



United States
General Accounting Office
Washington, D.C. 20548

Health, Education and Human Services Division

B-272085

June 3, 1996

The Honorable William M. Thomas
House of Representatives

Dear Mr. Thomas:

The Davis-Bacon Act (40 U.S.C. 276a) requires workers on federal construction projects whose value exceeds \$2,000 to be paid, at a minimum, wages the Secretary of Labor has determined to be prevailing for corresponding classes of workers in the project's locality. Labor defines a prevailing wage as that paid to the majority (more than 50 percent) of the workers in the same job classification working on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage is the average of wages paid, weighted by the total employed in the classification.

This letter responds to your concerns about the Department of Labor's position on job targeting programs (JTP) under the Davis-Bacon Act. JTPs are programs in which local union members agree to contribute a specified percentage of their gross wages to a fund administered by the local union. This fund is then used to subsidize the bids of union contractors (employers who are signatories to collective bargaining agreements or agree to be) on selected construction projects. On the basis of your concerns, you asked that we provide information on (1) Labor's interpretation of the Davis-Bacon Act regarding the use of JTPs on federal construction projects and (2) the activities Labor has taken to enforce its position on JTPs.

To develop this information, we interviewed cognizant officials in Labor's Wage and Hour Division (WHD) who administer the Davis-Bacon Act, in the Solicitor's office who provide legal advice and assistance to Labor personnel relative to the administration and enforcement of the Davis-Bacon Act, and in the Office of Labor-Management Standards (OLMS) who oversee the fiscal operations of unions. We also reviewed documentation promoting Labor's position on JTPs, including decisions by the WHD

Administrator and Labor's Wage Appeals Board,¹ and obtained information on other actions Labor has taken to enforce its position. These actions include JTP litigation Labor has been involved with and efforts Labor has taken in response to complaints and inquiries about JTPs. We obtained information on any complaints Labor has received on JTPs in the past 5 years through interviews with staff at Labor headquarters, a review of summary documentation of complaint resolution, and headquarters staff conversations with field staff. We also interviewed officials representing several labor unions and an association of nonunion contractors that have been involved in JTP litigation over the past several years and obtained and reviewed other JTP court cases not involving the Department of Labor. We conducted our work in April and May 1996 in accordance with generally accepted government auditing standards.

In summary, Labor has ruled that JTP payroll deductions from wages of workers employed on federal construction projects violate Labor regulations that dictate the types of deductions that can be taken from workers' wages from their employment on federal projects.² Labor has found that deductions to fund a JTP are not allowed under these regulations, regardless of the deductions' effect on the workers' wages. The Davis-Bacon Act is at issue only when JTP deductions reduce the workers' wages below prevailing wage levels because that violates the act's requirement that workers on federal construction projects be paid prevailing wages without subsequent deductions or rebates.

Labor has no authority to govern deductions from wages paid on private construction projects. As a result, Labor has no authority over the use of JTPs when funds are obtained from workers employed on private construction projects to

¹The Wage Appeals Board hears and decides appeals from decisions and rulings made by the WHD Administrator under the Davis-Bacon Act as well as other acts. Labor consolidated the Wage Appeals Board along with several other appeals functions into a single unit called the Administrative Review Board.

²These regulations set forth rules pursuant to the Copeland Act (40 U.S.C. 276c), which govern the circumstances and procedures for the making of payroll deductions from the wages of those employed on the construction of public buildings or works. These regulations also help to enforce the prevailing wage provisions of the Davis-Bacon Act.

subsidize union contractors' bids on federal construction projects. In addition, Labor recently announced that it would not take enforcement action against JTP payments in two specific circumstances when it would be difficult to establish and pursue the violations.

Labor has taken several actions to enforce its position on JTPs. Officials said that although Labor has brought no legal action involving JTPs, it has been a defendant in one court case that stemmed from appeals to Labor's rulings on the legality of JTP deductions. In addition, in the past 5 years, Labor has received and investigated five complaints that JTPs violated the Davis-Bacon Act or pertinent regulations; two of these complaints are still pending. Labor also responds to inquiries asking for its opinion on JTP-related issues on a case-by-case basis and informs its regional staff of all pertinent decisions and rulings.

BACKGROUND

The Davis-Bacon Act requires contractors on federal construction projects to pay workers wages (including fringe benefits) at least at a level determined by Labor to be prevailing in a locality where the work is to be done. The act requires that the wages be paid "without subsequent deduction or rebate." The Copeland Act makes it a crime to induce a person employed on a federal construction project to return to the employer any part of the wages he or she has earned under the employment contract (that is, pay kickbacks).

The Copeland Act also directs Labor to issue regulations that contractors working on federal construction projects must follow. These regulations (29 C.F.R. part 3) also help enforce the Davis-Bacon Act. The regulations specify the types of payroll deductions that can be taken from workers on federal construction projects. For example, allowable deductions under these regulations include federal and state income taxes, pensions or annuities on retirement, or regular union initiation fees and membership dues (not including fines or special assessments). Any deductions not listed in the regulations are improper unless specifically approved by the Secretary of Labor. According to the regulations, the Secretary is not to grant permission for such a deduction unless it is determined that the contractor does not profit or benefit directly or indirectly from the deduction.

Under most JTPs, local union members agree to contribute a specified percentage of their gross wages to a fund

administered by the local union. This fund is then used to subsidize the bids of union contractors (those that are signatories to collective bargaining agreements or agree to be) on selected construction projects. In the agreement, the union authorizes a contractor to deduct a portion of the workers' wages for a JTP fund. Often this is done through a deduction for dues, a portion of which is then used for a JTP. The percentage of the deduction is generally determined in the agreement; officials representing unions said deductions are generally around 2 percent of gross wages. The union often identifies the construction projects that it would like to subsidize and notifies potential contractors. In other cases, a contractor may contact the union about receiving assistance from this fund to develop a competitive bid for a particular project. The union then determines the subsidy necessary to reduce labor costs so that the contractor can make a competitive bid on the project. Although the union may pay this subsidy in different ways (for example, directly to the workers³ or to the contractor), officials representing unions and nonunion contractors said unions generally pay the subsidy to contractors in installments throughout the construction project.⁴

Little information is available on the extent to which JTPs are used, such as the number of local unions that operate JTPs or the amount of money collected for JTPs. Union officials said creating a JTP is generally a self-imposed decision by local unions in response to a determination that subsidies are needed to generate additional employment opportunities for union members. Officials representing both unions and nonunion contractors said they believe that unions do not usually target federal construction projects

³The unions cannot pay the subsidy directly to the workers on federal construction projects.

⁴According to officials representing several unions, these subsidies allow contractors with unionized workers to compete more effectively for projects with other contractors who are not using unionized workers. As a result, they believe these programs benefit unionized workers by creating additional employment opportunities. Some opponents of JTPs, however, believe that JTPs use labor costs as a bargaining chip and reduce workers' wages to benefit contractors.

because all contractors bidding on federal projects must pay the same wage, which limits the wage competition between union and nonunion contractors.

ALTHOUGH JTP DEDUCTIONS VIOLATE
REGULATIONS, LABOR HAS DECIDED
NOT TO PURSUE CERTAIN CASES

Labor has ruled that payroll deductions from wages of workers on federal construction projects for JTPs violate Labor regulations and, in some cases, the Davis-Bacon Act. In other cases, Labor has no authority over JTPs. In addition, Labor recently announced that it would not take enforcement action against deductions or payments to fund a JTP in two specific situations when it would be difficult to establish and pursue the violations.

Labor Believes JTP Deductions
Violate Regulations

In response to an inquiry from an association of nonunion contractors, the WHD Administrator, in January 1989,⁵ ruled that payroll deductions from workers' wages on federal construction projects to fund JTPs violate the regulations that list allowable payroll deductions.⁶ Although several unions contended that JTP deductions were union membership dues (which the regulations allow), the Administrator noted that she did not believe it was common, at the time the regulations permitting deductions for such dues were promulgated, for union membership dues to be returned to the contractor as JTP deductions are. Furthermore, the Administrator said that construing "membership dues" to include JTP deductions would be inconsistent with the regulations' general prohibition against contractors benefitting from wage deductions, which the Administrator stated occurred through JTP deductions. As a result, the Administrator found that the regulations did not allow JTP deductions as union membership dues. Because these regulations concern the use of the deductions rather than

⁵See the January 24, 1989, ruling by Administrator Paula V. Smith to Maurice Baskin, General Counsel to Associated Builders and Contractors, Inc.

⁶In this ruling, however, the Administrator found that these deductions were not kickbacks, which are outlawed by the criminal provisions of the Copeland Act, because the deductions were apparently approved by union membership and were reflected in the collective bargaining agreements.

their effect on the prevailing wage, Labor officials said the regulations prohibit JTP deductions regardless of whether they reduce workers' wages below the prevailing wage levels mandated by the Davis-Bacon Act. When a violation of these regulations occurs, Labor officials said contractors must stop taking the deduction or face possible debarment.

Because the Davis-Bacon Act mandates that workers on federal construction projects receive the prevailing wage, JTP deductions violate the Davis-Bacon Act only when they result in workers receiving less than the mandated prevailing wage. In a September 1989 letter clarifying the January ruling,⁷ the WHD Administrator said that both JTP deductions and direct payments by union members to fund a JTP would be considered a "subsequent deduction or rebate" prohibited by the Davis-Bacon Act if, and to the extent that, the payment means the worker receives less than the prevailing wage.⁸ Cases in which JTP deductions take the workers' wages below the prevailing wage violate the Davis-Bacon Act as well as the regulations. Labor holds that, in such cases, not only must the contractor stop taking the deductions or face debarment, but it also must pay back the workers' wages that were deducted for the JTP.⁹

In June 1991, in response to a union appeal of the Administrator's 1989 ruling, the Wage Appeals Board upheld the Administrator's finding that deductions from wages to

⁷See the September 25, 1989, ruling by Administrator Paula V. Smith to Terry R. Yellig, Counsel for the Building and Construction Trades Department, AFL-CIO, and to Gary L. Lieber, Counsel for the National Electrical Contractors Association.

⁸Officials representing unions said that unionized workers often realize that their wages could be lower as a result of JTPs. However, they continue to support JTPs because they believe the programs increase overall employment opportunities.

⁹Labor officials said that a contractor has never been debarred for violating the regulations or the Davis-Bacon Act for illegal JTP deductions. Labor has never even threatened such action. Generally, if Labor determines a violation has occurred, the contractor stops taking the deduction and pays the worker the back wages.

fund JTPs violate the regulations.¹⁰ The Wage Appeals Board appeared to adopt the Administrator's reasoning that the deductions were contrary to a fundamental purpose of the regulations--not allowing wages of workers on federal construction projects to directly or indirectly benefit contractors.

Subsequent legal decisions have supported Labor's rulings. The U.S. District Court for the District of Columbia and U.S. Court of Appeals for the D.C. Circuit upheld Labor's decisions.¹¹ A related decision by the U.S. Court of Appeals for the Ninth Circuit in 1995 also upheld Labor's position. This case involved a group of unionized workers employed on a federal construction project in Nevada. The workers refused to pay the JTP deductions as the union required, asserting that they were not allowed as dues under the regulations. The local union fined the workers the amount of the unpaid deductions and suspended them from the union. The workers brought action in the U.S. District Court for the District of Nevada, which ruled in the union's favor. The workers subsequently appealed to the U.S. Court of Appeals for the Ninth Circuit, which overturned the lower court ruling and found that JTP deductions were a prohibited "subsequent deduction or rebate" under the Davis-Bacon Act and required the union to reimburse the workers for the deductions.¹²

Labor Has No Authority
Over Some JTPs

In contrast with its authority over JTPs on federal construction projects, Labor has no authority over JTPs funded through deductions from workers' wages on private construction projects or from direct payments by workers on private projects. Although Labor officials said they believe JTPs are not prevalent on federal construction projects, JTP deductions from workers' wages on private construction projects may be used to subsidize union contractors' bids on federal construction projects.

¹⁰Building and Construction Trades Unions Job Targeting Programs, Wage Appeals Board Case No. 90-02, June 13, 1991.

¹¹These rulings were in response to the continued appeal from unions on Labor's rulings.

¹²International Brotherhood of Electrical Workers v. Brock, 68 F.3d 1194 (9th Cir. 1995).

Labor Will Not
Pursue Some JTPs

In 1995, the WHD Administrator announced that Labor's scarce resources to enforce the Davis-Bacon Act should not be used when the relationship between the deductions from wages of workers on federal construction projects and JTPs is remote and investigation would be highly resource intensive. In that respect, she noted that Labor would not take enforcement action (for example, pursue as violations) against JTP deductions or payments under certain circumstances.¹³

The Administrator said that Labor would not take exception to payroll deductions for JTPs from workers on federal construction projects when the union deposited them into a general fund to be used for a variety of purposes. The Administrator said that under these conditions, union officers may, from time to time, use the fund for JTP purposes, but any expenditures for this purpose should be authorized in union bylaws or membership resolution. In addition, no formal or informal mandate that funds be spent on job targeting or for earmarking of funds for a JTP, nor any formula or mandate requiring that any specific project, class of projects, or number of projects be targeted would be allowed. The Administrator also said that Labor would not take exception to JTP payments when they were made, along with other membership dues, directly to the union. In these instances, the union may use the dues to fund a JTP, even if a portion of the dues is earmarked for job targeting.

According to Labor officials, these two circumstances were highlighted as a result of questions that arose in the unions' appeal of Labor's 1989 ruling to the U.S. Court of Appeals for the D.C. Circuit and a dissenting opinion in that case. Officials had also been advised that some unions were already carrying out JTPs in this manner. In addition, officials noted that programs funded through these mechanisms would prove extremely difficult to investigate and prosecute and only limited remedies may be available. For example, they noted that under the first circumstance, tracing funds from the deductions to the transfer from general funds to a JTP, then to the contractor could prove difficult to investigate and

¹³See the June 20, 1995, ruling by Administrator Maria Echaveste to Robert A. Georgine, President, Building and Construction Trades Department, AFL-CIO.

litigate. In the second circumstance, Labor continues to believe that payments to contractors for JTPs--whether or not they are Davis-Bacon projects--which are funded in part with dues from employment on Davis-Bacon projects, seem to violate the Davis-Bacon Act prohibition against "subsequent deduction or rebate." However, the role of the contractor is even more remote and the funds would be even more difficult to trace to specific Davis-Bacon projects.

LABOR'S ENFORCEMENT ACTIVITIES
HAVE FOCUSED ON RESPONDING TO
COMPLAINTS AND INQUIRIES

Labor has been involved in various activities to enforce its position on JTP deductions, including being a defendant in one court case, responding to complaints and inquiries about JTPs, and providing pertinent information to its field staff.

Labor Has Been Involved
in One JTP Court Case

Labor has brought no legal action involving JTPs. It has, however, been involved as a defendant in one court case that ended in 1994. This case was an appeal of the 1989 ruling by the WHD Administrator and the 1991 determination by Labor's Wage Appeals Board that found that JTP deductions violated Labor regulations. Several unions appealed the Wage Appeals Board determination to the U.S. District Court for the District of Columbia in 1993 and ultimately to the U.S. Court of Appeals for the D.C. Circuit in 1994.¹⁴ Both courts upheld Labor's ruling that the JTP deductions were not allowed under the regulations.

Labor Has Responded to Complaints on JTPs

In the last 5 years, Labor has received four complaints from workers and one complaint from an association of nonunion contractors about JTPs. Two of these complaints (one from a worker and one from the association of nonunion contractors) were received in the last 6 months and are pending; Labor is still determining whether the complaints

¹⁴Building and Construction Trades Dept., AFL-CIO v. Reich, 815 F. Supp. 484 (D.D.C. 1993); motion for reconsideration denied, 820 F. Supp. 11 (D.D.C. 1993); affirmed and rehearing denied, 40 F.3d 1275 (D.C. Cir. 1994, 1995).

have merit.¹⁵ The remaining three worker complaints were received between 1992 and 1994 and have been closed. Labor officials distinguish complaints from inquiries as instances in which an individual or group believes a violation has occurred and is requesting investigative and corrective action from Labor. WHD's field offices are responsible for investigating the complaint, determining its merit, and resolving the complaint. If the field office cannot resolve the complaint, the headquarters staff may become involved.¹⁶

Labor received the first complaint in 1992 from a worker on a construction project covered under the Davis-Bacon Act. This worker wrote, in a 1992 letter to the WHD Administrator, that a portion of his wages was being deducted for a JTP against his wishes. Labor found that the JTP deductions violated the regulations as well as the Davis-Bacon Act because the deductions resulted in the worker's wages falling below the mandated prevailing wage. Labor determined that the worker was eligible for \$15 in back wages.¹⁷

Labor received another complaint in 1992 from a worker employed by a prime contractor in a government-owned, contractor-operated (GOCO) facility under the authority of the Department of Energy. The worker maintained that he should not have to contribute to a JTP. After investigation, Labor concluded that the file should be closed with no further action for several reasons. One was

¹⁵Labor's Office of Inspector General is currently investigating another worker complaint about JTPs. This complaint concerns a project under the authority of the Department of Energy. Other than providing information to the Inspector General's staff on Labor's position on JTPs, as of late May 1996, WHD staff have not been involved in the investigation.

¹⁶Detailed information about the investigation and status of complaints is maintained in the WHD field offices.

¹⁷The worker also filed a complaint with the National Labor Relations Board (NLRB). In an Advice Memorandum from 1993, the NLRB wrote that Labor's ruling that the JTP deductions violate the Davis-Bacon Act does not make the union's collection of these funds unlawful under the National Labor Relations Act because the funds were collected with regularity and did not have a purpose inimical to public policy.

that the Davis-Bacon Act does not apply to the prime contractor in GOCO situations. According to Labor officials, Department of Energy rules require that all Davis-Bacon work be performed by subcontractors, to whom Davis-Bacon requirements are applied. Also in question was whether the work performed was construction work the Davis-Bacon Act covered. Finally, Labor found that determining whether a direct payment to a union was a "subsequent deduction or rebate" under the Davis-Bacon Act was not necessary because the amount of the payment in this case did not cause the worker's wages to fall below the mandated prevailing wage.

The third complaint was from a worker employed on a Davis-Bacon project who contacted Labor in 1993 because he did not believe deductions should be taken from his wages for a JTP.¹⁸ Labor found that the JTP deductions violated the regulations but did not violate the Davis-Bacon Act because the deductions did not cause the worker's wages to fall below the mandated prevailing wage. The contractor stopped taking the JTP deductions, but this meant that the union stopped receiving these payments. As a result, it requested that the worker make the JTP contributions directly to the union. The worker again contacted Labor for action in this matter because he did not believe he should have to pay these JTP contributions. Around this time, however, Labor was considering the enforcement options that were ultimately enunciated in the Administrator's 1995 ruling, which said that Labor would not take exception to these types of funding mechanisms for JTPs. As a result, Labor took no further action on this complaint.

In addition, Labor officials noted that in 1989 Labor received a complaint from an association of nonunion contractors listing 24 projects that the association claimed had been targeted using JTPs. The complaint also listed a number of contractors who had received JTP subsidies that allowed them to win the projects. The complaint, however, did not include information about how the JTPs that were used to target the projects had been funded, that is, whether payments from workers on federal construction projects had funded the JTPs. According to Labor officials, this is where a violation would have

¹⁸The worker also wrote a letter to his congressman, who forwarded the matter to Labor in 1994 for review. According to Labor officials, they had already started to take action before being contacted by the congressman.

occurred. As a result, Labor's investigation focused on whether any of the projects listed in the complaint were federal construction projects and if JTP deductions were currently being taken from wages of workers on these projects. WHD's field offices investigated about half of the alleged projects and found that they were not federal projects, so the regulations about proper deductions and mandated wages did not apply. For the other projects, field offices took no action because they were waiting for a final decision from Labor's national office on how to proceed, given the pending appeal of the Administrator's 1989 ruling. The field offices did investigate one of the contractors on the list on another federal project and found a violation of the Davis-Bacon Act; they ordered the contractor to pay \$923 in back wages to 16 workers. They also found several other contractors on this same project who were taking JTP deductions in violation of the regulations and the Davis-Bacon Act and ordered the contractors to pay workers back wages in sums ranging from \$200 to \$4,000.

Labor Responds to Inquiries

Although Labor officials said their positions in the cases and complaints cited above are the primary way they enforce the agency's position, they did note that they respond to any inquiries from individuals or groups asking Labor about its position on various issues. Although uncommon, WHD officials said that they have had few such requests in the last 5 years. They said the 1995 ruling outlining exceptions to the prohibition on JTP deductions was a response to such an inquiry. As a result of the statements made in the dissenting opinion in the case before the U.S. Court of Appeals for the D.C. Circuit, a union had requested Labor to clarify situations in which deductions for JTPs would be allowed.

OLMS officials said they also receive inquiries for information and guidance on the legality of JTPs under the amended Labor-Management Reporting and Disclosure Act (LMRDA).¹⁹ Under this act, unions must report any cash flow to OLMS and ensure that any expenditure of funds is properly approved by the unions' constitutions and bylaws. OLMS officials reported that they have received about 35

¹⁹LMRDA (29 U.S.C. 401 et seq.), among other things, requires reporting and disclosure of certain financial transactions and administrative practices of labor organizations and contractors.

requests from unions or union representatives since 1987 that typically seek compliance advice on the funding of JTPs. In response to these inquiries, OLMS determines whether proposed JTP payments appear to violate any provision of the LMRDA enforced by Labor and refers the requester to other federal agencies with jurisdiction over other labor-related matters.

Labor Provides
Information to Field Staff

WHD staff in headquarters provide the field staff copies of all WHD Administrator rulings, such as the 1989 and 1995 rulings. In addition, they have sent the field copies of the decisions in the court case discussed above with a memo attached reiterating Labor's position on JTPs under the Davis-Bacon Act. Labor officials also have asked field staff to inform them when they learn of payments being made by workers to JTPs outside of payroll deductions. They have not issued any additional memoranda or guidance since the 1995 ruling.

AGENCY COMMENTS AND OUR EVALUATION

In commenting on a draft of this report, the Department of Labor reiterated its position that payments made by employees, whether directly or through wage deductions, to fund JTPs violate Labor regulations if the workers are employed on federal construction projects and also violate the Davis-Bacon Act if the effect of the deductions is to lower the workers' wages below the prevailing wage. Labor officials also described the limited circumstances under which it would not take enforcement action regarding JTP payments. In its comments, Labor also suggested technical changes, which have been incorporated, to improve the accuracy and clarity of the report. Labor's comments are enclosed.

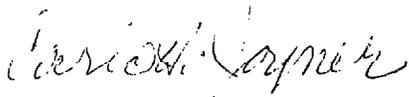
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We are sending copies of this report to the Secretary of Labor, the Assistant Secretary for Employment Standards, the Administrator of the Wage and Hour Division, the Solicitor of Labor, the Deputy Assistant Secretary of the Office of Labor-Management Standards, and other interested parties. If you have any further questions, please call me on (202) 512-7014. Other major contributors to this report

B-272085

include Charles Jeszeck, Assistant Director; Lori Rectanus, Evaluator-in-Charge; Ronni Schwartz, Senior Evaluator; and Robert G. Crystal, Assistant General Counsel.

Sincerely yours,



Carlotta C. Joyner
Director, Education and
Employment Issues

Enclosure

COMMENTS FROM THE DEPARTMENT OF LABOR

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210

MAY 30 1996

The Honorable Carlotta C. Joyner
 Director, Education and
 Employment Issues
 Health, Education, and
 Human Services Division
 General Accounting Office
 Washington, D.C. 20548

Dear Ms. Joyner:

We have reviewed the draft report entitled Davis-Bacon Job Targeting and are enclosing the draft with our annotations. We believe the suggested changes will improve the accuracy and clarity of the report.

In addition, I would like to emphasize the Department's consistent position that payments made by employees, whether directly or through wage deductions, to fund job targeting programs (JTP) violate the Copeland Act regulations at 29 CFR Part 3 if the workers are employed on Davis-Bacon covered construction projects, and violate the Davis-Bacon Act as well if the effect is to lower the workers' wages below the prevailing wage rate. As a result of questions which arose from the argument before the U.S. Court of Appeals in Building Trades Department v. Reich and the opinion by the dissenting judge, the Department reviewed various scenarios not previously closely examined. After a thorough analysis, and after consultation with the Office of the Solicitor, we determined that in the limited circumstances set forth, the payments technically would be violations but that the practical problems of tracing the funds to establish violations and allocate back wage liability in these circumstances would be such that it would be a poor use of the Department's scarce investigative and litigation resources to pursue such cases.

Therefore, the Administrator announced an enforcement position that applies to the following very narrow, limited circumstances where the relationship between the dues payments on Davis-Bacon projects and the job targeting project is remote and the investigation would be very resource-intensive. Specifically, the Administrator stated that the Department would not take exception to the funding of job targeting programs by dues payments where dues are deducted from wages and deposited in a general fund used for a variety of purposes at the discretion of union officers, including from time to time a job targeting program. The Administrator set forth a number of limitations, including that there be no formal or informal mandate that funds be spent on job targeting or be earmarked for that purpose. In addition, the Administrator stated that the Department would not take exception to situations where job targeting programs are funded through direct payment of union dues by employees, rather than through payroll deductions by the contractor from wages paid on Davis-Bacon projects.

COMMENTS FROM THE DEPARTMENT OF LABOR

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Finally, we would like to point out that it has been our experience that job targeting programs are not widely used in Federal construction projects because the Davis-Bacon prevailing wage requirements constrain the ability of contractors to leverage labor costs in competing for Federal construction contracts. To this day, relatively few complaints have been received by the Department. As the report indicates, in the few instances where we have found Davis-Bacon violations, the monetary findings have been very small.

We appreciate the opportunity to comment on the draft report.

Sincerely,



Bernard E. Anderson

Enclosure

(205324)

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