

U.S. Department of Labor

Office of Inspector General—Office of Audit

WAGE AND HOUR DIVISION



RECOVERY ACT: ENFORCEMENT OF DAVIS- BACON ACT PREVAILING WAGE RATE DETERMINATIONS

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A handwritten signature in blue ink that reads "Elliott P. Lewis".

Assistant Inspector General for Audit
U.S. Department of Labor

Date Issued:
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**U.S. Department of Labor
Office of Inspector General
Office of Audit**

BRIEFLY...

Highlights of Report Number: 18-11-009-04-420, to the Acting Administrator, Wage and Hour Division

WHY READ THE REPORT

President Obama signed the American Recovery and Reinvestment Act (Recovery Act) into law on February 17, 2009. The Recovery Act appropriated \$787 billion dollars to preserve and create jobs, promote the nation's economic recovery, and assist those most impacted by the recession. The Recovery Act funded construction, renovation of federal buildings, and a range of infrastructure projects, such as roads, bridges, public transit, water systems, and housing. The Act covered projects funded directly, by or in part, through several federal agencies.

The Department of Labor (DOL) received \$80 million for various Recovery Act-related oversight activities. Funds designated for these purposes could be obligated through September 30, 2010. The DOL Wage and Hour Division (WHD) obligated \$11.5 million to carry out Recovery Act work for Davis-Bacon Act (DBA) wage determinations and enforcement. WHD used the funds to conduct activities in three areas: outreach, prevailing wage enforcement, and prevailing wage determinations. This report presents the results of how efficiently and effectively WHD used the Recovery Act funds to conduct its oversight of DBA requirements for Recovery Act-funded construction projects.

WHY OIG CONDUCTED THE AUDIT

This audit was conducted to answer the following questions:

1. Did WHD provide adequate compliance assistance and outreach to ensure Recovery Act contractors and subcontractors complied with DBA?
2. Did WHD conduct timely prevailing wage complaint and directed investigations in accordance with applicable policies and regulations?
3. Did WHD issue timely and reliable prevailing wage determinations in response to the Recovery Act in accordance with applicable policies and regulations?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2011/18-11-009-04-420.pdf>.

March 2011

Recovery Act: Enforcement of Davis-Bacon Act Prevailing Wage Rate Determinations

WHAT OIG FOUND

WHD provided adequate assistance and outreach to contractors and other interested parties to ensure that they were aware of DBA requirements for Recovery Act-funded projects. In addition, WHD enhanced its enforcement program to conduct more investigations of DBA violations. The investigations were more effective in identifying violations and were completed in a more timely manner than non-Recovery Act investigations. WHD also conducted wage determination surveys for Department of Energy's weatherization program, which came under the DBA requirements because of Recovery Act funding. The wage determination surveys were timely and reliable.

WHAT OIG RECOMMENDED

Because WHD provided adequate outreach, implemented an improved prevailing wage investigations process, and issued timely prevailing wage determinations, this report does not include recommendations to DOL.

The auditors met with WHD personnel to discuss the results of the audit and subsequently provided the Agency with a draft report for review and possible comment. After reviewing the draft report, WHD management notified the OIG through an email that they agreed with the report and did not plan to send a formal response to the report.

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Independent Auditor's Report

March 31, 2011

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President Obama signed the American Recovery and Reinvestment Act (Recovery Act) into law on February 17, 2009.¹ The Recovery Act appropriated \$787 billion dollars to preserve and create jobs, promote the nation's economic recovery, and assist those most impacted by the recession. The Recovery Act funded construction, renovation of federal buildings, and a range of infrastructure projects, such as roads, bridges, public transit, water systems, and housing. The Act covered projects funded directly, by or in part, through several federal agencies.

The Davis-Bacon Act (DBA) requires contractors pay their laborers and mechanics no less than the prevailing wages for corresponding work on similar projects in the area. The Recovery Act requires that all projects receiving funds must comply with the DBA prevailing wage rates. As a result, an additional 40 federally assisted construction programs spread across 12 federal agencies were to comply with the DBA.² DOL's Wage and Hour Division (WHD) obligated \$11.5 million for Recovery Act related wage determinations and DBA enforcement. WHD expended funds in fiscal years 2009 and 2010, to conduct activities in three areas: outreach, prevailing wage enforcement, and wage determinations. Additional background on the Recovery Act and WHD's responsibilities is included in Appendix A.

Our audit objectives were to determine whether WHD (1) provided adequate compliance assistance/outreach to ensure Recovery Act contractors and subcontractors complied with DBA; (2) conducted timely prevailing wage complaint and directed investigations in accordance with applicable policies and regulations; and (3) issued timely and reliable prevailing wage determinations in response to the Recovery Act in accordance with applicable policies and regulations. We reviewed documents and

¹ *American Recovery and Reinvestment Act of 2009*, (P.L.111-5), February 17, 2009

² U.S. Government Accountability Office (GAO) Report; *Recovery Act: Officials Views Vary on Impacts of Davis-Bacon Act Prevailing Wage Provision*, GAO-10-421, (Washington D.C: February 24, 2010), Page 7

interviewed WHD officials in Washington, D.C., and at the WHD regional and district offices in Dallas, TX; Chicago, IL; and Philadelphia, PA.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our objectives, scope, methodology and criteria are further discussed in Appendix B.

RESULTS IN BRIEF

WHD used Recovery Act funds to achieve positive results. WHD provided adequate assistance and outreach to contractors, subcontractors, and other interested parties such as labor unions: federal, state, and local agencies; community action organizations; and employees. WHD conducted conferences, seminars, stakeholder meetings and various other activities to ensure that all parties involved in the Recovery Act-funded projects were aware of DBA requirements. WHD also issued guidance and advisory letters and enhanced its website to disseminate information on Recovery Act requirements.

We determined that WHD used Recovery Act funds in accordance with policies and regulations and implemented an improved process for conducting directed and complaint investigations that could have a lasting impact on future DBA investigations. Directed investigations were initiated by WHD based on risk assessment of contractor non-compliance with DBA provisions.

WHD placed a higher priority on DBA prevailing wage rate compliant investigations under the Recovery Act. In fiscal year 2010, the Recovery Act complaint investigations took an average of 157 days to complete compared to 342 days for DBA investigations not funded by the Recovery Act.

WHD issued timely prevailing wage determinations for workers covered under Department of Energy's (DOE) Weatherization program. Prevailing wage rates already existed for all other types of work for programs funded by the Recovery Act. Prevailing wage rates were needed for Weatherization workers because contractor employees doing home weatherization were low-skilled workers and the existing residential wage rates were for skilled workers. In June 2009, Energy and DOL agreed that new wage rate surveys were needed. WHD conducted the weatherization surveys in all states during July and August, and published the new rates in September 2009.

We determined WHD provided adequate outreach, implemented an improved prevailing wage investigations process, and issued timely prevailing wage determinations; therefore, the report does not include recommendations to DOL.

Before issuing a draft report, the auditors met with WHD personnel to discuss the results of the audit. Subsequently, the OIG issued a draft report to the Agency for review and possible comment. After reviewing the draft report, WHD management informed the OIG through an email that they agreed with the report and did not plan to comment on the report contents.

RESULTS

Objective 1 — Did WHD provide adequate compliance assistance and outreach to ensure Recovery Act contractors and subcontractors complied with the DBA?

Wage and Hour Division outreach efforts were extensive and effective.

The Recovery Act provided additional funding that allowed WHD to significantly expand its compliance assistance and outreach efforts. WHD provided adequate compliance assistance and outreach to contractors, subcontractors, and other interested parties such as labor unions; federal, state, and local agencies; community action agencies, associations, and employees. WHD conducted conferences, seminars, stakeholder meetings and various other activities to ensure that all parties involved in Recovery Act-funded projects were aware of DBA requirements. WHD also issued guidance, advisory letters and enhanced its website to disseminate information on Recovery Act requirements.

WHD hosted two prevailing wage conferences in Washington, D.C., and seven in the WHD regions from July 2009 to November 2010. The conferences were advertised to provide information to the federal, state, and local contracting communities on DBA requirements under the Recovery Act, and guidance on complying with the DBA. According to WHD officials, many of the affected contractors and agencies were not familiar with these requirements. More than 1,900 persons attended. At the end of each of the seven regional prevailing wage conferences, WHD officials asked participants to prepare an evaluation on the effectiveness of the outreach efforts. WHD received 714 evaluation forms. Our review of the evaluations from the seven regional conferences demonstrated that the conferences were comprehensive, effective, and targeted to the intended audience.

In addition, WHD held 376 smaller outreach events between July 2009 and September 2010 that included presentations, seminars, speeches, stakeholder meetings, and face-to-face consultations with individuals and groups concerned about the DBA requirements under the Recovery Act. More than 15,700 people attended these events. Of the 376 events, 300 were requested by employers, unions or government agencies. The other events were initiated by WHD.

WHD issued guidance (May 2009 for Recovery Act Division A programs and May 2010 for Recovery Act Division B programs)³ to all contract agencies of the Federal government and the District of Columbia that explained how the DBA applied to all Federally-assisted construction and weatherization work funded by the Recovery Act. WHD also issued project-specific advisory letters to the Departments of Energy, Interior, and other stakeholders. In addition, WHD created a WHD web page that provided comprehensive assistance materials and up-to-date information on how DBA applied to Recovery Act-funded projects.

WHD officials said that the Recovery Act-related outreach efforts contributed to making more people aware of the DBA requirements on contracts not affected by the Recovery Act. For example, WHD data showed a large increase in the DBA complaint investigations filed in fiscal year 2010 (1,428), compared to fiscal year 2009 (756) and fiscal year 2008 (356).

Objective 2 — Did WHD conduct timely prevailing wage complaint and directed investigations in accordance with applicable policies and regulations?

WHD used Recovery Act funds to perform Davis-Bacon Act investigations in accordance with policies and regulations, and their initiatives have resulted in lasting improvements to the investigation program.

WHD used its Recovery Act funds to perform DBA investigations in accordance with regulations and WHD's Recovery Act Plan. In doing so, WHD implemented an improved process for conducting DBA investigations by focusing on WHD directed investigations and setting a higher priority on complaint investigations in response to allegations of non-compliance with DBA requirements received by WHD. These initiatives, along with a cadre of better equipped and trained investigators, resulted in an enhanced enforcement program. As a result, WHD has increased its capability to conduct DBA investigations in the future.

Directed Investigations:

WHD initiated an aggressive program to target and investigate Recovery Act funded projects to assess DBA prevailing wage compliance. As part of a concentrated focus, WHD targeted projects with a high dollar volume and multiple contractors and subcontractors on-site. These directed investigations were initiated by WHD based on its assessment of the risk that contractors working on a construction project may not be complying with DBA requirements.

³ Division A of the Recovery Act consists primarily of discretionary spending. Examples of discretionary projects and activities include federal construction projects and certain research activities. Division B consists of mainly mandatory spending and revenue provisions, including tax, unemployment, health, and state fiscal relief.

Each of WHD's five Regional Offices was responsible for completing at least 10 project investigations. WHD selected 51 project investigations from a broad spectrum of federal agencies in fiscal year 2010. In this project-based approach, WHD investigated all contractors and subcontractors performing work on the project. If DBA violations were detected, investigators were expected to consider opening additional investigations of that contractor at other job sites.

According to WHD officials, DBA investigations are more complex than other DOL investigations and are generally performed by investigators with DBA investigation training and experience. Consequently, WHD restructured its investigation efforts by promoting and training 33 senior investigators to take on the new role as a Senior Investigative Advisor (SIA). The SIAs, along with WHD regional and headquarters officials, selected the DBA projects to be investigated. The SIAs managed the investigations and trained other experienced investigators to work on the projects.

The directed DBA prevailing wage investigations under the Recovery Act had positive results. In fiscal year 2010, WHD completed 450 directed investigations and 204 had violations. These investigations were completed more timely than regular DBA investigations. The DBA investigations funded by the Recovery Act took an average 109 days to complete, compared to 274 days for DBA investigations not funded by the Recovery Act.

Complaint Investigations:

WHD also placed a higher priority on DBA prevailing wage rate complaint investigations under the Recovery Act. In fiscal year 2010, WHD set a goal that district offices initiate 90 percent of the investigations within 30 days of receipt the complaint. WHD data shows that 67 percent of the complaint cases were assigned to investigators in 30 days. Although the 90 percent goal was not achieved, WHD officials said the goal was set to encourage district investigators to focus on Recovery Act complaint investigations. This tied into the DOL Secretary's policy to change the nature of referrals by having WHD be the lead on complaint investigations rather than referring the investigations to the federal agencies that actually provided funds for the projects.

During fiscal years 2009 and 2010, WHD received 157 complaints citing DBA prevailing wage violations under the Recovery Act. In fiscal year 2010, WHD completed 45 of the complaint investigations and 33 had violations. The investigations took an average of 157 days to complete compared to 342 days for DBA investigations not funded by the Recovery Act.

Investigative Results:

According to WHD officials, WHD's directed and complaint investigations have led to more awareness of the DBA requirements and provided financial benefits to workers. The following are examples provided by WHD officials.

- WHD investigated two Recovery Act covered contracts that led to truck drivers receiving \$20,800 in back wages. According to WHD officials, the affected state agency where the violations took place is taking steps to ensure that workers receive the correct DBA wages on all covered contracts. The truck drivers and contractors stated to WHD officials that they were more satisfied because they had a better understanding of the DBA requirements.
- As a result of an investigation of a Housing Authority project, 66 persons working for 12 different contractors received more than \$415,000 in back wages. Contractors paid the workers less than the required prevailing wage rates, misclassified the workers, and did not pay the workers for all of their hours worked on the project. Of the 14 firms investigated on this project, 12 contractors underpaid their workers.
- On a Recovery Act-funded construction project at a waste water treatment plant, eight workers of a cement contractor were not paid for a month's wages. The cement contractor issued weekly paychecks to the employees for their work on this Recovery Act project; however, many of the checks were returned unpaid. Following a WHD investigation, the prime contractor agreed that it was financially liable for subcontractor liabilities, and issued a check in the amount of \$26,048 to the workers for unpaid wages and fringe benefits.

WHD officials said that Recovery Act funding significantly increased the DBA prevailing wage rates enforcement program. According to WHD officials, current investigation efforts have been very effective based on the number of cases completed in 2010. Also, according to WHD officials there are now better trained and experienced investigators to meet future DBA responsibilities. All the documentation reviewed confirmed WHD's assertion.

Objective 3 — Did WHD issue timely and reliable prevailing wage determinations in response to the Recovery Act in accordance with applicable policies and regulations?

WHD conducted timely and thorough new prevailing wage determinations required by the Recovery Act.

WHD issued timely prevailing wage determinations for workers covered under DOE's weatherization program. Prevailing wage determinations already existed for all other types of work for programs funded by the Recovery Act. Prevailing wage rates were needed for weatherization workers because contractor employees doing home weatherization were low-skilled workers and the existing residential wage rates that applied to skilled workers did not apply to these workers.

WHD also used Recovery Act funds to update old DBA highway surveys in 10 states. However, these surveys had not been published when our fieldwork was completed. As

a result, we could not express an opinion on the reliability of the rates established based on the survey results.

Weatherization:

The Department of Energy's weatherization program received \$5 billion as a result of the Recovery Act; a substantial increase over funding received in prior years. After passage of the Recovery Act, DOE and DOL held extensive discussions concerning existing DBA prevailing wage rates for residential work. In June 2009, DOE decided that separate rates were needed for the low-skilled weatherization workers. Subsequent to this decision in June 2009, DOL published guidance to weatherization program grantees and agreed to data collection requirements needed for the prevailing wage surveys.

The WHD's weatherization surveys leading to new prevailing wage rates were conducted from headquarters. Under this Recovery Act-funded effort, WHD initiated and completed the prevailing wage rate surveys during July and August 2009 and published the weatherization rates for more than 3,000 counties by September 3, 2009. While waiting for the new wage surveys to be completed, DOE and DOL asked agencies to use existing residential rates so that weatherization work would not be delayed. Some states opted to wait until WHD issued weatherization rates before spending funds to weatherize homes.⁴

WHD started receiving inquiries from DOE and community action agencies concerning the new published weatherization rates in September 2009. Some community action agencies stated that they had submitted survey data with errors. The Community Action Agencies stated that they were confused and not familiar with DBA requirements, which resulted in the agencies providing incorrect data. Based on these discussions and the extent of possible errors in the reported data, WHD decided to re-verify all the submitted survey data to ensure the data was accurate and reliable. WHD then published revised prevailing wage rates for weatherization in December 2009.

We reviewed the quality control procedures and requested some of the underlying source data for the weatherization rates. We met with the WHD officials responsible for conducting the surveys and discussed the scope, methodology, and timeliness details of the surveys. We received a detailed chronology of the survey efforts and reviewed the information to evaluate the survey efforts. We concluded that the overall survey effort was timely. The procedures used by WHD to conduct the prevailing wage survey for the weatherization wage rates were adequate, under the circumstances, considering the short time it took to complete the surveys and finalize rates. To evaluate the use of the survey results, we obtained and reviewed survey information from WHD for three states. We compared the survey information with the rates that were established.

⁴ GAO, *Recovery Act: Project Selection and Starts Are Influenced by Certain Federal Requirements and Other Factors*, GAO-10-383 (Washington D.C.: February 10, 2010) Page 16


Based on these reviews, we concluded that the rates established for weatherization were reliable.

Highway Surveys:

Recovery Act funding was also used to update 10 DBA highway surveys, some of which had not been updated for about 18 years. According to WHD officials, WHD would not have given these surveys a high priority without Recovery Act funds being available. The surveys were conducted by WHD headquarters personnel. However, the regions assisted by contacting individual states to request certified payroll data. Once received, WHD had to analyze each of the payrolls and calculate prevailing rates for publication. The large volume of data to be analyzed resulted in the new rates not being published when our fieldwork was completed. According to WHD officials, the updated prevailing wage rates for the 10 states will be published by the summer of 2011. As a result, we did not review the surveys.

Because WHD provided adequate outreach, implemented an improved prevailing wage investigations process, and issued timely prevailing wage determinations, this report does not include recommendations to DOL.

We appreciate the cooperation and courtesies that Wage and Hour Division personnel extended to Foxx & Company during this audit.


Martin W. O'Neill
Partner

Appendices

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Background

President Obama signed the American Recovery and Reinvestment Act (Recovery Act) into law on February 17, 2009. The Recovery Act provided \$787 billion to preserve and create jobs, promote the nations' economic recovery, and to assist those most impacted by the recession. The Act covers projects funded directly, by or in part, through the Federal government. These funds were used for construction and renovation projects such as of federal buildings, and a range of infrastructure projects, such as roads, bridges, public transit, water systems, and housing.

WHD sets prevailing wage rates for various job categories in a local area based on periodic surveys it conducts of contractors, unions, advocacy groups, and other interested parties. The DBA requires that contractors and subcontractors working on federally funded contracts in excess of \$2,000 to pay their laborers and mechanics at least the prevailing wages, including fringe benefits, for the area in which the work will be performed.

Prior to the Recovery Act, many federal programs that included construction projects were already subject to the DBA prevailing wage rates. The new DBA related Recovery Act (section 1606) extended the requirement for DBA prevailing wage rate coverage to 40 additional federally-assisted construction programs spread across 12 federal agencies.⁵ One of the programs was the DOE weatherization program that received \$5 billion under the Recovery Program. The weatherization program has been in place since 1976,⁶ but at a much lower funding level. Also, the weatherization program had not been required to comply with DBA requirements previously. Except for the DOE's weatherization program, all the other 39 added programs were able to use existing DBA prevailing wage rates for related job occupations.

The DOL received \$80 million for various Recovery Act-related oversight activities. Funds designated for these purposes can be obligated through September 30, 2010. The DOL Wage and Hour Division obligated \$11.5 million to carry out Recovery Act work for the Davis-Bacon Act. As of February 25, 2011, WHD data showed that it expended \$10.3 million to conduct activities in three areas: outreach, prevailing wage enforcement, and prevailing wage determinations.

⁵ GAO; *Recovery Act: Officials Views Vary on Impacts of Davis-Bacon Act Prevailing Wage Provision*, GAO-10-421, (Washington D.C: February 24, 2010), Page 7

⁶ *Ibid*, Page 10 of GAO report cited in footnote 5.

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Appendix B

Objectives, Scope, Methodology, and Criteria

Objective

Our audit objectives were to determine whether WHD (1) provided adequate compliance assistance and outreach to ensure Recovery Act contractors and subcontractors complied with DBA; (2) conducted timely prevailing wage complaint and directed investigations in accordance with applicable policies and regulations; and (3) issued timely and reliable prevailing wage determinations in response to the Recovery Act in accordance with applicable policies and regulations.

Scope and Methodology

We audited the WHD oversight responsibilities for DBA prevailing wages under the Recovery Act. The scope of the audit included WHD's outreach efforts, prevailing wage enforcement, and prevailing wages rates determinations funded by the Recovery Act. The audit fieldwork started on January 5, 2011, and ended on February 25, 2011. The message conference with DOL/OIG officials was held on February 28, 2011.

The audit team examined policies and procedures, federal laws and regulations, and published reports related to DBA requirements and WHD responsibilities. We also reviewed WHD planning documents and other documentation that helped explain the extent of and results of oversight efforts. To obtain more detail on the DBA process and further determine the impact of the Recovery Act on WHD activities, we conducted interviews with WHD officials in Washington, D.C., and regional and district officials in Chicago, IL; Dallas, Texas; and Philadelphia, PA. We obtained and reviewed documentation, as appropriate, from WHD to ensure that information received during the interviews concerning WHD's oversight effort was supported and reliable.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Criteria

We used the following criteria to accomplish our audit:

- American Recovery and Reinvestment Act of 2009, dated February 17, 2009
- WHD Recovery Act Plan
- Department of Labor Risk Management Plan
- Wage and Hour Division FY 2010 Transitional Performance Plan

- Wage and Hour Division FY 2011 Operating Plan
- Wage Determination Resources Book
- Wage and Hour Division Field Operations Handbook
- Office of Management and Budget (OMB) Memorandums:
 - M-09-10: *Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, dated February 18, 2009
 - M-09-15: *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, dated April 3, 2009
 - M-09-21: *Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009*, dated June 22, 2009
- DOL/WHD May 2009 and May 2010 guidance letter
- DOL Web Site

Appendix C

Acronyms and Abbreviations

Recovery Act	American Recovery and Reinvestment Act of 2009
DBA	Davis-Bacon Act
DOL	Department of Labor
DOE	Department of Energy
FY	Fiscal Year
GAO	Government Accountability Office
OIG	Office of Inspector General
WHD	Wage and Hour Division

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