

## **SUPPORTING STATEMENT**

### **Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act Reporting Requirements- 29 CFR Part 5 OMB Control Number 1235-0023**

1. Circumstances that make the collection of information necessary

Regulations at 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 (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. 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 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, regulation 29 C.F.R. § 5.5(a)(1)(iv) provides for contractors to request approval of unfunded fringe benefit plans.

2. By whom, how and for what purpose the information is to be used.

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. Consideration of the use of improved information technology

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 the DOL).

B. Unfunded Fringe Benefit Plans: Respondents may submit required information in any format, including fax and email. DOL receives about three 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. Efforts to identify duplication

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 1235-0018 (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 control number 1235-0008.

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 1205-0223. 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.

The information is not available from any other source.

5. Methods to minimize the burden to small businesses if involved

This information collection does not have a significant impact on a substantial number of small entities.

6. Consequences to federal program if collection were conducted less frequently

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 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 the 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. Explain any special circumstances that would cause the information collection to be conducted in a manner inconsistent with guidelines.

This information collection involves no special circumstances.

8. Consultation

The DOL published a notice in the Federal Register inviting public comment on November 8, 2012 and no comments were received.

9. Explain any decision to provide any payment or gift to respondents.

No payment or gift of any kind is provided by DOL to respondents.

10. Describe any assurance of confidentiality provided to respondents.

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. § 552) and its attendant regulations (29 C.F.R. part 70) and with the Privacy Act (5 U.S.C. § 552a).

11. Additional justification for any questions of a sensitive nature.

This information collection asks no sensitive questions.

12. Estimates of reporting and recordkeeping hour and cost burdens of the collection of information.

- A. Conformance Reports: Several government agencies (e.g., Department of Defense, General Services Administration, Department of Transportation) that account for a 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 8,500 reports submitted annually, the total annual burden is 2,125 hours. (8,500 x 15 min./60 min per hour).
- B. Unfunded Fringe Benefit Plans: The DOL annually receives about three 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 annual burden of 3 hours. (3 plans x 1 hour = 3 hours).

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

**TOTAL ANNUAL BURDEN ESTIMATE FOR CONFORMANCE REPORTS AND UNFUNDED FRINGE BENEFIT PLANS—2,128 HOURS**

The DOL used the annual average hourly earnings for a production or non-supervisory worker in the construction industry in August 2012 of \$25.72 ([http://www.bls.gov/news.release/archives/empsit\\_09072012.pdf](http://www.bls.gov/news.release/archives/empsit_09072012.pdf) Table B-3) to estimate respondent costs. Estimated annual respondent costs are \$54,732.16 (\$25.72 x 2,128 hours).

13. Estimates of annualized capital and start-up costs

The DOL estimates the annual mailing cost for respondents to be \$3,996.41 (8,503 x .47 (.44 postage + .03 envelope)).

14. Estimates of annualized Federal Government costs

A. Conformance Reports: The DOL estimates it annually receives 8,500 requests for conformed wages under DBA/DBRA. The DOL estimates annualized federal costs associated with these reports, exclusive of fringe benefits and overhead as follows-

- 1) Procuring agencies: 5 minutes x 8,500 x \$13.14/hr x 2 of GS-3, step 4 (rest of U.S.) clerical costs processing reports to and from the DOL = \$18,615.

10 minutes x 8,500 x \$30.26/hr of GS-11, Step 4 (rest of U.S.) agency professional processing = \$42,868.

Mailing charges 8,500 x \$.47 (\$.44 postage + \$.03 envelope) = \$3,995.

2) DOL: 25 minutes x 8,500 x \$32.92/hr of GS-11, step 4 (Washington, D.C.) processing \$116,591.

Mailing charges – 8,500 x \$.47 (\$.44 postage + \$.03 envelope) = \$3,995.

**Total Federal costs for Conformance Reports = \$186,064.**

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

5 hours x 3 x \$39.46/hr of GS-12, Step 4 (OPM salary table Washington, DC location [http://www.opm.gov/oca/12tables/html/dcb\\_h.asp](http://www.opm.gov/oca/12tables/html/dcb_h.asp) ) review and analysis of plans = \$592.

Mailing charges (3 x .47 [\$0.44 postage + \$0.03 envelope])= \$1.

**Total Federal Costs for Unfunded Fringe Benefit Plans = \$593.**

**TOTAL ANNUAL FEDERAL COSTS FOR CONFORMANCE REPORTS AND UNFUNDED FRINGE BENEFIT PLANS = \$186,657.**

15. Reasons for change in burden

The actual number of Unfunded Fringe Benefit Plans processed by DOL has decreased since the last renewal. The number of conformances processed by DOL has increased. This may in part be due to the stimulus package by the federal government in response to the economic downturn as many of those government funded projects are now getting up and running and these projects are subject to DBA and DBRA requirements. The increase in burden cost is also in part due to the fact that the BLS figure has increased since the last time the information collection was submitted.

16. For collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis and publication.

The DOL does not publish this information.

17. Reasons for seeking not to display the expiration date for OMB approval of the information collection.

The DOL has no forms associated with this information collection.

18. Explain each exception to the certification statement

The DOL is not seeking any exceptions to the certification requirements.