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Testimony given by

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Mr. Chairman and members of the subcommittee, thank you for inviting me to testify today. I'd like to begin by reminding the subcommittee of the important purposes the Davis-Bacon Act has served for over 80 years. The Congressional Budget Office summarized them succinctly in a 1983 report signed by Alice Rivlin:

> The Davis-Bacon Act's benefits include protecting both the living standards of construction workers and the competitiveness of local construction firms bidding against transient contractors who might win federal contracts on the basis of lower-than-prevailing local wages. Government contracts are especially vulnerable to such practices, because they must be awarded to the lowest qualified bidder. Further, by excluding bids from contractors who would use lower-wage, less-skilled workers, Davis-Bacon may aid federal agencies in choosing contractors who will do high quality work. Finally, by helping to stabilize wage rates in the inherently volatile construction labor market, Davis-Bacon may aid the industry in recruiting and training workers, thereby helping to maintain the long-term supply of skilled labor.

Careful academic research has shown again and again[1] that the Davis-Bacon Act achieves these goals without significantly raising the federal government's cost of construction. By protecting the wages of higher-skilled workers from low-wage, less-skilled competition, Davis-Bacon raises employee productivity and offsets the cost of paying higher hourly rates. Better-managed firms and more skilled employees also tend to work more safely, reducing the number of accidents, lowering workers compensation costs, and preventing damage to materials and equipment.

How the U.S. Department of Labor implements the Davis-Bacon Act and makes wage determinations has been the subject of many congressional hearings and GAO reports over the years, going back as far as 1932, when Congress first passed amendments to the Act, only to have President Hoover veto the bill. The idea embodied in Rep. Gosar's H.R. 448 is not new, either: Hearings were held in this committee 16 years ago to explore the merits of substituting the Bureau of Labor Statistics for the Wage and Hour Division as the responsible agency.

The idea was rejected in 1997 and must be rejected now, for the simple reason that BLS surveys are incapable of accomplishing Davis-Bacon's statutory mandate. H.R. 448 does not prescribe how BLS should meet the Davis-Bacon Act's statutory requirements while using "scientific methods," but it is clear that the suggestion offered by the Heritage Foundation and others—that the Occupational Employment Statistics (OES) data be substituted for the current system—is unacceptable. First, OES data do not include fringe benefits, which the Act has required since 1964. Any determination that ignores 20% or more of the typical construction worker's compensation would obviously not protect the locally prevailing compensation, would

[1] http://constructionacademy.org/wp-content/uploads/downloads/2012/09/2012-10-Industrial-Relations-Philips-et-al-Effect-of-Prevailing-Wage-Regulations-on-Contractor-Bid-Participation-and-Behavior-Palo-Alto-Etc.pdf; http://constructionacademy.org/wp-content/uploads/downloads/2012/09/Davis-Bacon_CO-highway-june11.pdf

undermine the local labor market, and would make it easier for migrant contractors to underbid local firms.

The OES does not capture and report exact wage rates and is incapable of determining a single rate paid to a majority of workers in a given classification and locality. Unlike the Wage and Hour Division survey, the OES measures 12 wage intervals or ranges for wages, not the actual rate. For example, wages falling in Range D in the May 2012 survey could vary by as much as $3.74 an hour, from $14.50 to $18.24, or $30,160 to $37,959 on an annual basis. From the OES it is virtually impossible to know whether a single rate is being paid to a majority of workers in any classification in a local area.

Terry Yellig, a Washington, D.C., lawyer representing the AFL-CIO Building and Construction Trades Department, gave very thorough testimony in 1997 about the many other ways that BLS surveys are designed for purposes that make them unsuitable as a substitute for DOL's current survey process.

First, the Davis-Bacon Act specifies that wage determinations on federal construction projects should be based on locally prevailing wages paid "on projects of a character similar to the contract work." This poses several hurdles for BLS, whose data collection does not distinguish between different locations and types of projects. As Mr. Yellig testified,

> This legislative requirement will not be met by the proposed use of BLS-developed wage information. BLS surveys gather information from establishments, not projects. An "establishment" is defined in Chapter 3 of the BLS Handbook of Methods as "an economic unit which processes goods or provides services, such as a factory, mine, or store." The 1992 Census of Construction explains how the establishment concept is applied to the construction industry as follows:
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> > A "construction establishment" is defined as a relatively permanent office or other place of business where the usual business activities related to construction are conducted. With some exceptions, a relatively permanent office is one which has been established for the management of more than one project or job and which is expected to be maintained on a continuing basis. Such "establishment" activities include, but are not limited to estimating, bidding, purchasing, supervising, and operation of the actual construction work being conducted at one or more construction sites. (1992 Census of Construction at V-VI.)
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> Unlike most other industries, in the building and construction industry, where the work is actually performed does not correspond with the BLS concept of an "establishment," which is primarily a location for managerial activity. Thus, for example, the operations headquarters of a construction contractor may very well be in one county, but the contractor may not have performed any construction work in that locality during a survey period, yet performed a substantial amount of work on projects in other localities. Consequently, the laborers and mechanics reported in a survey of construction "establishments" by that contractor might not be counted as employed in the localities where they were actually employed, as required by the Davis-Bacon Act.

More important, perhaps, collecting compensation data segregated according to projects of a similar character precludes the kind of general collection BLS does for the OES and other surveys. BLS does not collect data separately for residential, heavy, highway, and building construction, even though the skills and pay rates for any craft can vary dramatically depending on the type of project involved. But as Mr. Yellig explained, to carry out the Act's requirements, "if laborers and mechanics working on highway projects are paid different rates than are laborers and mechanics working on building projects in the same locality, then the Secretary of Labor's wage determinations must also differentiate between laborers and mechanics working on highway projects and building projects."

As currently administered, Davis-Bacon wage determinations reflect these distinctions. In order to accurately carry out the Secretary of Labor's mandate under the Davis-Bacon Act, DOL's Wage and Hour Division uses four basic categories to classify construction work of a "character similar." The categories are (1) building construction (exclusive of single-family homes and garden-style apartments up to and including four stories); (2) residential construction (including single-family homes and garden-style apartments up to and including four stories); (3) heavy, water, sewer, and utility construction; and (4) highway construction.

But, as Yellig noted:

> On the other hand, the BLS uses Standard Occupational Classifications ("SOC") to define "classes" of workers. Use of standard occupational classifications assumes that the occupational structure of the construction industry is nationally homogeneous. This is not consistent with the requirements of the Davis-Bacon Act because the variety of classifications of laborers and mechanics in the local building and construction industry will vary depending on the nature of work in the area and the predominance, or lack thereof, of collectively-bargained practices.

For example, BLS's large national surveys cannot distinguish between an urban area with a lot of high-rise construction that might have three ironworker classifications, each with a corresponding skill and wage level, and a rural area that has only one classification.

The Davis-Bacon Act also instructs the Secretary of Labor to set project wages based on the wages prevailing in "the city, town, village, or other civil subdivision of the State in which the work is to be performed." The Wage and Hour Division generally meets this requirement by collecting data on a county-by-county basis. BLS, however, does not collect its data according to civil subdivisions. Once again quoting Terry Yellig's 1997 testimony:

> BLS surveys Metropolitan Statistical Areas ("MSA") and the balance-of-state. Construction markets are organized around types of work, volumes of work, prevalence of differing models of employer organization, and the nature and availability of labor supply. A BLS survey would not capture these wage variations because it assumes that construction markets are homogeneous within MSA's and within vast rural areas. On the

other hand, the current Wage and Hour Davis-Bacon wage survey system can and does recognize this variation.

The biggest problems with the current survey process—the low response rates when contractors are solicited to voluntarily submit wage information during a prevailing wage survey and the inaccuracy of the wage information the contractors actually provide—will not be solved by a switch to the OES. It, too, is a voluntary survey, and I see no reason a contractor that refuses to respond to the Wage and Hour Division would be more enthusiastic about responding to BLS, given that the purpose of the former agency's request and that of the latter are identical.

The need to keep the federal government from depressing construction industry wages, the need to support the development of the next generation of skilled workers in the construction trades, and the need to ensure the highest quality work on federal construction projects are just as great today as they were 30 years ago or even 80 years ago. The Davis-Bacon Act has served the public well, and nothing should be done that might undermine the effectiveness of the Act in achieving these important purposes. Therefore, I recommend against shifting the responsibility for gathering wage information supporting Davis-Bacon prevailing wage determinations from the Wage and Hour Division to the BLS. Instead, I recommend increased support for the Wage and Hour Division's efforts to improve and streamline the current Davis-Bacon wage determination process.