages in the early 1930s and avoid destructive contractor competition." This is an incomplete and misleading statement. The special labor standard for the employees of government contractors in this industry was designed for much broader purposes: to protect prevailing living standards of the construction workers, to provide equality of opportunity for contractors, and to prevent the disturbance of the local economy. Under this equitable standard, contractors are free to compete against each other in efficiency, know-how, and skill, rather than in wage rates and fringe benefits levels. Construction workers are protected to the extent that their wages are not forced down by contractors seeking to win government work.

It is commonplace for critics of the Davis-Bacon Act to suggest that it was solely a product of the Great Depression. Actually, the Act was part of a trend that began much earlier than 1931, when President Hoover signed it. Kansas had adopted a prevailing wage statute in 1891. Other States followed: New York in 1897, Oklahoma in 1909, Idaho in 1911, Arizona in 1912, New Jersey in 1913 and Massachusetts in 1914. A total of 41 States have now adopted "little Davis-Bacon" laws. Many of these were enacted in the 1950s and 1960s when economic conditions also were quite different from the early 1930s. For a list of States with "Davis-Bacon" laws, with year of enactment, see Enclosure 1.

Congressman Bacon (R., N.Y.) first introduced his Federal prevailing wage bill in 1927. His action was related to a ten-year building program Congress had authorized in 1926.

Congress has reaffirmed its 1931 decision more than 80 times in the enactment of Federal statutes with prevailing wage provisions. See the GAO draft report's Appendix III entitled Statutes Related to the Davis-Bacon Act. Moreover, in 1964, when the economic conditions were very different from those of 1931, Congress reaffirmed its belief in the prevailing wage principle by expanding the definition of "wages" in the Davis-Bacon Act to include fringe benefits.

For some critical excerpts from the legislative history, see Enclosure 2.

B. Other laws cannot substitute.

The draft GAO report, on pages 23, 27-32, also argues that various labor standards statutes enacted since 1931 make the Davis-Bacon Act's protection unnecessary. On the contrary, the various statutes mentioned in the draft report complement Davis-Bacon by facilitating its enforcement and providing valuable protections for employees, but they do not substitute for it, nor make it unnecessary.

Under the Copeland Anti-Kickback Act it is a Federal crime for a public contractor to induce an employee to return any part of his or her compensation in order to obtain or retain the job. The Miller Act requires Federal contractors to post performance and payment bonds to ensure that construction workers' wages will be paid; it applies only to direct Federal construction and has no application to Federally assisted construction, which accounts for about 90 percent of the dollar volume of the Federal Government's construction program. The Contract Work Hours and Safety Standards Act,

which merely consolidates laws going back to the 19th century, establishes an 8-hour day and 40-hour workweek standard for most Federal construction contract work.

The Social Security Act and the Wagner-Peyser Act provide basic income maintenance for qualified retirees and workers who lose their jobs. None of these five laws is a wage protection law.

The Fair Labor Standards Act establishes a general minimum wage standard for most American workers. This law has little or no relevance for most job classifications in the construction industry. Studies by this Department's Employment Standards Administration suggest that as few as two percent of the workers in the construction industry are minimum wage workers.

GAO also argues that the DBA prevailing wage determinations are unnecessary because it found no adverse impact from the lack of wage determinations under the Walsh-Healey Public Contracts Act (Walsh-Healey) and the Service Contract Act. The Department of Labor has not undertaken any wage determinations under the Walsh-Healey Act since 1964 because of the U.S. Court of Appeals decision in Wirtz v. Baldor Electric Company, 337 F.2d 518 (D.C. Cir. 1964), which required making available for inspection confidential Bureau of Labor Statistics information on which these determinations were based.

Walsh-Healey determinations were not parallel or comparable to the determinations under the DBA because they measured the prevailing industry-wide minimum wage, either nationally or on a

regional basis, according to the area of competition. Thereby, they applied only to the lowest wage earners among the occupational classifications in an industry. Thus, there seems to be no useful analogy between the Walsh-Healey experience and the DBA, which provides for prevailing wages in each classification and in each locality.

Under the Service Contract Act (SCA), prevailing wage determinations are currently made on 83 percent of the service contracts. Most of the other service contracts under which no determinations are issued fall within SCA's Section 10, which provides that determinations are not mandatory for contracts under which no more than five service employees would work. We are aware that workers on service contracts without wage determinations are deprived of a degree of wage protection which would be beneficial to them. However, the Department has not yet made a specific evaluation of the exact impact of a lack of a determination for contracts involving five or fewer employees.

The fact that SCA was enacted in 1965, when economic conditions were very different from those of the 1930s, is another indication that Congress' concern with special wage protections for the employees of government contractors is not depression-oriented. Prior to the enactment of the SCA, Congress found wage-busting practices in the service industries similar to those found in construction previous to DBA. Last year, at Congressional hearings, it was disclosed that large numbers of professional employees of service contractors, who are not covered by SCA, were victims of similar practices. The Office of Federal Procurement Policy (OFPP) issued regulations setting forth the procedures for all Federal agencies to prevent wage busting of professional employees working under service contractors. OFPP pointed out that "the Federal Government cannot allow the protracted labor instability, loss of morale, and undermined mission performance that comes from the fact or

fear of wage busting. The human impact on long-standing careers, family dislocations and personal economic distress makes the problem even more compelling, even if it could be confined to isolated locales."

C. Repeal of the Davis-Bacon Act would risk serious economic and social costs.

The construction industry in this country has always been volatile and intermittent in its business volume and therefore in the employment opportunities it provides. Since the annual value of new construction put in place averages about 10 percent of the Gross National Product, this has very important implications for the national economy.

Over four million workers are attached to the construction labor force. They are employed by about one-half million businesses, most of them very small, and are divided into more than 30 crafts or trades. Typically, these are not long-term employment relationships, as in most other industries: workers move among sites and contractors without forming permanent attachments to a single employer. Unemployment has persistently been higher in this industry than in most others: recently it has been about 10 percent, when unemployment in the American workforce averaged 6.0 percent.

The annual percentage increases in hourly wage rates over the last seven years have been lagging the all-industry increases. Between 1971 and 1977, the construction workers' increases were 5.9 percent per year, compared to the all-industry average of 7.3 percent. Between 1975 and 1977 the gap widened: the construction workers' increases were 5.5 percent per year, and the all-industry increases were 7.7 percent. The April 1977-78 wage rise for construction workers was the smallest 12-month increase since 1967.

The half million mostly small construction contractors engage in one of the most competitive businesses in the U.S. There are three pressing reasons why the potential for severe wage competition is always present in this industry. First, labor cost is a significant proportion (from 25 to 50 percent) of total cost. Second, for the reasons discussed above, workers are economically very vulnerable. The 1972 Commission on Government Procurement Study Group #2, a group probably more concerned with procurement than worker protection, found that "The wages of construction workers on government construction would likely be adversely impacted without prevailing wage protection." Third, the employer has much less control over other major cost factors such as land, materials, and interest rates than over wage rates. The cost of these factors has been increasing at a much higher rate than labor cost. Moreover, as anti-inflation measures reduce demand for construction work, these competitive factors will intensify.

There is another aspect of the construction labor force which should be considered. Minority groups and women are just beginning to be represented in the higher paid "mechanical" building trades (plumbers, ironworkers, sheet metal workers, elevator constructors, electricians, boilermakers). Recent data show that blacks number only about five percent of the members of these trades, Hispanics about four percent, and women have not yet been counted. During the early 1970's there was a concerted effort, stimulated in large part by the Federal Government's affirmative action requirements of Federally financed contractors, to develop skilled minority workers through training programs. These efforts did significantly increase the participation of minority group members into apprenticeship and other skills

training programs. However, given the length of most apprenticeships (from three to five years) and other formalized skills training in this industry, the major impact on journeyman membership is only now beginning to be felt. Obviously, the tenuous foothold these workers have in the industry makes them especially vulnerable to the wage exploitation which could occur with the repeal of Davis-Bacon.

In brief, short-term employment, unemployment fluctuations, a preponderance of small firms, keen business competition, high labor costs in proportion to total costs, and a lack of control of other production costs, make employment conditions in the construction industry inherently uncertain and, indeed, perilous for construction workers. In this environment the costs of the repeal of Davis-Bacon would be very onerous and fall directly upon the four million persons attached to the industry, particularly women and minorities.

II. GAO's analysis of the Department's administration of Davis-Bacon contains fundamental misconceptions and errors.

The GAO review team, in order to determine whether there were inadequacies and problems in the Department's wage data collection, reviewed 73 area and project determinations involving half of the Department's 10 regions. Fifty of these were project determinations; they represented about one-half of one percent of the 9,573 such Department decisions issued between January 1 and June 30, 1976. GAO also reviewed 23 area determinations out of a total of 530, which varied in the number of counties covered and in the type of construction to which they were applied. The GAO report does

not indicate the scope of the 23 area determinations selected, either in the number of counties covered or in the number of types of construction to which they were applied. The counties covered could have been as few as one or as many as all of those in a State. The number of counties covered by area determinations for each of the four kinds of construction (building, highway, residential and heavy) ranged from about 600 to about 3,000. Thus, although it is not clear exactly how inadequate the GAO sample of the Department's wage decisions was, it is clear that it was far too small to be representative.

For the limited purpose of discovering when the Department uses surveys to support its area determinations, the GAO team also reviewed the 530 area determinations in effect nationwide during the first six months of 1976.

Below is a point-by-point discussion of GAO's findings from both its sample of 73 determinations reviewed for inadequacies and problems, and its more limited examination of all 530 then-current nationwide determinations.

A. Parties have a right to seek a review of wage determinations.

The GAO draft report gave no recognition to a fundamental element of the Department's wage determination procedures. This oversight detracts from the draft report.

Any interested party, such as an employee, a contractor, a Federal contracting agency, a contractor association or a union may seek a review of the Department's wage determination, under the Department's regulations. 29 CFR Parts 1, 7.

The first step is an informal one, in which the program officials review the wage decision. This is a frequently exercised right, and most complaints are handled informally. The Department's records show that 66 such requests were the subject of a written response in the first six months of 1976, when the GAO review was being made. Department officials responsible for this program indicate that many more were handled orally. In the past Fiscal Year 127 of these informal requests were the subject of written responses. Some action to consider a change in the determination, such as carrying out a survey, was undertaken in 21 cases.

Any party still unsatisfied may appeal to an impartial Wage Appeals Board. The number of cases which are appealed is relatively small. As evidence of the high degree of accuracy which our wage decisions achieve, we cite the following statistics. In 1976 only eight cases were appealed to the Board on the issue of the accuracy of the rates in a wage decision. In 1977 only seven such cases were appealed. In 1978 fourteen cases were appealed to the Wage Appeals Board on this issue.

B. The Department conducts surveys wherever and whenever needed.

GAO states, on page 48 of the report, that many wage determinations were not supported by wage surveys of priority projects, and that the Department's regulations and the Manual gives little guidance on when and where to conduct such surveys. It draws this conclusion from an observation that, of the 73 wage decisions reviewed at five regions, about half were not based upon such surveys, and that the same was true of the 530 area decisions reviewed at the Department's national office. These statements are based upon an erroneous assumption that accurate wage rates can only be determined in one way--a rigid adherence to the survey process in every instance. The Department's

Manual, which is based on 47 years of experience, recognizes that in many situations it is unnecessary and wasteful to undertake a full survey in a particular locality (see Manual page 180). Through the maintenance of a continuing liaison with contracting agencies, contractor and labor groups, and others interested and knowledgeable about construction in the various parts of the country, the Department has been able to develop and update economic information on the construction industry which on many occasions gives a clear indication as to whether open-shop or collectively bargained rates prevail for a particular civil subdivision or for certain crafts in that subdivision. For example, if it is obvious from evaluating information from these sources that collectively bargained rates prevail, a survey of projects and rates is not undertaken. It is then appropriate to examine collective bargaining agreements and State and local prevailing wage decisions, which we do. Where our sources indicate an area is non-union, we obviously must make a survey because there is no ready source material, such as union agreements, to provide rates. However, where there is uncertainty as to whether open-shop or union rates are dominant in a locality, or in a particular type of construction in the locality or in a particular craft or crafts in the locality, the Manual requires that the Department undertake surveys. This requirement is carefully followed. GAO should not have assumed that our determinations were not accurate simply because it found no project-by-project, craft-by-craft survey had been made prior to issuance of wage determinations.

C. Department decisions as to whether union rates prevail are based upon substantial information and experience.

The GAO report, at page 50, states that the availability of collectively bargained rates in a locality is considered as sufficient data to indicate that union rates prevail.

This is a basic error which occurs in explicit form here and by implication throughout the GAO draft report. When information available to the Department indicates that negotiated rates prevail, the collectively bargained agreement is used simply as a resource to insure that accurate rates are reflected. There are collectively bargained rates in almost every county in the United States. However, the Department currently finds these bargained rates to be the prevailing wage among construction workers in only about half of the counties in the United States, and in those counties some of the determined rates are often non-union. Doubts are resolved by undertaking a survey. For reasons discussed above in Subsection B, the Manual requires that, where there is no satisfactory schedule or recent data to base a decision upon, consideration must be given to conducting a new survey (Manual, page 18).

D. The percentage of determinations which are current is constantly increasing.

The GAO draft, at page 57, found that "many surveys were old", based upon a review of the October 1976 index of area determinations. In the sample of wage determinations GAO drew in that year, it found only 35 percent of the surveys had been completed within the year. It is more significant to note that the Department has recently found when it analyzed the age of each of its 9,516 county schedules, 78 percent were set within the past year; the schedules are either based upon surveys or upon current collective bargaining agreements where union rates are known to prevail. Only three percent were more than three years old. This current and comprehensive information provides a more accurate and up-to-date description of the status of Davis-Bacon wage determinations.

E. The voluntary submission program works effectively and is in line with the administration's policy of voluntary participation by the citizenry in governmental programs.

The GAO report, on page 58, finds that the voluntary submission program for wage data does not work well, on the ground that it is difficult "to obtain data on the universe of construction activity in a county or project area." (Underlining added.) However, the Department has found no significant problems with the voluntary cooperation program which comports with Administration policy for voluntary participation in government programs.

As a first step, we check the data submitted voluntarily against other objective data available to us. Further, in the great majority of instances, the prevailing wage rate is clearly either union or nonunion, and a total response is not necessary. Where the union rates prevail, a survey would be superfluous, and labor agreements are an excellent resource to identify the actual rate. In nonunion situations experience has repeatedly demonstrated that a representative sample will produce substantially the same results as a complete survey of the universe. (See Manual, page 20.) Fortunately, in those areas in contention between union and nonunion forces, the adversary nature of the proceedings leads to quite comprehensive information with both union and nonunion interests furnishing as much data as possible to support their positions.

Where necessary to assure a representative sample, the Department will make successive contacts of potential survey respondents by mail, telephone, or even personal visits. In order to make surveys as complete and accurate as possible, the Department requests information not only from the specific contractors and subcontractors known to have worked on similar projects in the area, but also from contractors associations, labor unions, and others likely to have knowledge

of the area. Using these multiple sources increases the overall response level, and multiple responses on the projects help establish their validity.

Department personnel who make these wage surveys are currently being provided with intensive training to assure a uniform approach. The Department is also revising its program manual and procedural regulations for this purpose. In Appendix IV, GAO provides five examples of memoranda written by Wage-Hour field personnel which comment upon, and sometimes to complain about, the difficulties of conducting a county wage survey by using voluntary submission of payment data as the primary resource. Such subjective expressions by five employees out of a potential 1,000 who might undertake surveys in any one year, cannot be viewed as definitive judgements on the adequacy of the voluntary data collection system. It is quite possible that more training and improvement of instructions to personnel who conduct these surveys will eradicate such views.

F. The Department verifies data when necessary.

The GAO draft, at page 62, found instances when the Department did not verify the wage data it obtained in its surveys, although GAO did not quantify this finding.

Contrary to the report's statements and the examples given in Appendix V, the Department's practices do provide for verification of data. Where data is questionable for any reason, it is not used unless the questions can be resolved after due consideration. The mere fact that examples cited in Appendix V of the Report show discrepancies between information given by contractors to GAO representatives some time after it was given to Department representatives does not support GAO's contention that the Department accepted inaccurate data. There was a considerable lapse between the occasions when the Department and GAO gathered the data, and some contractor

records are frequently not well maintained for any considerable period. Also, there were occasions when contractors supplied combined wage and fringe benefit information to the Department and simply wage rates to GAO. Certainly, the few examples cited in Appendix V are hardly representative of the construction industry universe.

G. The Department's analysis of raw wage data is consistent with the Act.

The GAO report charges, beginning on page 65, that the Department deleted, edited, and changed wage data received in the surveys without adequate reasons or rationale. It lists four practices found in the cases it examined: adding classifications, combining data, deleting rates, and not considering piece rate information. Each of these practices is, under appropriate circumstances, completely consistent with the purpose of the Act, as well as the Department's policy and regulations. The only circumstances discussed in the GAO draft report are those given in some examples provided in Appendix VI. Each situation presented in that Appendix has been examined by those charged with the administration of the Davis-Bacon program. They found that no classifications had been "added", but that GAO misunderstood the basis for the determination. They also found that data were combined only for adjacent counties with similar economic characteristics. These explanations are fully set forth in Enclosure 4. In that Enclosure, there are some explanations for each of the other GAO examples, including those involving "deleting" rates and piece rates.

H. The Department properly includes data from Federally financed construction.

The GAO draft argues, on pages 44 and 67, against the Department's use of Federally-financed construction projects in its wage surveys, on the basis of its reading of the Act's legislative history.

The Department has been including data from Federally financed construction in its wage surveys since the inception of the program 47 years ago. Although there was some reference to surveying private construction in a 1931 Senate report, a more complete analysis of expressed Congressional intent supports the Department's long established practice. The 1931, 1935 and 1964 enactments contain no language which does not support this practice. Detailed oversight hearings upon the Department's administration of Davis-Bacon were conducted in 1962 and 1963. The Department's position was not challenged, although wage determinations procedures were examined. Moreover, the 1964 basic amendments to the Davis-Bacon Act did not include this issue.

As a practical matter, Federally financed construction must be included in wage surveys to provide realistic data on which to base determinations issued for highway construction, sewers, bridges, dams, and similar kinds of public works. Almost all are built with some Federal financing and there is little or no private construction of such items.

The GAO draft report states, on page 67, that a wage analyst in New York said he does not usually collect wage data from Federal projects. The Department's investigation produced quite different results. It indicates that New York, like all other regions, includes all appropriate data from similar construction, including Federal projects.

I. The Department properly selects projects of a similar character for its surveys.

The GAO draft report, on pages 67 and 68, states that the Department has used projects in its wage survey that are not of a similar character. It does not, however, indicate how frequently it found this kind of problem.

The Department generally classifies projects as building, heavy, highway, or residential. Instructions sent to Federal contracting agencies designated as All Agency Memoranda (AAM) No. 130 and No. 131, include a general description of these classifications. Except for heavy construction, projects within classifications are generally considered of a "character similar". "Heavy" is a catchall classification, and the Department recognizes that not all heavy projects are of a character similar.

The Act was amended in 1935 to require projects to be classified on the basis of a "character similar". Before this the Act referred to "work of a similar nature". The Act does not require that other projects surveyed be of a "character identical", nor does it define "similar". As stated in the instructions referred to above, the Department recognizes that not all projects fit neatly into one of the four classifications which the Department and the industry have recognized. Accordingly, following the decision the Wage Appeals Board in WAB 77-23, issued on December 30, 1977, we go to great lengths to check local practice, including wages paid, construction techniques, and classification of workers required by the project in resolving questions as to what constitutes similar projects. The examples cited in GAO's Appendix VIII have been examined and found not to support GAO's criticism on this issue. All 19 of the projects included in the seven surveys discussed by GAO were in the same project classification as the

project for which the determination was issued. All have a "character similar", within the criteria expressed in AAM Nos. 130 and 131. Enclosure 3 to this letter provides additional information concerning the Department's analysis of the examples provided by GAO in Appendix VIII.

The GAO draft does not indicate what projects it considers to be sufficiently similar to include in a survey. However, in implying that projects considered in a survey should be only those virtually identical to the proposed project, the GAO is suggesting a standard which is impossible to achieve and at variance with both the legislative history and the 47-year administrative practice.

J. In its surveys the Department focuses upon the locality.

The GAO draft report, on pages 69 and 70, finds that the Department is "still" improperly extending wage rates from one county to another. This finding repeats a confusion found in previous GAO reports on the administration of the Act. Project data from other counties may be considered when there is a dearth of construction data in the county involved and we have already made a survey of an adjoining or close county with similar economic characteristics. In rare cases, such as a dam, missile site or major bridge construction, projects at a considerable distance from the proposed project may be included. Generally, a metropolitan county is not used to obtain data for a rural county, and vice versa. State boundaries are not crossed. Similarly counties with distinctly different wage patterns are not grouped together. These guidelines are set forth in the Manual of Operations at page 19. In this way the Department focuses upon the concept of locality.

GAO assumes that union rate information from urban areas has been used as the basis for wage determinations in rural areas. This error by GAO may arise from a lack of understanding of short-hand terminology used by persons in the program. The offices of union locals are generally located in urban areas; however, the locals have a much larger geographical jurisdiction. The fact that the Department has determined a union rate to prevail in one county, although it was negotiated by a local with offices in another, does not mean that the rates were "extended" from the other county. It reflects the Department's information that the union rate is prevailing in the county where the project is to be constructed. In such a situation, employees of the Department will frequently refer to the rate as being "from" the urban area in which the union's offices are located. This was the situation with respect to decisions issued for Dickson County, Tennessee; Montgomery County, Tennessee, and Huntington County, Indiana, referred to in GAO Appendix IX. Enclosure 4 to this letter provides additional information concerning the Department's analyses of the examples provided by GAO in Appendix IX.

K. The Department's experience is that the "duplicate count" does not cause significant distortion of survey results.

The GAO report, on pages 70 and 71, finds that duplicate counting of workers distorts survey results. The Department's data collection is on a project basis, and contractors are asked simply for the number of workers in each classification during the peak week for that classification. The reporting burden of the contractors is not complicated by a requirement that they identify the workers. The price paid

for this non-burdensome data collection system is that occasionally the rate of one worker will be reported in a survey more than once. However, as a practical matter, the Department has not found that there is much distortion in the wage survey results.

The Department is aware of the problem that GAO points out in a rather extreme example. It understands that the present approach can potentially cause a distortion of the survey results, either higher or lower. Wage Specialists are instructed that, when they review survey data, they should be alert for repetitions that may be significant. If the same contractor appears in a survey on a number of projects with approximately the same number of workers, the contractor may be recontacted to determine whether there has been in fact any repetition.

In looking for ways to handle any potential problems arising from duplicate counting, we have adopted the "scattered sites" procedure set forth in the Manual, at page 24, relative to data from single family homes in residential surveys. Under this procedure, if a contractor has a number of single family homes in construction at approximately the same time at scattered sites in the area, these homes are all grouped together and considered as a single project in the same way that they would be if the homes were all in a single residential development. This eliminates the counting of the crew over and over again as they move from house-to-house.

The Department is also studying the feasibility of other changes to minimize or eliminate any problems which may arise from potential duplication. For example, we have been analyzing the pros and cons of a "craft hours" basis for wage determination data.

L. The "30 percent rule" is not established as being inflationary.

The GAO draft report argues, on pages 72 and 74, that the Department's so-called "30 percent rule" inflates the wage determinations. If no single rate represents more than half of the construction workers surveyed, a prevailing rate is sought from among the wage rates which represent between 30 and 50 percent of the workers surveyed.

The "30 percent" rule should be viewed as a limitation on the definition of prevailing. If it were not for the 30 percent limitation, a rate prevailing at 20 percent or even lower might be held reasonable. A wage rate is "prevailing" if it occurs more than any other, but not necessarily in a majority of the occurrences. "Prevailing" also means that the rate determined must be a rate actually being paid, rather than a contrived figure, like an arithmetic mean or average. For an explanation of the DBA wage determination procedures, now and with automation, see Enclosure 4.

It is significant to note that the Department's use of the "30 percent rule", which has been applied consistently since 1935, was reviewed in depth by the House Special Subcommittee on Labor in oversight hearings conducted in 1962. In its report, the Subcommittee strongly supported use of the "30 percent rule", noting: "As was indicated previously an average rate is per se going to be an artificial rate in that it will not mirror any of the actual wages paid in a community. To that extent it would disrupt such local wages." In 1964, when the Act was amended to define "prevailing wages" to include fringe benefit payments, no action was taken to negate the Department's regulation or clarify legislative intent, in spite of the contrary minority views in the House and Senate Labor Committee reports on the bill.

Although this 30 - 50 percent rule is alleged by GAO to have an inflationary effect, GAO offers no evidence to support this contention. A study prepared by the Council on Wage and Price Stability in 1976 attempted to estimate what cost savings would accrue to the Federal Government if average wage rates were used instead of present procedures. Using the BLS special construction wage surveys and actual Davis-Bacon rates in effect in 19 cities, the study found that Davis-Bacon prevailing wage rates are not "typically higher" than average rates paid to craft workers in a local labor market. The study compared actual Davis-Bacon rates to average rates measured in the BLS survey for commercial and residential construction. The Davis-Bacon rate was found to be 2.7 percent below the average rate for commercial construction, and 3.1 percent above the average rate for residential construction. In seeking an explanation for the divergence between the two wage rates in commercial construction, the Council suggested that it may be due to a lag between the time a contract is signed and is received by the Department of Labor.

Early this year the Department will undertake a study in 17 areas surveyed by the Bureau of Labor Statistics in 1976 and 1977 to update the findings of the 1976 Council on Wage and Price Stability study.

The Department has reviewed each of the 1,609 craft classifications in which surveys were made in FY 1978 based on the 30 - 50 percent rule. It found that 48.7 percent of the rates so calculated were higher than the average rate paid in specific occupation classifications, 49.9 percent were lower, and the rest were equal. There was an average difference of only nine cents when all 1,609 craft classifications were computed by both the 30 - 50 percent step method and the averaging method. For a more complete description of the findings, see Enclosure 4.

In sum, recent studies indicate that use of the "30 percent rule" produces a prevailing wage very close to the average rate in a locality. For this reason the Department cannot concur in this criticism of its so-called "30 percent rule".

M. GAO errs in describing Department determinations as incorrect.

The GAO draft report found, on pages 74 and 75, "several instances" in which the Department furnished wage determinations for work not covered by the Act, or furnished a determination for a different type of construction than that described by the contracting agency. Four examples were furnished in Appendix XI. For reasons explained in Enclosure 3 of this letter, GAO is mistaken in all four cases. In the first three examples the work performed is covered by the express terms of the Act. In the last example, the Department provided the exact type of determination requested by the contracting agency which later turned out to be an erroneous request and an erroneous application of the wage determination by the agency to the construction involved.

N. GAO fails to establish that local workers are not employed on DBA sites or protected by the DBA.

Finally, the GAO report, in Chapter V, argues that the purpose of the DBA is not being achieved because contractors from outside the locality are performing the work on about one-third of the 30 projects they examined. This argument is not persuasive for two reasons. First, GAO did not establish that no local subcontractors were involved or that construction workers were imported from outside the local. There is no showing that local workers did not do the work. As indicated in the discussion under Statement IB, workers in this industry typically have short-term employment, moving from site-to-site and contractor-to-contractor. Typically, out-of-town contractors bring with them only a small cadre of key personnel. They hire a substantial portion, if not most, of their site workers locally. Second, for reasons set forth below in discussing Statement III, the 30 surveys are far too small a sample, as GAO concedes, to provide a statistically valid basis for a projection of the effects of the administration of DBA.

GAO also contends in this Chapter that DBA does not protect the workers covered by the 18 surveys in which GAO found rates above those determined by the Department. GAO did not indicate how far above Department rates it found the wage rates to be. It is the Department's experience that if its predetermined rates are not identical to the going rate in the locality, at most the variance is minimal. A wage determination slightly below the level actually prevailing when the work is being performed offers considerable protection to workers because there are some contractors who would, if it were not for such a wage floor, pay well below the norm for the locality. Without the DBA we can expect that construction contractors would revert to the severe hourly wage competition which characterized the pre-DBA days.

O. The Department's management of the program is being constantly improved.

In the last two years, the Department has taken active steps to increase its efficiency in administering the Davis-Bacon Act to the fullest possible extent. As a first step, the processing of project wage decision requests through the regional offices has been eliminated to avoid duplication of effort and to reduce possible error resulting from both National Office and Regional Office handling.

Intensive training of ten Regional Wage Specialists has been undertaken to assure a uniform approach to the wage determination program on a nationwide basis and to have an informed center of responsibility for the program in each Region.

In this connection, new sections have been added to our Field Office Manual and the Wage Determination Procedures Manual has been updated and published.

Also, all regulations relating to the issuance of wage determinations in this program are in the process of being reviewed to provide full guidance to the contracting agencies and other users on Departmental interpretative positions and procedures. Several key memoranda have been issued to all contracting agencies to assist them in carrying out their responsibilities under the Law (AAM 130 and 131).

III. GAO's findings regarding the impact of Davis-Bacon on industry costs and the economy as a whole, like those of previous studies, are not based upon sufficient evidence to support the findings.

A. Estimate of construction costs

GAO reviewers made their own surveys of construction wages in localities covered by 30 of the 73 Department's January-June 1976 wage determinations they reviewed for "inadequacies and problems". (GAO draft page 73). Fifteen of these surveys were each compared to a Department project determination and the other 15 were each compared to a Department area determination (GAO draft page 119). Between January 1 and June 30, 1976, the Department issued 9,573 project determinations. The first fifteen surveys constitute a sample of about one-tenth of one percent of the project determination universe. It is more difficult to know the size of the universe of area determinations. As we discussed at the beginning of the explanation of Statement II, area determinations may cover one county or a whole State and one kind of construction or all four kinds. It is clear, that, as GAO concedes on page 93 of its report, the sample size was insufficient.

There are three other major flaws in this calculation, each substantial enough to provide an independent basis for invalidating the GAO survey results. First, GAO used different procedures and criteria in making their surveys. GAO excluded all projects where there was any Federal financing (GAO draft, page 80). This eliminates almost all significant projects for highways and some "heavy" public works, like sewers and tunnels. Such exclusion does not carry out the legislative mandate and is not realistic for some types of construction, like roads and dams. Also, judging from GAO's analyses of some of the Department's surveys presented in the Appendices, the analyses made by GAO of its 30 surveys were undoubtedly in error. The extent of this error cannot be precisely fixed until the Department has an opportunity to examine the GAO wage survey files. Having surveyed by different rules, GAO emerged, not unexpectedly with different results in its 30 wage surveys. On 12, or 40 percent, of the 30 wage determinations reviewed, GAO's wage surveys indicated a lower prevailing rate than the rate required by the Department's wage determination. They then applied their lower rates to one construction project covered by each determination. (See table on page 85 or the GAO draft.) On this basis, GAO found an average difference of 3.3 percent higher construction costs.

Second, GAO failed to take into consideration the extent higher wage costs were offset by increased productivity. As a recent M.I.T. study, discussed in the next subsection, found, the following factors may reduce the real cost in this kind of situation: workers with more training and/or experience are attracted, contractors choose their better workers for these jobs, and supervisors pay more attention to training and managing their workers. The M.I.T. findings are consistent with traditional microeconomic production theory. Other studies of Davis-Bacon also

point to additional considerations apparently not taken into account by GAO. The Council on Wage and Price Stability study, relied upon in the GAO draft and discussed above, notes that "union and non-union workers may differ systematically in skill level within the same occupation." A 1972 study conducted by D. Quinn Mills, entitled "Industrial Relations and Manpower in Construction", pointed out that poorer quality of work may result without the Davis-Bacon wage determinations, by facilitating awards to incompetent contractors competitive only by virtue of low wages and resulting in greater long-term costs through higher maintenance and repair costs.

Third, GAO assumes that there is an exact correlation between wages and contract costs to the government - that contract costs would necessarily be higher if a wage decision is high or that there would have been a proportional savings had wage rates been lower. Neither assumption is correct. For example, when the Washington Metro was first extended into Northern Virginia, the wage rates in the contracts reflected the low non-union rates then prevailing in the area. However, the successful bidders were, in almost every instance, union contractors who paid as much or more than the Department would have determined had the Department issued a wage determination based upon union rates. Thus, in spite of low rates in the wage decision, a high paying employer was the successful low bidder.

In a reverse, but similar, situation involving a dispute over wage rates the Department had determined to prevail for the MARTA (subway) project in Atlanta, the State Highway Department and some contractors appealed this decision to the Department's Wage Appeals Board (WAB No. 78-5). Significantly MARTA, the contracting agency, declined to join in the appeal on the basis of its observation that lower wage rates were not reflected in lower contract costs.

When a contractor has a substantial cost advantage because he pays low wages and the wage determination is also low, this will generally reduce the bid price only to a level low enough for the contractor to insure that the bids of contractors who pay higher wages have been undercut. The difference will go into increased profits for the contractor. Again, the contract price bears no exact relationship to the wage levels issued.

Despite these four major flaws in its data, GAO assumed that the 3.3 percent proportion of cost increase, which they found in twelve projects, would hold true for all projects in the country covered by Davis-Bacon, amounting to about 120,000 projects a year and \$40 billion. After warning that "...the size was insufficient to project the results to the universe of construction costs during the year with any statistical validity", the draft speculates that, "if these projects are representative", industry costs "may" have been increased half billion dollars a year. This projection is the only support for GAO's finding that wage determinations lead to higher industry costs and inflation in the economy as a whole.

B. Estimate of contractors' administrative costs

The one-half billion dollar estimate discussed in Subsection A, above, constitutes about 70 percent of GAO's 715 million dollar finding. The only major component of the remainder of the 715 million dollar finding is an estimate by GAO that it costs contractors 200 million dollars a year in administrative expenses to comply with the requirements of Davis-Bacon (GAO

draft, page 96). This is based upon results of a survey taken in 1972 by the Associated General Contractors of America (AGC), that "an average cost of complying with weekly Davis-Bacon requirements was approximately one-half of one percent of the contract price." The draft report does not provide a sufficient discussion of that survey to permit the Department to independently assess the accuracy of the cost estimates provided by this interest group. However, in response to the Department's recent inquiry, AGC provided a description of the 1972 survey and a summary of its results. AGC national headquarters requested its Chapter Managers across the country to ask members how much savings would be affected if the weekly "Davis-Bacon" payroll requirements were eliminated, in order to "help document the case against" the weekly payrolls. The Chapter Managers were asked to have members provide estimates of the "cost of preparing and filing weekly payrolls...in terms of a percentage of contract price, or in terms of dollars and cents on given projects." The open invitation to build a case against the "Davis-Bacon" requirements was reinforced by the following statement which accompanied the information request:

"AGC has opposed this requirement as involving unnecessary expenses and red tape. Several years ago, AGC interested the Bureau of the Budget in checking out the feasibility of giving contracting agencies discretion to waive the weekly payroll requirement, but the policy was never implemented. Today, the

President's Commission on Government Procurement is under the impression that the weekly payroll requirements are unnecessarily costly and, in order to reach a conclusion on what should be recommended, they need documentation as to what exactly are the costs to contractors." (AGC Labor Law Bulletin #16-72, issued August 9, 1972.)

The 125 Chapter Managers brought in 276 responses, from the nine to ten thousand employers who were members at that time. A September 27, 1972, AGC analysis of these responses states, "Unfortunately, many of the responses from chapters and members did not answer the questions asked. Consequently, a thorough statistical analysis is impossible." An earlier AGC analytical memorandum, dated August 30, 1972, indicates that at that time 53 members had presented cost data in some form, which is a membership representation of .0054. Moreover, it is reasonable to infer that those who presented cost estimates were more strongly impelled to make a case against the Davis-Bacon requirements than those who did not bother, and that therefore a biased, self-selected sample was collected. Another factor, however, affecting the validity of the survey is that the questions were not clearly expressed. More than 80 percent of the answers were not responsive enough to the questions asked to be included in AGC's cost projections. The cost estimates which were provided vary greatly. There were 34 responses indicating the estimated cost per million dollars of contract price. The range of estimates was from \$200 per million contract dollars to \$10,000 per million contract dollars, a variance of 5,000 percent.

Seven members "and others" provided costs in terms of Cost Per Year, with a range of from \$1,000 to \$20,000 a year, a variance of 2,000 percent. Twelve members provided Cost Per Week or Per Payroll, with estimates ranging from \$11 per payroll to \$67 per week.

Only 41 of the responses were used to derive the oft-quoted conclusion that "The survey suggests the average cost of compliance is approximately one half percent of the contract." An apology was provided in the September 27 memorandum:

"Unfortunately over half of the responses submitted their weekly, monthly or yearly cost without giving contract volume for the respective periods. Also, some of the responses appear to be reporting on their total payroll cost, rather than the cost of complying with the weekly payroll requirements under the Davis-Bacon Act."

Compliance with DBA centers around payroll records and related data. Preparation of the payroll is simply a good business practice which would continue whether or not contractors are required to submit it to the contracting agencies. Most of these records are required by many other laws, including Federal tax laws. The Davis-Bacon requirement to pay construction workers and laborers each week is similar to the wage payment laws in most States

and is customary in the construction industry in any case. The requirement for posting wage rates can hardly be expensive to a contractor. Posting requirements are also very common for local, State and Federal labor standards and licensing laws, as well as very vital to successful enforcement. The most distinctive requirement for Davis-Bacon contractors is that they provide the contracting agency each week a certified copy of their payroll.

The difficulty of collecting reliable information on this subject is somewhat measured by GAO's own experience. During GAO wage surveys, GAO asked many of the contractors for such estimates, but the ranges were so varied and the responses frequency so poor that they were not reliable enough to support a finding. For the reasons discussed above in connection with the AGC survey, it is very likely that the contractors' estimates are inconsistent because many did not know how to allocate payroll costs.

The GAO draft report, on pages 97 and 98, cited a Wharton School study to buttress its case against what it conceived to be the Davis-Bacon payroll requirements. The only data used to support the conclusion of the Wharton study are the AGC 1972 survey discussed above.

In view of the nature of both AGC and the GAO evidence, their estimate of a cost of \$200 million dollars for the industry each year seems a most unfounded assessment.

C. Estimates of the impact upon the whole economy

The same twelve projects upon which, according to the GAO contractors paid higher rates than those prevailing when the job was being done, are used as a basis for the further GAO finding that "because of the large volume (of Federally financed construction) (it) tends to have an inflationary impact on...the national economy as a whole". Obviously the same defects in their projections of the twelve projects to the industry are greatly magnified when they project the results of the surveys of the twelve projects to the economy as a whole. Because there is no attempt to quantify the extent of the inflationary impact upon the economy as a whole, and merely an assertion that there is some such impact, cost/benefit analysis of the subject is precluded.

D. Inconclusive economic studies

The rest of GAO's argument consists essentially of a discussion of eight selected studies, all of which have the flaws described in a June, 1978 research report by a Massachusetts Institute of Technology group, entitled "A Comparison of Wages and Labor-Management Practices in Union and Non-Union Construction:

"The impact of the Davis-Bacon Act on the level of wages and on the cost of some public construction has been a source of bitter controversy for many years. Yet, because of the polemical nature of the debate, there are no serious studies of the actual cost impact that Davis-Bacon has had. Most of the studies

consist only of a few examples and illustrations of particular wage determinations which will raise the wage level (and perhaps the final cost) of selected projects. But since there are over 14,000 wage determinations every year, it is not clear whether these wage determinations are really typical of the whole". (page 22)

GAO does not cite, nor could we find, substantial evidence from these studies which establishes that there is a significant inflationary impact of Davis-Bacon upon the economy as a whole. Two of the reports cited in the GAO draft report at pages 107-109 provide some quantitative evidence but it is far from conclusive.

The first is a study by A. J. Thieblot described by GAO as the "Wharton Study", of the behavior of 914 contract bidders who bid before President Nixon suspended the operations of the DBA in February 1971, and then bid again after the suspension was lifted, 45 days later. Of the 914 contractors who submitted bids a second time, 594 reduced their bids, 218 increased their bids, and 102 made no change from their original bids. Thieblot candidly discusses the limitations of his study.

"The cost comparison which can be provided by these bid and rebid jobs is far from pure. In the first place, all of the initial bids became

public knowledge before the rebids, which undoubtedly influenced the later decisionmaking. Second, a considerable amount of gamesmanship was probably going on among open shop and union contractors to cut bids, withhold them, raise them, or encourage new ones, as the case suited their purpose."

This Department later independently examined the data used by Thieblot, in an attempt to measure the effect of the suspension, and it found the data inconclusive. The General Accounting Office itself expressed the same conclusion in a letter dated March 27, 1972, from the Deputy Comptroller General to Senator Paul Fannin (R., Ariz.).

The other study with some quantitative data, cited in the GAO draft report, was a report prepared by Robert Goldfarb and John Morrall and issued in May 1976 by the Council on Wage and Price Stability. It compared actual Davis-Bacon rates for September 1972 to rates which would have applied if the data had been averaged in all cases. However, the data was limited to two occupations in residential construction, (carpenters and laborers) and three occupations in commercial construction (bricklayers, electricians, and laborers) in 19 cities.

The researchers, Goldfarb and Morrall, analyzed the data in several ways. One of their results showed Davis-Bacon rates falling short of average rates in commercial construction by 2.7 percent and exceeding residential construction average rates by 3.1 percent. The GAO draft, on page 109,

refers to another of the study findings: "union wages for commercial construction were found to be 2.1 percent higher than those calculated by a simple average method, and 5.4 percent higher in residential construction". That comparison cannot be considered to support GAO's assertion that the Davis-Bacon Act is inflationary because it fails to compare union rates and Davis-Bacon wage determinations.

Goldfarb and Morrall arrived at a suitably modest conclusion that their analysis "does not support the contention that the present Davis-Bacon procedures produce rates that are 'typically higher' than the actual average rate paid for the same craft in the labor market."

The other six studies cited by GAO, as well as the rest of the literature on the economic impact of Davis-Bacon has been closely reviewed by this Department and found to be even less probative than the two studies described above. For a discussion of the literature, see Enclosure 6.

List of States with "Davis-Bacon" Laws, with Year of
First Enactment

Minnesota	1973	Massachusetts	1914
		New Jersey	1913
		Arizona	1912
		Idaho	1911
Maryland	1969		
Alabama	1969		
Louisiana	1968		
Wyoming	1967	New York	1897
Michigan	1965	Kansas	1891
Oklahoma	1965		
Delaware	1962		
Pennsylvania	1961		
Oregon	1959		
Missouri	1957		
Hawaii	1955		
Arkansas	1955		
Tennessee	1953		
Washington	1945		
New Hampshire	1941		
Kentucky	1940		
Nebraska	1939		
New Mexico	1937		
Nevada	1937		
Connecticut	1935		
Rhode Island	1935		
Indiana	1935		
Utah	1933		
Texas	1933		
Maine	1933		
Colorado	1933		
Florida	1933		
West Virginia	1933		
Wisconsin	1931		
Ohio	1931		
Montana	1931		
California	1931		
Illinois	1931		
Alaska	1931		

Excerpts From the Legislative History

Congress recognized the necessity for providing basic wage protection to local laborers and mechanics employed in construction almost from the inception of Federal construction activity. The first bill on this subject was introduced in 1927 by Representative Robert L. Bacon of New York, who was later the co-author of the law which now bears his name. In the years which followed, he and other members of Congress introduced a series of proposals to protect local wage standards on Government construction contracts. On two occasions prior to its enactment, the House Labor Committee, after hearings, recommended enactment of such measures.

Acknowledging the continuing need for prevailing wage legislation in construction, the House Committee on Education and Labor stated in 1964, in their report on the fringe benefit amendments to the Act:

"With the advent of large Federal construction programs, however, it soon became apparent that local wage standards in a community had to be protected from cheap labor imported from other areas. Qualified contractors residing and doing business in an area of high wage standards found it impossible to underbid outside contractors who based their estimates for labor upon the low wages they could pay to workmen obtained from another locality or even another State. On many occasions the local contractors and local laborers had to stand by while outside contractors and outside labor performed under locally substandard conditions work that otherwise would have been theirs. In the words of one of the authors of the Act, Congressman Robert Bacon, Republican from New York, in 1927:

'I want to cite the specific instance that brought this whole matter to my attention. The Government is engaged in building in my district a Veterans' Bureau hospital. Bids were asked for; several New York contractors bid and in their bids, of course, they had to take into consideration the high labor standards prevailing in

the State of New York. I think I can say the labor standards in New York are very high. The wages are fair, and there has been no difficulty in the building trades between the employee and employer in New York for some time. And the situation existed therefore, and the New York contractors made their bids, having the labor conditions in mind. The bid however, was let to an out-of-State contractor and some thousand out-of-State laborers were brought to New York. They were hired into this job, they were housed, and they were paid a very low wage, and the work proceeded. Of course, that meant that labor conditions in this part of New York State where the hospital was being built were entirely upset. It meant that the neighboring community was very much upset.'

"To overcome this situation, the Congress adopted the prevailing wage principle as public policy for Federal construction. Thus, the Davis-Bacon Act was designed to provide equality of opportunity for contractors, to protect prevailing living standards of the building tradesmen, and to prevent the disturbance of the local economy.

"The principle underlying the prevailing wage concept has remained just as valid in the years since the Davis-Bacon Act was passed as it was some 30 years ago. Under this equitable standard, contractors were free to compete against each other in efficiency, know-how, and skill rather than in terms of their ability to depress the prevailing wage structure in a locality. H.R. Rep. No. 308, 88th Congress, 2nd Sess., p 4, 5 (1964)."

The Congress specifically reaffirmed the underlying principle of the Act in the 1964 amendments requiring that fringe benefits must be reflected in prevailing wage determinations--that Federal funds should not be used to depress prevailing local wage standards including fringe benefits on federally supported construction work:

"It has become increasingly apparent that if the Davis-Bacon Act is to continue to accomplish its purpose, prevailing wage determinations issued pursuant to the Act must be enlarged to include fringe benefits. The Act was founded on the sound principle of public policy that the Federal Government should not be a party to the destruction of prevailing wage practices and customs in a locality. Unless the law is amended to provide for the inclusion of fringe benefits in wage determinations, prevailing wage practices and customs will not be reflected in these determinations." H.R. Rep. No. 308, Supra, Pg. 6.

Corrections of Materials in GAO's Appendices

I. Analyses of Appendix VI of GAO's draft report:

GAO provides in this Appendix five examples in which it alleges that the Department adjusted wage data and work classification without adequate reason or rationale. GAO's assertions and the Department's analyses concerning each of those examples is provided below.

1. New York Determination 76-NY-237:

The draft report, on pages 164-165, states that the Department added 11 classifications for which no data were received in a survey to 12 classifications for which survey data were obtained, and then issued union rates for all 23 classifications. The report also notes that after regional personnel had recommended that the union rate be used, headquarters increased the rate further.

The reason for the change in the survey data cited by GAO is in error and is actually irrelevant to the decision. The change resulted from the Department's 1976 decision to update a union rate determined in a 1973 survey. There had been updates in the annual decisions issued between the 1973 survey and the 1976 wage decision. The original union dominance found in 1973 still prevailed. The bricklayers and cement mason in this county had melded into one group and were receiving the \$11.90 rate in 1976. Other classifications were added because of information available to the National Office which had not been available to the New York Region.

2. Georgia Determination GA-75-1039:

The draft report, on pages 165-167, discusses this wage determination as being flawed because it combined data for two counties for all crafts except plumbers, raised the rate for truckers above that which the survey revealed, and did not issue rates for nine other classifications surveyed.

The Department's investigation shows that this determination was properly made. When, because of need for data in two counties, there is a simultaneous survey of adjoining counties which have similar economic characteristics the data are analysed both separately and together for the two counties. If the data are similar, they are combined into a single schedule. When they are different, there are separate rates. In this case the prevailing rates for plumbers in two counties were substantially different. The change in the truck drivers' rate was based upon the general knowledge that no skilled classification on the project is paid less than the laborers. No rate was issued for the other nine classifications because the survey resulted in too little information for an accurate finding, and the rates were sufficiently inconsistent with other information in the survey to raise substantial questions as to their validity.

When the Department is unable to include a rate for a specific craft in the schedule, the regulations provide for the contracting agency to develop a "conformed" rate. 29 CFR Part 5.5(a). A conformed rate is an additional rate bearing a reasonable relationship to related craft rates on the published wage determination for any needed classification of laborers or mechanics not listed on the original wage determination. The contracting officer is responsible for these additions; however, such actions requires the concurrence of all interested parties, and this Department's National Office must be notified of the actions. A conformability action is not valid unless this Department is notified and approves. If a dispute between the parties exists, the matter is referred to this Department for resolution.

These conformed rates are essentially supplemental determinations which operate within the overall parameters of the Davis-Bacon wage determination process. They contribute greatly to the overall wage determination process by providing the

system with flexibility to accommodate to specific situations. This flexibility is particularly important since it is often difficult to identify in advance all the crafts which will be employed on the particular projects.

3. Minnesota Determination AR-3147:

The draft report, on pages 167-168, suggests that the determination was flawed because the Department deleted from the survey all payment data on projects covered by the Davis-Bacon Act which were below the previously issued prevailing wage determination.

The Department's review of this determination has indicated that the payments were correctly deleted because they were illegal payments as a result of rates issued under previous determinations, which should have been controlling on the projects deleted.

4. Texas Determination 76-TX-89:

The draft report, on pages 168-169, indicates that the Department incorrectly manipulated data received on five classifications presented in the draft.

The Department's review of this determination indicates that for all five classifications the rates issued by the Department were correct. A union rate was updated and issued for the asbestos workers, rather than using survey data because the Department independently found that the union rate still prevailed for asbestos workers. The rates issued for the tile setter helper and the air conditioner mechanic were deleted because the survey data provided too little data for an accurate finding, and were sufficiently inconsistent with other information in the survey to raise substantial questions as to their validity. With respect to the boilermakers used in the example, a rate for them was included in the final wage determination because the prevailing rate for this occupation was a union rate

which was independently found to be prevailing in the county. No survey data was collected on boilermakers during the survey, thus no changes were made.

The rate which the Department issued for the iron worker was lower than that which GAO asserts the survey disclosed because GAO improperly included fringe benefits in the hourly rate for iron workers. The Department's action on this determination is consistent with page 26 of the Manual which provides that where wage data contains hourly rates, which includes fringe benefits in the basic hourly rate, because the employer paid them as a lump sum payment, the fringe benefits must be broken out prior to compiling the data.

5. California Determination 76-CA-33:

The draft report, on pages 169-174, indicates that wage rate data obtained through surveys were improperly deleted and that piece work data were improperly not used in computing wage determinations.

The Department's analysis of this determination disclosed that proper use was made of all data obtained through wage surveys. The rates for a number of workers in carpenter and plumber trades were deleted because they showed an unusually broad range and the Department's experience has indicated that, when there is such a broad range of rates within a trade employed by the same employer, the rates of the lower paid workers are generally those for trainees, whether in formal and informal programs.

Pursuant to the Department's regulations, persons in properly approved apprenticeship or training programs may work on projects subject to Davis-Bacon requirements. Such classifications are not included in wage decisions, and wage data regarding these workers is not included in wage surveys because neither trainees nor apprentices are recognized as "laborers or mechanics," the groups to which Davis-Bacon wage determinations are limited.

The reasons stated by GAO for the refusal to issue helper rates are erroneous: the Department does issue helper rates under appropriate circumstances, when it is clearly shown that such a classification exists in a particular craft in an area.

No wage determination was made for the soft floor layers because of scant information.

With respect to the eight classifications for which piece rate data were not used in computing the wage determination, the analyst preparing the determination was not able to use these data because the survey did not include the number of hours each piece rate worker worked at that piece rate. However, in the case of cement masons, the piece rate was converted to an hourly rate because the number of hours they worked was available. The wage determination for the cement masons was, contrary to GAO's reading of the Department's regulations, proper and issued under the standards of Section 1.2(a)(3) of 29 CFR Part 1, which provides for the use of an average rate when there is no majority paid at the same rate and where less than 30 percent of the workers in the classification receive the same rate. The averaging of the wages of 12 workers to arrive at the prevailing rate was clearly correct since the five cement masons whose rate averaged \$10.62 did not each earn \$10.62.

II. Analysis of Appendix IV of GAO's draft report:

GAO provides three examples where it feels the Department has extended wage rates to adjacent and non-adjacent counties. The Department's analysis of each of the examples has shown this not to be the situation. Each of GAO's examples and the Department's analysis of them is provided below.

1. Dickson County, Tennessee 76-TN-88:

The rates for building construction for Dickson County were based on union rates found to be prevailing in both Dickson County and Davidson County. GAO's statement that the rates were based upon a 1972 survey restricted to Davidson County and extended to Dickson County is incorrect.

GAO's finding may be based on a misunderstanding on the part of GAO reviewers. Sometimes Department personnel will describe a wage rate in terms of the county in which the negotiating union's offices are located, even though the wage rate was negotiated for other counties as well. It would then seem to those not familiar with the terminology used by the Departmental staff in the wage determination program that for such a rate to be applicable to another county it was "extended". However, the Department would not apply a negotiated rate to a county unless it finds as a fact that the rate is prevailing in that county. In this determination the union office was located in Davidson County (Nashville) but the wages were negotiated for and independently determined to be prevailing in Dickson and other counties as well. Thus, they were not extended to Dickson County.

2. Montgomery County, Tennessee 76-TN-92:

The rates used in this determination were also union rates which were negotiated for and found to be prevailing in this county as well as Davidson County. Again, GAO's finding fails to recognize that union rates can be negotiated for counties other than the one in which the union's office is located. If this were not the case, separate union offices would have to be located in every county in the country in order for the Department's determinations to accurately reflect prevailing rates in union areas.

GAO note: The deleted comments relate to matters which were discussed in the draft report but omitted from the final report.

III. Analysis of Appendix VIII of GAO's draft report:

The draft report provides, on pages 180-185, seven examples where GAO asserts that the Department included in its surveys projects not of a character similar to the proposed projects.

The Department has reviewed each of the examples and has determined that projects included in the surveys were of a character similar to the proposed projects. The determinations were consistent with the criteria for projects to be included in surveys, as provided by the Wage Appeals Board, Case No. 77-23 (issued December 30, 1977); All Agency Memorandum No. 131, issued July 14, 1978; and pages 14, 14a, and 15 of the Manual.

In the Wisconsin example, the survey for a "single family residence" project quite properly included another project, described as "construction of new apartment buildings", because both fall within the Department's Residential Construction classification. The Manual, at page 14a, lists both of these construction descriptions as examples of Residential Construction. The first Florida example (76-FL-262) involves exactly the same principle, as do the California and Arizona examples also provided by GAO.

The second Florida example (76-FL-345) was described by GAO as involving "building, access road, install generator fuel tanks, two antenna support towers and coaxial cables". It is of a

"character similar" to the project on which the rates were based, which was described as "construction of storm sewers", since both fall within the Department's Heavy Construction classification. The survey project, and portions of the project for which the determination was issued are expressly included in the examples of Heavy Construction projects provided in the Manual, at page 14a.

IV. Analyses of Appendix XI of GAO's draft report:

The draft report discusses, on pages 192-194, four examples which it feels indicate that the Department has issued wage determinations for work not covered by the Act, or for the wrong type of construction. The Department's analysis of these determinations indicates that all four determinations were properly issued.

In the three examples cited by GAO as work not covered by the Act, the Department properly concluded that there was coverage in each case. Under the authority given to the Secretary in the Reorganization Plan No. 14 to issue regulations and interpretations, the Department issued decisions in these determinations consistent with relevant precedents, and the initial determinations of coverage made by the contracting agencies.

The U.S. Postal Service example involves a project described as "overhaul air condition unit". This is "repair work" which has been covered by the Act since its enactment in 1931.

The EUD example, described as "install vinyl covering in offices", is alteration and repair to a public building. The 1935 amendments to the Act specifically included this type of work.

The Navy project involved work described as "replace hot water heaters in family housing". The Department's experience is that this type of effort involves considerable alteration and repair of the kind covered by the Act.

In the fourth example, GAO alleges that the Department incorrectly issued building construction rates, rather than water and sewer rates, for work described by the Department of Army as a waste water treatment project. The Department's investigation of this determination indicates that the Army requested a building construction determination, and this is what the Department provided. It was contrary to the terms of the wage determination for the contracting agency to apply it to any kind of construction other than building construction. The error is thus not one made by the Department of Labor.

Davis-Bacon and Related Acts
Wage Determination Procedures,
Now and With Automation

The Davis-Bacon Act, requiring payment of prevailing wages on Federally financed construction projects, was originally passed in 1931 in response to chaotic conditions in the construction industry. Local economies were being severely disrupted as a result of importation of non-local wage rates by non-local contractors bidding on Federal construction projects. The philosophic base underlying the legislation at the time was that the wage levels of workers should not be the key competitive factor in the procurement process. Ever since the original legislation, Congress has consistently maintained and even expanded on that premise, with the extension of the Act in 1964 to include fringe benefits as an integral part of the prevailing wage. Approximately 80 other statutes providing for Federal financing of construction require Davis-Bacon provisions, and 41 States have passed similar "little Davis-Bacon" laws for public construction work. The competitive conditions in the labor-intensive construction industry which foster deleterious wage-cutting by contractors exist regardless of the economic situation. The core intent of the Act(s) is to prevent a reduction in existing wage levels due to Federal construction activity and contracting procedures and practices.

The procedures for issuing wage determinations are straightforward. There are currently two types of wage determinations -- "general" determinations of indefinite duration which cover a specific geographic area for a given type of construction, and "project" determinations, which are issued in response to a request by a contracting Federal agency in those areas where no general determination is applicable.

General determinations, utilized principally in areas where there is considerable construction activity, are published in the Federal Register

and do not expire automatically; wage rates are modified as required through publication of addenda. (Periodically the entire schedule is codified and re-published.)

If there is no general determination applicable to a given geographic area, the contracting Federal agency submits a request to the Department of Labor and available wage data is utilized and/or additional data are obtained to assemble a wage schedule for the job classifications and type of construction of that particular project. With rare exception, this process is accomplished within 15 working days.

Construction projects are categorized into four types - building, heavy, highway, and residential. The basic survey area for which wage data are obtained is the county. With 3,119 counties in the country, there is thus a potential need for 12,476 wage schedules to cover the four categories of construction. (In many areas, however, wage levels and schedules for different types of construction are the same.) Each wage schedule contains wage rates for each job classification anticipated on a project, reflecting local practice as to job name and craft jurisdiction for division of the work.

To summarize, currently wage determinations are either general, covering a geographic area, or specifically designated for a given project. The wage rates to be paid are determined:

- on a craft-by-craft basis, reflecting local practice;
- from projects of a character similar (building, heavy, highway, or residential);
- From wages being paid on projects under construction or completed within a calendar year past;

- from wage data on public and private construction in the same locale, the county being the basic survey unit.

Actual calculation of the basic hourly wage rates to be published in a determination is done according to a specific formula. For each craft, the array of wages being paid is examined, and the determination made as follows:

- If a majority of workers in a craft in the locality is being paid at a single rate, that rate is determined to be prevailing. In the event there is not a majority of workers in the craft receiving a single rate, then;
- If 30-50 percent of the workers in the craft are receiving a single rate, that rate is determined to be prevailing. If there are two rates falling within this cluster, the rate representing the larger number of workers becomes the prevailing rate. If less than 30 percent of workers in a craft are receiving a single hourly rate, then;
- The average hourly rate of all workers in the craft is determined to be prevailing. (Number of workers at each wage rate, multiplied by that wage rate amount; add the total wage rate amounts for each wage level, and divide the grand total hourly wage by the total of number of workers.)

Fringe benefit payments if any, are calculated separately.

It is anticipated that this system and the procedures for accomplishing this work will change somewhat with the advent of the

automated Davis-Bacon Information System. The new system will provide broader-based data collection, a greatly increased capacity to process more data more quicker and more accurately. Stepped up enforcement will be possible without additional paperwork burden through the creation of a positive audit trail on contract awards, and the entire system will function as a core data bank for industry wage information. A comparison of present and future procedures and responsibilities is attached.

Current SystemTypes of Determinations Issued

- o Project - 10,000 annually
- o General - 1,750 issue and maintain

Regional Office Role

- o Ad-Hoc survey as required
 - o Identify data sources
 - o Mail and Telephone requests for data
 - o Evaluate data
 - o Follow-up
 - o Manually calculate rates
 - o Submit to NO with recommendations

National Office Role

- o Review Regional Office (RO) submissions on surveys
- o Reconcile problems with RO
- o Additional follow-up
- o Receive requests from Agency
- o Prepare data on hand
- o Prepare determination
- o Issue determination

Automated SystemTypes of Determinations Issued

- o Project - 120,000 annually

Regional Office Role

- o Conduct surveys as requested by National Office (NO)
- o Continued liaison with:
 - o Agencies
 - o Labor
 - o Management
- o Enhanced enforcement capability
- o Greatly enhanced agency oversight capability

National Office Role

- o Receive request from agency
- o Submit request to system
- o Use available schedule if appropriate
- o Submit survey parameters to system:
 - o Automated mailing
 - o tracking
 - o mail follow-up
 - o data sufficiency
 - o Evaluate data
 - o Update data base
 - o Review calculation of rates
 - o Prepare preliminary determination
 - o Review and approve
 - o Prepare final determination
 - o Store newly pre-calculated schedule in system
 - o Automated mailing to agency

Comparison of Cavis-Bacon craft classification rates under wage determinations using the 30-percent rule with average rates paid in corresponding crafts, based on fiscal year 1978 surveys

Difference between craft determination rate using 30 percent rule and average rate paid in craft	All craft determinations using the 30 percent rule				Craft determinations resulting in union rate				Craft determinations resulting in open-shop rate					
	Total	Determination rate	Average rate	Average per craft	Total	Determination rate	Average rate	Average per craft	Total	Determination rate	Average rate	Average per craft		
	Number	Percent	Amount	Number	Percent	Amount	Number	Percent	Amount	Percent	Amount	Number	Percent	Amount
Total	793	48.7	\$534.75	\$1.63	259	81.7	\$339.57	\$1.20	524	40.6	\$223.11	5	1.1	\$1.12
Residential construction	215	13.7	133.31	.71	152	19.9	37.50	1.31	172	13.3	72.57	1	0.2	1.02
Commercial	315	19.5	273.41	.58	156	49.2	201.54	1.29	159	12.3	71.37	1	0.2	1.02
Highway	114	7.1	42.42	.39	23	7.3	11.23	.49	91	7.0	33.13	1	0.2	1.02
Heavy	133	8.3	50.18	.42	34	10.7	32.39	1.13	99	7.7	17.75	1	0.2	1.02
Water and Sewer	5	.3	2.25	.45	2	.6	1.01	.51	3	.2	1.12	1	0.2	1.02
% difference	22	1.4	-	-	1	.3	-	-	22	1.7	-	-	-	-
Residential construction	8	.5	-	-	1	.3	-	-	5	.5	-	-	-	-
Commercial	7	.4	-	-	1	.3	-	-	2	.2	-	-	-	-
Highway	3	.2	-	-	1	.3	-	-	2	.2	-	-	-	-
Heavy	5	.3	-	-	1	.3	-	-	5	.4	-	-	-	-
Water and Sewer	-	-	-	-	-	-	-	-	-	-	-	-	-	-
30-percent rule lower than average rate	803	49.9	\$307.91	-.48	57	18.0	29.24	-.51	746	57.7	\$357.77	8	1.6	5.13
Residential construction	253	15.1	138.13	-.57	16	5.0	12.73	-.50	227	17.9	72.53	1	0.2	1.02
Commercial	163	11.9	125.30	-.63	14	4.4	4.93	-.35	175	13.5	62.27	1	0.2	1.02
Highway	122	11.3	60.32	-.33	20	6.3	8.22	-.41	152	12.5	60.15	1	0.2	1.02
Heavy	181	11.2	45.94	-.26	7	2.2	3.56	-.48	174	13.5	45.33	1	0.2	1.02
Water and Sewer	8	.5	5.01	-.53	-	-	-	-	8	.6	5.13	1	0.2	1.02

Comparison of Davis-Bacon craft classification rates under wage determinations using the 30-percent rule with average rates paid in corresponding crafts, based on fiscal year 1978 surveys.

Difference between craft determination rate using 30 percent rule and average rate paid in craft	All craft determinations using 30 percent rule		Craft determinations resulting in an open-shop rate		Craft determinations resulting in an open-shop rate	
	Number	Percent	Number	Percent	Number	Percent
Total	1,609	100.0	1,292	100.0	317	100.0
Difference between craft determination rate and average rate paid in craft	511	31.8	457	35.4	64	20.2
Total	295	18.3	255	19.7	40	12.6
Residential	511	31.8	362	28.0	149	46.5
Commercial	295	18.3	255	19.7	40	12.6
Highway	319	19.8	278	21.5	41	12.9
Heavy	13	.8	11	.9	2	.6
Water and Sewer	13	.8	11	.9	2	.6
Difference between craft determination rate and average rate paid in craft	511	31.8	457	35.4	64	20.2
Total	295	18.3	255	19.7	40	12.6
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Heavy	13	.8	11	.9	2	.6
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Highway	319	19.8	278	21.5	41	12.9
Heavy	13	.8	11	.9	2	.6
Water and Sewer	13	.8	11	.9	2	.6

Source: Special tabulation of all craft determinations using 30-percent rule that were based on fiscal year 1978 surveys.

Note: Details may not add to totals due to rounding.

Employment Standards Administration
Division of Evaluation and Research

DISCUSSION OF LITERATURE ON
ECONOMIC IMPACT OF DAVIS-BACON

REPORT ON THE COMMISSION ON GOVERNMENT
PROCUREMENT, VOL. 3

The Commission on Government Procurement was created by Public Law 91-129, in November 1969, to study and recommend to Congress methods "to promote the economy, efficiency, and effectiveness" of procurement by the Executive Branch of the Federal Government.

The basic objective of the Commission was to analyze the administrative aspects of the Act, possible conflicts with other statutes and general enforcement issues. The thrust of the report is directed to management issues and not to specific economic factors and effects.

Although the main thrust is administrative, the report does refer to GAO Report B-146842, which claimed that, on the basis of 29 projects surveyed over a decade costing \$88 million, the cost add-on attributable to Davis-Bacon was \$9 million. (This is the same report quoted by the contractors in the Presidential Conference on Inflation in 1974, discussed below.) Even here, the Commission sought to evaluate the role of administrative and legal problems and bottlenecks in terms of explanatory variables of cost add-ons.

The Commission's report revealed widespread and growing concern about the impact of labor conditions and laws on construction. Some of the problems noted by the Commission resulted from the evolution of the labor movement in the construction industry and general labor legislation, and effect both public and private construction. Others resulted from conditions peculiar to government contracting, or laws applicable to government contractors.

The Commission confirmed that construction costs in both the public and private sectors are increasing and that the onus rests substantially not on Davis-Bacon per se, but on their

institutional practices. As a result, the repeal of Davis-Bacon would not reduce Federal construction costs because these other variables would remain.

After reviewing the report the Department notes that:

1. The Commission Report only repeats the statements made to it that Davis-Bacon contributes to inflation. Ostensibly these are the same contractors and contractor associations who registered their complaints before the Presidential Conference on Inflation convened in 1974. The same GAO Report No. B-146842 is quoted by both this Commission and the President's Conference on Inflation.
2. The findings of the Commission regarding statutory and functional conflicts and ambiguities need to be investigated. Many of these have been resolved by administrative orders and inter-agency memoranda of agreement.
3. The two study groups within the Commission which reviewed Davis-Bacon arrived at different conclusions. They were both composed of representatives of contractors and Federal contracting agencies. Study Group #13c concluded that the Act was no longer needed and recommended that it be repealed or amended. The Commission's Final Report did not include this recommendation. Study Group #2 found, however, that the Act remains relevant and that without it the wages of local construction workers would be undercut by firms competing at lower than prevailing wage scales.

PRESIDENT'S CONFERENCE ON INFLATION

This Conference was convened in 1974 by then President Ford as a "brain trust" to advise on ways and means to cope with inflation during a period of chronic stagflation. The panel on the construction industry was made up of representatives of contractors, contractor associations, subcontractor associations and less than six union representatives.

The contractor associations' hypothesis was that the prevailing wage determination methodology of DOL relies exclusively on union wage levels in an area and applies them indiscriminately to Federal construction projects. Consequently, these associations contended that Davis-Bacon tends to spread a homogeneous union wage across crafts throughout the area. It was alleged that since only the large construction firms can afford to pay these rates, small firms are prevented from bidding for Federal construction projects, thereby eliminating free competition, spreading monopoly, and artificially increasing Federal construction project costs. Contractor associations also contended that in cases where DOL cannot obtain local wage rates it will even go to some other jurisdiction and "import" these wage rates rather than undertake independent wage surveys as required by the statute.

Panel members provided no original quantitative evidence concerning the Davis-Bacon Act. One of the contractor associations quoted a GAO study which reviewed 29 projects over a decade costing \$88 million on which \$9 million are attributed to Davis-Bacon. These figures were accepted without any explanation as to how they are derived.

One of the position papers of the Contractors Mutual Association explicitly acknowledges that the working conditions, hazards, seasonality

and other factors prevalent in the construction industry justify wage differentials for construction workers. This document demands that limits be set on cost-plus contracts in order to curb inflation in construction costs.

The Department's analysis of this report shows:

1. The contextual economic conditions prevalent during the convening of the Presidential Conference on Inflation need to be taken into account when assessing the unanimous call by contractors and their associations for the repeal of Davis-Bacon. The severe recession had devastated the construction industry which has always been cyclical.

2. The Conference failed to develop the necessary paradigm which incorporates the entire spectrum of variables which contribute to higher Federal construction costs. This is necessary in order to develop a viable conclusion on which policy makers can act confidently. Most important to such a paradigm is the development of a time series analysis of financing and land costs. A review of contracting agency practices such as cost-plus, lump sum, retainage and bonding requirements needs to be scrutinized in order to identify factors contributing to higher costs. The nature and cost impact of interim construction financing also needs to be analyzed as well as other hidden costs and charges. There is also a need to examine accounting practices of contractors related to commingling, cash flow, equipment rental and use of equipment costs under Federal projects but utilized on non-Federal projects, and so on.

THE DAVIS-BACON: HISTORY, ADMINISTRATION,
PRO AND CON ARGUMENTS, AND CONGRESSIONAL
PROPOSALS

(STUDY BY THE CONGRESSIONAL RESEARCH SERVICE
LIBRARY OF CONGRESS)

This study by the CRS developed in July 1978 provides a comprehensive overview of Davis-Bacon. The study is undertaken in five parts: (1) The Davis-Bacon Act and Related Statutes, (2) Legislative History of the Act, (3) Administration of the Act, (4) Arguments Pro and Con the Davis-Bacon Principle, and (5) Congressional Bills and Proposals Relating to Davis-Bacon. Some significant contributions of the report are outlined below:

Legislative History of the Act

The original statute prescribed the threshold limit at \$5,000 in 1931 and an amendment in 1935 reduced the threshold limit to \$2,000 and this was signed into law by President Roosevelt on August 30, 1935. The present law is substantially the same as the 1935 amendment. The legislative intent of reducing the threshold limit was to bring under the Act's purview contracts for painting and decorating.

Administration of the Act

In order to ensure due process to contractors covered by Davis-Bacon, the Department established a Wage Appeals Board in 1963 by Secretary's Order No. 32-63 in response to a recommendation by the House Committee on Education and Labor that, since judicial review of wage determinations was not practical, an in-house arrangement would be desirable. The authority and responsibilities of the Wage Appeals Board (WAB), which consists of three public members appointed for indefinite terms by the Secretary of Labor, are spelled out in Secretary's Order No. 24-70, dated October 7, 1970. During the calendar year

1977, only 34 cases were filed with the WAB and 20 decisions were issued; in 1978 through May only 15 cases were filed with the Board. The rules of WAB practice are spelled out in 29 CFR Part 7.

Arguments Pro and Con the Davis-Bacon Principle

The report undertakes to enumerate the various arguments in favor of and opposed to Davis-Bacon. The report explicitly declares that the pro and con arguments "are transmitted by the Congressional Research Service without critical evaluation; they say nothing about the position of the Service". This needs to be taken into consideration when evaluating GAO's inclusion of the CRS Report.

The Department's evaluation is that the section dealing with the pro and con arguments surrounding Davis-Bacon constitutes a faithful attempt to enumerate the controversies for and against Davis-Bacon. However, the presentation is overly simplistic, does not contain any statistically significant variables and does not contain any evaluation of the relative merits or strengths of the arguments commonly raised.

IN DEFENSE OF DAVIS-BACON

This report was prepared by a private consulting firm for the 59th Convention of the Building and Construction Trades Department of AFL-CIO in December 1977. Its objective was to provide an overview from organized labor's standpoint of the Davis-Bacon Act with special emphasis on criticisms levelled against the statute, and to expose misconceptions or misinterpretations behind such criticisms.

The theme is covered in four parts. The first part titled "An Overview of Davis-Bacon" deals with three key issues which are germane to the enforcement of Davis-Bacon. These are: occupation/project classification; area/project determinations; appeals of determination (Wage Appeals Board).

The second part of the monograph is titled "A Brief Legislative History." By pointing out that most of the State "little Davis-Bacon" statutes were enacted either before or after the Depression, the authors refute the criticism the Davis-Bacon was relevant only to the economic circumstances surrounding the Great Depression and has become obsolete thereafter.

The third and most extensive part of the document is titled "Attacks on Davis-Bacon." This identifies the wide spectrum of criticisms levelled at Davis-Bacon and refutes them. For instance, it points out that union wage scales are not uniformly applied. Approximately 50 percent of the Davis-Bacon wage rates contain non-union rates. The early legislative history of the Davis-Bacon Act clearly indicates Congressional intent to protect union wage standards rather than have them subverted by application of nonunion or other "average" wage schedules. Consequently if the "prevailing wage" is the same as the union wage, this is consistent with the statute because "organized labor may be in a minority position, with its standards vulnerable to assault by nonunion contractors, and that it is this type of situation that the prevailing wage program is supposed to cover." (page 27 of monograph).

The monograph devotes considerable attention to the controversy related to the Act's alleged inflationary effects. It argues that, while union wages are admittedly higher than non-union wage rates, productivity of union workers is demonstrated to be higher. This position is supported by Professor Mandelstamm's study which found that despite higher wage scales of union workers, total labor costs for union and non-union workers were virtually the same. This situation was attributed to higher productivity of unionized workers.

The criticisms raised by Professor Thieblot are refuted, as is his case study of the "C-7 Segment" of the Washington, D.C. rapid rail system.

The fourth and last part of the monograph is the "Need to Strengthen Davis-Bacon". Special importance is given to administrative problems, especially lack of enthusiastic enforcement by the procurement agencies which have the initial responsibility for the enforcement of Davis-Bacon. The inadequate enforcement by the Army Corps of Engineers and the U.S. Postal Service are mentioned as case studies.

The Department's evaluation of this monograph is that it is carefully researched and contains important insights into the complex issues surrounding Davis-Bacon. It recognizes deficiencies where these exist but confirms the net economic, industry and social value of the program.

THE NATIONAL ACADEMY OF SCIENCE REPORT: FEDERAL
PROCUREMENT POLICY FOR CONSTRUCTION

The objective of this 1978 NAS Report was to critique the recommendations made by the Commission and make suitable recommendations.

The NAS Committee made the following comments:

1. The Davis-Bacon Act should not be repealed since the original rationale for the Act remains valid, and since it has benefited the government by contributing to labor peace on Federal projects.
2. The Act should be reviewed in the light of current conditions, and certain "undesirable aspects" which increase government administrative costs should be examined and eliminated.
3. The dollar threshold level should be increased, and in no case should it be less than \$10,000.
4. The 30 percent rule should be eliminated and replaced by a "statistical mean" of the wages paid in a given area for a given classification as the prevailing wage rate.
5. The Committee disagrees that a paperwork reduction would result in real savings since any savings would be offset by increased administrative cost for construction agencies in investigating complaints of Davis-Bacon violations.

The Department's analysis of this report is that:

- A. The NAS Committee agreed that the threshold amount should be increased to \$10,000. The rationale seems to be the resultant reduction in administrative loads. However, a low threshold amount is required because (a) the construction industry is extremely fragmented, decentralized, and locally oriented and employs very few workers on small projects, and (b) the fact that a worker is involved on a "small" project, whether it be painting or light rehabilitation, does not justify exclusion from Davis-Bacon protections.

B. The NAS Committee recommended the elimination of the 30 percent rule. However, the alternative(s) recommended are ambiguous. It recommended adoption of "statistical mean" wages. This is administratively difficult. The recent M.I.T. Report, referred to below, stated that, due to the complex wage structures found in construction industry sub-markets, the identification of mean or average wages would be impossible. As discussed above on page 22, of the comments and shown in Enclosure 5, the Department has reviewed each of the determinations made in FY 1978, in which this 30-50 percent step was followed. It found a difference of only nine cents when all 1,609 wage determinations were computed by both the 30-50 step method and the averaging method. Early next year the Department will undertake a study in 17 labor areas to determine whether similar 1976 findings of the Council on Wage and Price Stability, also discussed on page 22 of the comments, are still valid.

COMMISSION ON FEDERAL PAPERWORK,
FINAL REPORT, WASHINGTON, D.C.,
JUNE 1977

The Commission recommended in a June 1977 report that the \$2,000 threshold currently used by Davis-Bacon be raised to \$10,000 thereby reducing the paperwork burdens of smaller firms less able to bear them.

The Commission's recommendation indicates unfamiliarity with the fragmented and decentralized structure of the nation's construction industry. The 1972 Census of Construction found that out of 900,000 establishments in the U.S. engaged in contract construction, 78 percent had annual receipts of less than \$100,000. The construction industry is not oligopolistic, but is made up of small firms. Obviously, the purpose of keeping threshold limits low is to ensure maximum coverage.

While the reduction of paperwork burdens and costs is desirable, this should not be achieved at the expense of removing the necessary protections provided by the Davis-Bacon Act. Many of the alleged administrative costs of the Act are imposed by other State and Federal laws, or simply constitute sound business practice. In any event, these "costs" would remain regardless of whether the threshold is increased. There are ways of effectuating paperwork reductions, but a reduced threshold should not be one of them.

M.I.T. STUDY TITLED "A COMPARISON OF WAGES AND LABOR
MANAGEMENT PRACTICES IN UNION AND NONUNION CONSTRUCTION"

This research study was published in 1978 by the M.I.T. Department of Civil Engineering and the Economics Department of the National Association of Homebuilders. A sample survey of firms in the construction industry in eight metropolitan areas (Boston, Baltimore, Atlanta, New Orleans, Grand Rapids, Kansas City, Denver and Portland) furnished the data sets necessary to develop this study. The eight metropolitan areas were selected in order to ensure a geographic dispersion across the country and also to contain substantial amounts of open-shop construction activity.

The objective of the study was to compare and contrast the wages and work practices union and open-shop construction. Two types of surveys were used. First, a wage questionnaire was mailed to contractors in the eight SMSAs. Second, a lengthy contractor interview schedule was conducted with a sample of firms drawn from the union and nonunion sectors of the industry. Both the wage questionnaire and the contractor interviews were designed to permit the comparison and cross-tabulation of data by firm type, by size, by product market, and by union or nonunion status.

The report authoritatively states that the controversy over Davis-Bacon and other prevailing wage laws has never "effectively established" that such laws do in fact raise wages or actually raise the final costs of construction. The opening part of Chapter 5 affirms that the debates surrounding Davis-Bacon have been "more polemic than substantive" and that there are no "serious studies" showing the actual cost impact of Davis-Bacon. Even the few case studies which may show higher wage bills and inflationary effects are inadequate to conclusively establish the inflationary effects of Davis-Bacon. Commenting on the COWPS study, this chapter notes that even broad based studies which indicate relatively small and ambiguous outcomes of prevailing wage laws, have a "tendency to dramatize the supposed impact on construction costs."

The chapter then proceeds to show that higher wages and higher productivity go together, and the assumption that "labor productivity is unrelated to wage levels" as is assumed in many criticisms of Davis-Bacon is untrue. The report's position is that higher Davis-Bacon wage rates are accompanied by higher productivity rates. Interviews conducted by the M.I.T. researchers confirmed this in the areas of selection of workers ("several of the nonunion contractors interviewed pointed out that by offering higher wages on public projects, they were able to attract workers with more training and/or experience"); incentive to workers ("over half of these nonunion contractors used the difference between wages on their public and private work to reward their most loyal and productive workers"); incentive to managers ("nonunion contractors when required to pay higher wages to their workers, devote more attention to selecting, training and especially managing those workers"); reduction in first line supervision ("the interview results suggest strongly that union journeymen require less supervision than nonunion workers within comparable trades").

Chapter 5 concludes that the key issue in Davis-Bacon analysis is the extent to which the higher productivity generated by higher wage levels is neutralized or offset by the higher wages and indirect costs. The M.I.T. Report candidly acknowledges that the findings "preclude wholesale assumptions or allegations about relative union productivity. Thus, the impact of Davis-Bacon on construction costs really needs to be studied on the basis of an unbiased sample of the unit labor costs and final costs of particular construction projects, both union and open-shop, before any general conclusions can be made."

The M.I.T. study concludes with the observation that the law does not simply reflect the "remains of an idiosyncratic response to Depression-era problems in the construction industry rather is represents one particular philosophy of government."

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