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# Supporting Statement for Semi-Annual Davis-Bacon Enforcement Report

## **Part A: Justification**

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**OMB No. 1910-5165**

*DOE F 354: Semi-Annual Davis-Bacon Enforcement Report*

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September 2024

U.S. Department of Energy  
Washington, DC 20585

# Table of Contents

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Part A: Justification.....	i
Introduction.....	2
A.1. Legal Justification.....	2
A.2. Needs and Uses of Data.....	2
A.3. Use of Technology.....	3
A.4. Efforts to Identify Duplication.....	3
A.5. Provisions for Reducing Burden on Small Businesses.....	3
A.6. Consequences of Less-Frequent Reporting.....	4
A.7. Compliance with 5 CFR 1320.5.....	4
A.8. Summary of Consultations Outside of the Agency.....	4
A.9. Payments or Gifts to Respondents.....	5
A.10. Provisions for Protection of Information.....	5
A.11. Justification for Sensitive Questions.....	5
A.12A. Estimate of Respondent Burden Hours.....	5
A.12B. Estimate of Annual Cost to Respondent for Burden Hours.....	6
A.13. Other Estimated Annual Cost to Respondents.....	7
A.14. Annual Cost to the Federal Government.....	7
A.15. Reasons for Changes in Burden.....	7
A.16. Collection, Tabulation, and Publication Plans.....	8
A.17. OMB Number and Expiration Date.....	8
A.18. Certification Statement.....	8

## Introduction

The information collection requests a revision of DOE's Semi-Annual Davis-Bacon Enforcement Report. All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by 29 CFR § 5.7(b) to submit a report of all new covered contracts/projects and all compliance and enforcement activities every six months to the Department of Labor (DOL). In order for DOE to comply with this reporting requirement, it must collect contract and enforcement information from the Recovery Act funded Loan Borrowers, Loan Guarantee Borrowers, DOE direct contractors, Infrastructure Investment and Jobs Act (IIJA) funding recipients, and other prime contractors that administer DOE programs subject to Davis-Bacon requirements. DOE will require that such entities complete and submit a Semi-Annual Enforcement Report (DOE F 354) every six months, by the 21st of April and the 21st of October each year.

A 60-day Federal Register Notice was published on June 25, 2024, and a 30-day notice on August 12, 2024. A correction to the 30-day notice was published on September 23, 2024. No comments were received during the 60-day notice period.

### A.1. Legal Justification

**Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.**

All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by 29 CFR § 5.7(b) to submit a report of all new covered contracts/projects and all compliance and enforcement activities every six months to the Department of Labor (DOL). In order for DOE to comply with this reporting requirement, it must collect contract and enforcement information from the Recovery Act funded Loan Borrowers, Loan Guarantee Borrowers, DOE direct contractors, Infrastructure Investment and Jobs Act (IIJA) funding recipients, and other prime contractors that administer DOE programs subject to Davis-Bacon requirements.

Department contractors are reimbursed through their contracts for the costs of providing this information, as it is an allowable contract cost under Department of Energy Acquisition Regulations (DEAR) 970.5204-3, 970.5227-1, and 970.5232-3. Therefore, those contractors would not be adversely impacted by the requirement to provide the information. The collection of this information is unlike a request for information imposed upon the general public, for which the costs are not reimbursed.

No similar collections are conducted to which the General Counsel is aware. The data collected is not available from any other source and is not duplicated elsewhere.

### A.2. Needs and Uses of Data

**Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection**

DOE will require that entities listed in A.1 complete and submit a Semi-Annual Enforcement Report every six months, between April 1st and 21<sup>st</sup>, and between October 1<sup>st</sup> and 21<sup>st</sup> each year. DOE compiles this data and delivers it to the Department of Labor (DOL) for review and record, pursuant to DOL's all-agency memorandum (AAM) number 189, issued on February 5, 1998.

<https://www.dol.gov/sites/dolgov/files/WHD/AAM/AAM189.pdf>. AAM 189 discusses the requirement pursuant to 29 CFR Part 5.7(b) that Federal agencies like DOE furnish DOL with a report on compliance with and enforcement of the Davis-Bacon and related Acts. The information sought in this collection is drawn from an itemized list from AAM 189, such as *total dollar amount of prime contracts awarded; amount of back wages found due; number of investigations completed*.

Since the last submission to OMB, DOE has updated the form instruction to eliminate confusion about the type of information sought. For example, the form previously asked respondents to "enter the number of contracts subject to the Davis-Bacon Act". That has been changed to "enter the number of prime contracts awarded by the Department of Energy (or public agency) which are subject to the Davis-Bacon and Related Acts during this reporting period." DOE made this change to ensure receipt of the correct information, and to accommodate the variety of respondents that are now anticipated.

Additionally, the information is used by DOE program staff to help assess respondents' compliance with DBA and the Contract Work Hours and Safety Standards Act (CWHSSA) overtime requirements. DOE Program Staff will review responses and investigate cases where a respondent's reported data does not appear to match the projects they are undertaking.

Please refer to Section A.1 for the specific uses of this data. With use of this form and associated data collecting tools DOE has never fallen out of compliance with DOL requirements.

### **A.3. Use of Technology**

**Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.**

DOE offers two technology-based options for submission of the form. Respondents enter the data manually into the Semi-Annual Davis-Bacon Enforcement Report Form either in a fillable Microsoft Forms survey, or the iBenefits module. 100% of submissions are collected electronically.

iBenefits is a web-based application found at <https://doeibenefits2.energy.gov/>. Access to the site is granted to users requiring access according to the Security Plan Process. The application hardware is operated, maintained, and controlled by the DOE Office of Chief Information Officer Application Hosting Environment. Users are located across the Department's complex of offices and facilities, and its hosted pages and relational database are in Germantown, Maryland. Operating within this overall architecture, iBenefits consists of several independent modules which share a common set of reference tables, user identification protocols, security mechanisms, data entry techniques, and other such operating conventions. This system was designed to reduce the information collection burden and improve the timeliness and usefulness of the information collected.

Microsoft Forms is a web-based application found at (<https://forms.office.com/>) that is used to create surveys. With the passage of the Infrastructure Investment and Jobs Act (IIJA), an exponential increase in submitted forms is anticipated. The Microsoft Forms option makes it more efficient to aggregate the incoming data. Microsoft Forms does not impose an additional burden on respondents.

#### **A.4. Efforts to Identify Duplication**

**Describe efforts to identify duplication.**

There is only one office within DOE authorized to collect this information, and no other entity collects this information related to DOE contracts and financial assistance agreements. Since this information is unique to DOE, duplication is not possible for this collection.

#### **A.5. Provisions for Reducing Burden on Small Businesses**

**If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The collection of information will not have a significant economic impact on small businesses or other small entities. The respondent contractors generally exceed the Small Business Administration's (SBA) size standards for small businesses. DOE expects that any potential economic impact of the collection of information on small businesses would be minimal because the contractors are reimbursed through their contracts for the costs of providing the requested information.

#### **A.6. Consequences of Less-Frequent Reporting**

**Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

If the information is not conducted or conducted less frequently, DOE would be in violation of DOL reporting regulations required by 29 CFR § 5.7(b). These regulations govern all Federal agencies administering programs subject to Davis-Bacon prevailing wage rates.

#### **A.7. Compliance with 5 CFR 1320.5**

**Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines:**

- (a) requiring respondents to report information to the agency more often than quarterly;**
- (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- (c) requiring respondents to submit more than an original and two copies of any document;**
- (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years;**
- (e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

(f) requiring the use of statistical data classification that has not been reviewed and approved by OMB;

(g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The collections are consistent with OMB guidelines and 5 CFR 1320.5.

### **A.8. Summary of Consultations Outside of the Agency**

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.

The Department published a 60-day Federal Register Notice and Request for Comments concerning this collection in the Federal Register on June 25, 2024, volume 89, number 122, and page number 53075. The notice described the collection and invited interested parties to submit comments or recommendations regarding the collection. No comments were received.

The Department published a 30-day Federal Register Notice and Request for Comments concerning this collection in the Federal Register on August 12, 2024, volume 89, number 155, and page number 65617. A correction to the 30-day notice was published on September 23, 2024, volume 89, number 184, and page numbers 77507 and 77508.

Other than the requests for comments in the Federal Register, no efforts were made to consult with persons outside DOE to obtain their views on the availability of data, frequency of collection, the clarity of instructions etc.

### **A.9. Payments or Gifts to Respondents**

**Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

In providing this information, the respondent is remunerated for costs expended fulfilling contractual requirements. This remuneration is consistent with the contract and does not constitute a payment or gift under 5 CFR 1320.5 (a)(1)(iii)(D).

## A.10. Provisions for Protection of Information

Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

When the collection of confidential information is involved, the provisions for handling the information are set forth in the contract documents, related Departmental regulations, and the Privacy Act of 1974 (5 U.S.C. § 552a). The iBenefits application includes processes designed to ensure the integrity and access of the data. Each contractor has unlimited access to its own data, and its personnel cannot access the data of any other contractor. DOE Field and Headquarters personnel can view the data entered by assigned contractors but are unable to change the data.

## A.11. Justification for Sensitive Questions

Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why DOE considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no collections in this package involving questions that are sensitive, personal, or private in nature.

## A.12A. Estimate of Respondent Burden Hours

Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

The burden provided represents the number of estimated labor hours for the contractor to furnish the data for each of the data collection categories.

There are an estimated 150 respondents. The collection of information is required twice a year by each respondent. Each respondent is estimated to require one hour per response, totaling two hours per annum per respondent—resulting in an estimated 300 responses.

**Table A1. Estimated Respondent Hour Burden**

Form Number/Title (and/or other Collection Instrument name)	Type of Respondents	Number of Respondents	Annual Number of Responses	Burden Hours Per Response	Annual Burden Hours	Annual Reporting Frequency
Semi-Annual Davis-Bacon Enforcement Report (1910-5165)	Contractor Human Resources Specialist	150	300	1	300	2
<b>TOTAL</b>		<b>150</b>	<b>300</b>		<b>300</b>	



### A.12B. Estimate of Annual Cost to Respondent for Burden Hours

Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under 'Annual Cost to Federal Government'.

Privately employed Contractor Human Resources Specialists will fill out and submit the reports. The average hourly wage rate published by the U.S. Department of Labor for this personnel type is \$37.63 per hour. DOE estimated the fully burdened wage rate ( $\$37.63 \times 1.4$  multiplier) as \$52.68. By multiplying this fully burdened wage rate (\$52.68) by the annual reporting frequency (2 times per year), we calculate that the total amounts to \$105.36 per respondent each year

**Table A2. Estimated Respondent Cost Burden**

Type of Respondents	Annual Burden Hours	Hourly Wage Rate	Total Respondent Costs
Contractor Human Resources Specialist	300	\$52.68	\$15,804
<b>TOTAL</b>	<b>300</b>		<b>\$15,804</b>

### A.13. Other Estimated Annual Cost to Respondents

Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

There are no other additional or secondary costs to Respondents.

### A.14. Annual Cost to the Federal Government

Provide estimates of annualized cost to the Federal government.

The iBenefits application is already in existence and there is no additional cost to run the Semi-Annual Davis-Bacon Enforcement Report module. The government must reimburse the contractor for these collection costs pursuant to their contracts. The average wage rate of \$52.68 per response per year, multiplied by 300 estimated responses, equals a total of \$15,804 per year. There is one Federal employee who reviews and analyzes the data submitted by respondents. The fully burdened hourly wage is about \$110.80, and it is estimated that approximately 10 hours are expended by the Federal employees reviewing and analyzing the data for a total of \$1,108 per year.<sup>1</sup>

Thus, the total annual cost is estimated to be \$16,912 ( $\$15,804 + \$1,108$ ) per year.

### A.15. Reasons for Changes in Burden

Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

<sup>1</sup> Fully burdened rate for GS-14-02 conducting this work,  $\$69.25 \times 1.6 = \$110.80$ .  
<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/DCB.pdf>  
Information on the 1.6 multiplier used, <http://www.bls.gov/news.release/ecec.nr0.htm>

The reason for the change in burden is due to the increase in anticipated responses resulting from the passage of the Infrastructure Investment and Jobs Act (IIJA). As a result of IIJA, there is an anticipated increase in the construction projects that will be subject to the Davis-Bacon Act. As a result, that will increase the number of respondents that need to complete the Semi-Annual Enforcement Report form. Some respondents might be required to submit more than one response depending on the number of contracts that they are awarded.

**Table A3. ICR Summary of Burden**

	<b>Requested</b>	<b>Program Change Due to Agency Discretion</b>	<b>Change Due to Adjustment in Agency Estimate</b>	<b>Previously Approved</b>
Total Number of Responses	300		150	150
Total Time Burden (Hr)	300		+150	150
Total Cost Burden	\$15,804		\$8,718	\$7,086

**A.16. Collection, Tabulation, and Publication Plans**

**For collections whose results will be published, outline the plans for tabulation and publication.**

This package contains no collections whose results will be published, tabulated, or used for statistical purposes. The information collection is used to ensure Department compliance with DOL regulations.

**A.17. OMB Number and Expiration Date**

**If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

The Department is not seeking approval to not display the expiration date for OMB approval of the information collections.

**A.18. Certification Statement**

**Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.**

No exceptions have been taken. This collection of information has been reviewed and justified by Departmental management requirements, statutes, external regulations, interagency reporting requirements, Departmental orders, or other internal DOE requirements, and meets the requirements listed in the “Certification for Paperwork Reduction Act Submissions.”