

The Associated Builders and Contractors (ABC) submitted a comment to the Office of Management and Budget (OMB) in response to the 30-day Federal Register Notice published May 7, 2017. OMB asked the agency to consider the comment and provide a response for use during the review.

- 1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ABC Comment: ABC has repeatedly urged the Department to make greater use of data that is already captured by the Bureau of Labor and Statistics (BLS). BLS's data uses proven statistical sampling techniques to arrive at an accurate and market-driven approximation of prevailing wages throughout the country. There is no statutory obstacle to having BLS conduct Davis-Bacon wage surveys.

DOL Response: DOL has previously considered the use of BLS's Occupational Employment Statistics (OES) data to determine Davis-Bacon and Related Act (DBRA) prevailing wages. However, DOL has concluded that such an approach would contravene legal requirements for the determination of DBRA prevailing wages. For example, BLS's OES wage estimates do not calculate a "prevailing wage" as defined under the DBRA. The DBRA's implementing regulations define "prevailing wage" as the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. See 29 C.F.R. § 1.2(a)(1). If the same wage is not paid to a majority of those employed in the classification, the prevailing wage is the average of the wages paid, weighted by the total employed in the classification. *Id.* BLS OES wage estimates are instead either estimates of mean wages or percentiles, such as the median wage.

- 2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

ABC Comment: The Department inaccurately estimates that it will take 20 minutes for an employer to complete form WD-10. The Department's estimate fails to take into consideration that a vast majority of construction contractors, including merit shop contractors, are small businesses. Based on ABC members' experiences, it can often take 20 minutes just to read and understand how to fill out the form WD-10, and after reviewing the form, contractors often determine that collecting and imputing the information is too much of a time burden, so they opt not to participate. Thus, the current collection process leads to the survey producing statistically unrepresentative samples.

The current methodology used by the Department has been shown to be flawed through multiple reports, including those by the Government Accountability Office (GAO) and DOL's Office of the Inspector General (OIG). A 2004 OIG report revealed that nearly 100 percent of the wage determinations that were analyzed contained errors. More recently, a 2011 GAO report found that "most survey forms verified against payroll data had errors." The report further stated that more than "one-quarter of the final wage rates for key job classifications were based on wages reported for six or fewer workers."

DOL Response: The agency does not believe the time estimate for responding to this information collection is incorrect. . The DOL estimate is the average response time; thus, we agree it may take longer for some respondents to complete the form; however, others may require less time to respond.

As ABC notes, concerns regarding DOL's DBRA prevailing wage survey process were raised in reports from 2004 and 2011. In response to these reports, WHD previously obtained OMB approval for substantive revisions to the collection, making improvements to the automated system used in determining prevailing wage rates and to the electronic WD-10 form. WHD is committed to gathering and reporting data in an effective and efficient manner.

3) Enhance the quality, utility and clarity of the information to be collected.

ABC Comment: As noted above, the current collection process and publication leads to inaccurate and unscientific wage rates. Under the Department's current rules, a survey can be published if it has a minimum of two companies with three workers' wages from each. To enhance the quality of the information collected, the agency should utilize the data already being collected by BLS. Currently, the Department uses BLS data (specifically the Occupational Employment Statistics survey) for the Service Contract Act and the Foreign Labor Certification program, which are both prevailing wage requirements.

BLS already has in place two separate surveys that are done on an annual basis to estimate occupational wages: the Occupational Employment Statistics survey, which estimates local wage rates, and the National Compensation Survey, which estimates benefits at the national level. By combining the results from these two surveys, the agency could effectively create more representative and accurate wage rates. Economists at BLS have already created a model to combine the two sets of wage data, and a similar methodology could be used to determine Davis-Bacon wage rates.

DOL Response: Please see our response to comment #1 addressing the use of BLS OES data. The DBRA's implementing regulations similarly prevent the use of BLS's National Compensation Survey data to determine DBRA prevailing wages (most notably, the estimate of benefits at a national rather than local level). Further, DOL's Service Contract Act and Foreign Labor Certification programs have different regulatory criteria that do not impose the same information collection needs and requirements as those under the DBRA.

4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

ABC Comment: As discussed previously, this information is currently collected by BLS; therefore OMB should not approve this information collection request and instead should utilize the data that is already collected by BLS.

DOL Response: Please see our response to comment #1 addressing the use of BLS data.