

OMB NO. 1215-0140
SUPPORTING STATEMENT

**Davis-Bacon and Related Acts/Contract Work Hours and Safety
Standards Act Reporting Requirements - 29 C.F.R. Part 5**

1. Regulations 29 C.F.R. Part 5 prescribe labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon Act (DBA), 40 U.S.C. § 3141 *et seq.*, the Davis-Bacon Related Acts (DBRA), and labor standards for all contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. § 3701 *et seq.* The DBA and DBRA require payment of locally prevailing wages and fringe benefits, as determined by the Department of Labor (DOL), to laborers and mechanics on most federally financed or assisted construction projects. See 40 U.S.C. § 3142(a) and 29 C.F.R. § 5.5(a)(1). The CWHSSA requires the payment of one and one-half times the basic rate of pay for hours worked over forty in a week on most federal contracts involving the employment of laborers or mechanics. See 40 U.S.C. § 3702(c) and 29 C.F.R. § 5.5(b)(1). The requirements of this information collection consist of: (A) reports of conformed classifications and wage rates, and (B) requests for approval of unfunded fringe benefit plans.
 - A. Conformance Reports (29 C.F.R. § 5.5(a)(1)(ii)): DBA section 1(a) provides that every contract subject to the DBA must contain a provision (a wage determination) stating the minimum wages and fringe benefits to be paid the various classes of laborers and mechanics employed on the contract. See 40 U.S.C. § 3141(c)(1) and 29 C.F.R. § 5.5(a)(1)(i). This requirement necessitates a method for establishing minimum rates for classes of employees omitted from wage determinations, primarily due to wage data being unavailable; therefore, regulations 29 C.F.R. § 5.5(a)(1)(ii) requires that any class of laborer or mechanic not listed in the wage determination that is to be employed under the contract shall be classified in conformance with the wage determination. A report of the conformance action (or, where there is disagreement among the parties, the questions and views of all parties) shall be submitted through the contracting officer to DOL for review and approval. 29 C.F.R. § 5.5(a)(3)(i).
 - B. Unfunded Fringe Benefit Plans (29 C.F.R. § 5.5(a)(1)(iv)): The DBA provides that “wages” may include “costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers or mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program.” 40 U.S.C. § 3141(2)(B)(ii). Where a benefit plan is not of the conventional type described in the DBA and/or common in the construction industry that is established under a customary fund or program, it is necessary to determine from the circumstances whether the benefit is *bona fide*, as required by the DBA; thus, regulations 29 C.F.R. § 5.5(a)(1)(iv) provides for contractors to request approval of unfunded fringe benefit plans.

2.
 - A. Conformance Reports: The Wage and Hour Division (WHD) of the DOL reviews a proposed conformance action report to determine the appropriateness of the request. The WHD considers such factors as: (1) the work of the proposed classification, which cannot be work that is performed by a classification already listed in the wage determination; (2) whether the proposed classification is utilized in the area by the construction industry; and (3) whether the proposed wages and fringe benefits bear a reasonable relationship (*i.e.*, appropriate comparison of skills and duties) to the rates contained in the wage determination. Upon completion of the review, the WHD approves, modifies, or disapproves the conformance request and issues a determination.
 - B. Unfunded Fringe Benefit Plans: Taking credit for payments to fringe benefit plans that are not *bona fide* violates the DBA and DBRA. WHD reviews requests for approval of unfunded fringe benefit plans to determine the propriety of the plans.
3. Information required by the report of a proposed conformance action or a request to review an unfunded fringe benefit plan is acceptable in any format, electronic or otherwise. Pursuant to the Government Paperwork Elimination Act (GPEA), the WHD will accept electronic (fax and email) submissions of requests to approve conformed wage rates and unfunded fringe benefit plans.
 - A. Conformance Reports: The WHD currently receives about 150 electronic (fax and email) conformance requests annually from contracting officers. Each individual contracting agency must determine any electronic submission option of the information sent by interested parties (contractors and workers), because they provide the information directly to each contracting agency (not to the DOL).
 - B. Unfunded Fringe Benefit Plans: Respondents may submit required information in any format, including fax and email. DOL receives about six requests to approve unfunded benefit plans each year, and the expense to expand electronic submission options (*e.g.*, on-line submission) would not be justified.
4. The basic recordkeeping requirements of this regulation (29 C.F.R. §§ 5.5 (a)(3)(i), 5.5(c), and 5.15) are a restatement of requirements cleared under OMB control number 1215-0017 (Records to be Kept by Employers under the Fair Labor Standards Act (FLSA), 29 C.F.R. part 516). Requirements at regulations 29 C.F.R. § 5.5 (a)(3)(ii) for weekly reporting of DBA-required payroll items are approved under OMB number 1215-0149.

Contractors employing apprentices or trainees may pay less than the applicable wage determination rate, provided the apprentices or trainees are employed pursuant to, and individually registered in, approved programs. The Employment and Training Administration of the DOL administers these apprenticeship or training programs that involve substantial training obligations and require the maintenance of detailed records

on the part of the contractor. (For an example of these requirements, see regulations 29 C.F.R. § 29.6, approved under OMB control number 1215-0223.) Thus, the requirement in 29 C.F.R. § 5.5(a)(3)(i) that a contractor employing apprentices or trainees maintain written evidence of the registration of the apprentices and trainees along with documentation of the ratios and wage rates prescribed in the applicable programs does not impose any additional burden on contractors.

This submission pertains to the information collection requirements not cleared under OMB control numbers 1215-0017, 1215-0149, or 1215-0223, and the information is not available from any other source.

5. This information collection request does not have a significant impact on a substantial number of small entities.
6. A. Conformance Reports: The report of a proposed conformance action, if its purposes are to be effectively achieved, is to be submitted by the contracting agency promptly upon discovery that a classification of laborer or mechanic on the contract is not listed in a DOL wage determination. Submission less frequently would not be feasible in view of the potential serious compliance problems that could develop.

Failure to collect the information would prevent the WHD from issuing the legally required additional wage rates where a wage determination does not include all job classifications and could result in serious enforcement problems, such as unduly protracted compliance reviews when it is discovered during investigations that appropriate conformance action was not taken. Moreover, there would be no assurances that employees in the unlisted classification would receive the wage protections the statutes provide. Failure to monitor the conformance requirements also can harm contracting agencies by causing labor unrest and potential work stoppages during contract performance.

- B. Unfunded Fringe Benefit Plans: The WHD expects a contractor only to obtain approval for any given unfunded fringe benefit plan one time. Failure to collect the information would prevent the WHD from being able to review and grant approval to *bona fide* unfunded fringe benefit plans. Taking fringe benefit credit for payments to plans that are not *bona fide* violates DBA/DBRA provisions. If such plans are not detected at the outset of their implementation, they can result in an accumulation of substantial back wage liabilities and potentially result in suspension or debarment of the contractor.
7. This information collection request involves no special circumstances.
8. DOL contacts with respondents made during the course of regular investigation activities and during general outreach sessions have not indicated any concerns with these information collection requirements. The DOL published a notice in the *Federal*

Register inviting public comment on [October 31, 2006 in Vol.71, No 210 pages 63782 and 63783] and received no comments.

9. The DOL offers no payments or gifts to respondents.
10. The DOL offers no pledge of confidentiality in association with this information collection. As a practical matter, the DOL would only release this information in accordance with the provisions of the Freedom of Information Act (5 U.S.C. § 552a) and its attendant regulations, 29 C.F.R. part 70, and with the Privacy Act (5 U.S.C. § 552b) and its attendant regulations, 29 C.F.R. part 70a.
11. This information collection asks no sensitive questions.
12. A. Conformance Reports: Several government agencies (*e.g.*, the Department of Defense, the General Services Administration, the Department of Transportation, and the Federal Highway Administration) that account for a very large portion of federally financed or assisted construction contracts subject to the DBA and DBRA have developed standardized procedures for submitting requests for conformed wage rate approval. The DOL estimates respondents spend approximately 15 minutes providing information to a contracting agency regarding each conformance request. Based on an estimated 3000 reports submitted annually, the total annual burden is 750 hours. (3000 responses x 15 minutes = 750 hours)
- B. Unfunded Fringe Benefit Plans: The DOL annually receives about six requests to approve unfunded fringe benefit plans and estimates it takes approximately 1 hour to assemble the plan data, prepare, and transmit each request for approval of an unfunded fringe benefit plan, for an annual burden of 6 hours. (6 plans x 1 hour = 6 hours)

The DOL bases these estimates on agency experience and workload data.

TOTAL ANNUAL BURDEN ESTIMATE FOR CONFORMANCE REPORTS AND UNFUNDED FRINGE BENEFIT PLANS – 756 HOURS

The DOL has used the annual average hourly earnings for a production or non-supervisory worker in the construction industry in June 2006 of \$19.99 (http://www.bls.gov/news.release/archives/empsit_09012006.pdf, Table B-3) to estimate respondent costs. Estimated annual respondent costs are \$15,112.44. (\$19.99 x 756 hours)

13. The DOL estimates the annual mailing cost for respondents to be \$1263.00 (3006 responses x \$.42 [\$0.39 postage + \$.03 per envelope]).

14. A. Conformance Reports: The DOL estimates it annually receives approximately 3000 requests for conformed wage rates. The DOL estimates annualized federal costs associated with these reports, exclusive of fringe benefits and overhead, as follows:

(1). Procuring agencies: 5 minutes x 3000 x \$11.90/hr x 2 of GS 3, step 4 (rest of U.S.) clerical costs processing reports to and from the DOL \$5950.00

10 minutes x 3000 x \$27.39/hr of GS 11, step 4 (rest of U.S.) agency professional processing \$13,695.00

Mailing charges (3000 x \$.42 [\$.39 postage + \$.03 per envelope]) agencies to DOL \$1260.00

(2). DOL: 25 minutes x 3000 x \$28.61/hr of GS 11, step 4 (Washington, DC) processing \$35,762.50

Mailing charges (3000 x \$.42 [\$.39 postage + \$.03 per envelope]) \$1260.00

Total Federal costs for Conformance Reports \$57,927.50

B. Unfunded Fringe Benefit Plans: The DOL annually receives approximately six requests to approval unfunded fringe benefit plans and estimates annualized federal costs associated with such requests, exclusive of fringe benefits and overhead, as follows:

5 hours x 6 x \$34.28/hr of GS 12, step 4 (Washington, DC) review and analysis of plans \$1028.40

Mailing charges (6 x \$.42 [\$.39 postage + \$.03 per envelope])) \$2.52

Total Federal Costs for Unfunded Fringe Benefit Plans \$1030.92

TOTAL ANNUAL FEDERAL COSTS FOR CONFORMANCE REPORTS AND UNFUNDED FRINGE BENEFIT PLANS \$58,958.42

15. The DOL has increased the estimate of the number of conformance reports from 1500 to 3006 and the annual burden estimate from 375 hours to 750, an increase of 375 hours. Enhanced tracking systems allow the DOL to more accurately track and report data on incoming conformance reports and provide more accurate data than was previously available.

The DOL has increased the estimated operation and maintenance costs from \$602.40 to \$1263.00, an increase of \$660.60, because of the increase in estimated responses and increased postage costs.

16. The DOL does not publish this information.
17. The DOL has no forms associated with this information collection.
18. The DOL is not seeking any exceptions to the certification requirements.