

Reasons Why Davis-Bacon Doesn't Work for People Who Do

The survey process does not work.

- Surveys are inefficient. DOL depends on the voluntary submission of wage rate data on its form WD-10, collective bargaining agreements, and information from other agencies. Only a few surveys can be done in a single year. Once surveyed, an area may not be re-surveyed for many years; some surveys are over 20 years old.
- The lag time between participation in the survey and its reflection in a new wage determination discourages participation.
- Real or rumored intervention by unions discourages participation. Open shop contractors know that unions often complain about wage determinations; even if these contractors otherwise would be willing to participate in the survey, they feel it would be a waste of time if in the end the union were to challenge the wage determination. The pro-union bias of local officials also plays a role.
- Lack of training and practical information for users of wage schedules leads to confusion, complaints, and low response to surveys. Firms with little or no interest in government jobs in particular tend not to report.
- The survey process does not address such difficult problems as the definition of a locality, the sufficiency of sample size, double counting (reporting of the same individual by an employer and a union), or the categorization of nonunion workers who do not hold standard union job titles.

Inadequate survey and wage information interferes with objectives of fair bidding.

- There is no statutory requirement for sufficiency of data, so there is no requirement for DOL to correct for out of date, incomplete, incorrect or even fraudulent survey information.
- Surveys don't use standard job titles and definitions. This interferes with a contractor's ability to bid a job correctly, and often necessitates requests for "conformances," an awkward legal proceeding with no guarantees of success.
- Classifications are incomplete and not up to date. Construction is a dynamic industry, with new techniques and equipment constantly in development, changing the way that workers perform their tasks. Wage surveys cannot and do not keep up with these changes.

- A contractor who ordinarily uses workers to perform a broad array of tasks, in order to conform to the Davis-Bacon Act, must either segregate the hours performed by each worker according to the designated job classifications and pay the corresponding wage rates, assign duties only within a single job classification, or pay the highest rate for the various job classifications.

Achieving an accurate survey would require an overwhelming process.

- If taken seriously, accurate determination of prevailing wages nationwide would be overwhelming. Each of the 3,000 counties in the country should have a wage determination survey performed every year for each of the four types of construction, totaling 12,000 determinations. Each determination is composed of anywhere from 30 to over 100 rates and fringes. For these rates to be accurate, each should have a statistically adequate number of representative survey rates from recent private construction. Furthermore, each gathered rate should be checked and validated. The result would be a bureaucracy that would put the IRS to shame.
- In fact, a low priority is placed on wage rate determination if budget allocation is any indication. The Wage and Hour Division spends only about 10 percent of its budget on surveys and rate determinations, whereas it spends approximately 75 percent for enforcement activities.
- Davis-Bacon supporters have argued that wage rates in some areas may be “too low.” We are happy to accept their tacit agreement that the survey process is flawed. We would also point out that any wage rate actually set too low would have no impact because the contractor must pay the market rate.

Survey results do not reflect industry statistics.

- DOL has asserted that 29 percent of all federal wage determinations issued are from what DOL considers safe union territory and a further 23 percent are “mixed,” meaning something less than 100% union. Economists tell us that this proportion should be the result if union representation were close to 50%. In fact, the BLS reported that union representation in 1995 was only 18.8% in construction.
- Inaccurate or fraudulently inflated wages in the Davis-Bacon Act and other prevailing wage laws add billions a year to the cost of public works -- the equivalent of \$5,000 per year per individual union member in the entire construction industry.

- The current administration of the Davis-Bacon Act does not even attempt to set a “prevailing” rate. It sets a super-minimum wage rate. Even if resulting wage rates did accurately reflect the average wage paid, it is applied, not as an average, but as a minimum.

The Davis-Bacon Act creates uncertainty in the contracting process.

- Rates in existing wage determinations can change without a full survey. Regulations require the use of modified wage determinations even if the modification was made within 10 days of bid opening.
- Even after a construction job has begun, a third party can object to the wages that were paid, and drive up the cost of the project. If the complaint is made after the job is complete, the contract cannot be modified, and the contractor must pay the difference out of profits.