

February 2010

# RECOVERY ACT

## Officials' Views Vary on Impacts of Davis-Bacon Act Prevailing Wage Provision



GAO

Accountability \* Integrity \* Reliability



Highlights of [GAO-10-421](#), a report to the Senate Republican Leader

### Why GAO Did This Study

The American Recovery and Reinvestment Act of 2009 (Recovery Act) has the broad purpose of stimulating the economy. It includes substantial appropriations for construction projects that, under the act's prevailing wage provision, are subject to Davis-Bacon Act requirements. That is, contractors must pay laborers and mechanics who work on those projects at least the prevailing wage rates set for their local area by the Secretary of Labor. In addition, contractors must submit certified payrolls and pay their workers weekly.

Prior to the Recovery Act, some federal programs with construction projects were already subject to Davis-Bacon Act requirements. Others, however, are subject to the requirements for the first time because the Recovery Act extended the requirements to all construction projects supported by the act.

GAO was asked to (1) identify the programs that are newly affected by the Recovery Act's prevailing wage provision and (2) examine the extent to which that provision is expected to affect each of those newly affected programs. GAO obtained data from 27 agencies and spoke with federal, state, and local officials as well as contractors involved with the newly affected programs.

Although GAO is not making recommendations in this report, these findings may be helpful in considering and designing legislation with similar objectives.

View [GAO-10-421](#) or [key components](#). For more information, contact Patricia A. Dalton at (202) 512-3841 or [daltonp@gao.gov](mailto:daltonp@gao.gov).

## RECOVERY ACT

### Officials' Views Vary on Impacts of Davis-Bacon Act Prevailing Wage Provision

#### What GAO Found

Forty programs are newly subject to Davis-Bacon requirements as a result of the Recovery Act's prevailing wage provision, according to federal agency officials. Of these, 33 programs existed prior to the Recovery Act and are subject to Davis-Bacon requirements for the first time under the act, while 7 are newly created programs. Together, the 40 programs account for about \$102 billion of the \$309 billion that was appropriated by the Recovery Act for projects and activities. However, a smaller amount of these funds will be subject to Davis-Bacon requirements because not all of the funds will be used for construction activities and only a portion of those funds will be used to pay labor wages.

**Expected Impact of Davis-Bacon Requirements on Program Costs and Goals as Reported by Federal Officials Responsible for 40 Programs Newly Subject to those Requirements**

Expected impact of:	Little to no impact	Moderate impact	Large impact	Other <sup>a</sup>	Total
Prevailing wage requirement on program costs	23	4	4	9	40
Administrative requirements on program costs	18	6	7	9	40
Davis-Bacon requirements on program goals	27	5	1	7	40
Davis-Bacon requirements on Recovery Act goal of preserving or creating new jobs	26	3	4	7	40

Source: GAO analysis of information from interviews and correspondence with federal officials.

<sup>a</sup>This category includes those that responded do not know, unclear, too soon to tell, or mixed impact.

For those programs that are newly subject to Davis-Bacon requirements, officials had mixed views on the impact of these requirements on program costs and goal achievement. In some cases, officials said Davis-Bacon requirements would have little or no impact on program costs for a few reasons, such as (1) the program having a small amount of construction activities, (2) prevailing wage rates that were in line with expectations, and (3) companies' previous experience with weekly payrolls. In other cases, officials said the requirements would have a moderate to large impact on program costs and/or goals. For example, officials from the Department of Energy's (DOE) Energy Efficiency and Conservation Block Grants program anticipated a potentially large cost impact as a result of the significant amount of funds to be spent on construction labor wages. Officials from DOE's Weatherization Assistance Program reported that weatherization projects in buildings taller than four stories will require workers to be paid a commercial prevailing wage rate under the Davis-Bacon Act that is higher than what would otherwise be used and could potentially reduce the number of homes weatherized. Additionally, weatherization officials said that Davis-Bacon requirements affected the program's timing because prevailing wage rates for weatherization workers were not fully available until September 2009. Further, officials from the Department of Housing and Urban Development's Lead Hazard Reduction Program noted that Davis-Bacon requirements would require a more detailed payroll tracking system that could be particularly burdensome for small companies. Those officials also explained that because administrative costs are likely to increase, the department is in the process of increasing the cap on how much recipients can spend on administrative costs.

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## Abbreviations

DOE	Department of Energy
Recovery Act	American Recovery and Reinvestment Act of 2009
TIGER	Transportation Investment Generating Economic Recovery

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United States Government Accountability Office  
Washington, DC 20548

February 24, 2010

The Honorable Mitch McConnell  
Republican Leader  
United States Senate

Dear Leader McConnell:

The nation faces what is generally reported to be the most serious economic crisis since the Great Depression. In response, the American Recovery and Reinvestment Act of 2009 (Recovery Act) was enacted to promote economic recovery, make investments, and minimize and avoid reductions in state and local government services.<sup>1</sup> In early 2009, the Congressional Budget Office estimated that the combined spending and tax provisions in the Recovery Act will cost an estimated \$787 billion from 2009 through 2019. Of that total, more than a third comes from Division A of the act, which provides substantial funding for, among other things, construction and infrastructure projects.<sup>2</sup> These projects, which are supported by various federal agencies, encompass construction, alteration, and repair efforts for roads, bridges, public transit, water systems, and federal buildings and facilities.

Under the Recovery Act's prevailing wage provision, all construction projects funded directly by or assisted in whole or in part by the federal government through Division A of the act are subject to the requirements of the Davis-Bacon Act.<sup>3</sup> That is, all laborers and mechanics employed by contractors and subcontractors must be paid at least the prevailing wage rate, including fringe benefits, in the local area in which they are employed, as determined by the Secretary of Labor. In addition, contractors are required to pay these workers weekly and submit weekly certified payroll records to the contracting or administering agency. Prior

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<sup>1</sup>Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

<sup>2</sup>The Recovery Act consists of two divisions, Division A and Division B. Division A—titled “Appropriations Provisions” in the act—consists primarily of discretionary spending, with some exceptions. Examples of discretionary projects and activities include federal construction projects and certain research activities. Division B consists of mainly mandatory spending and revenue provisions, with some exceptions, and includes tax, unemployment, health, state fiscal relief, and some other provisions.

<sup>3</sup>Pub. L. No. 111-5, § 1606, 123 Stat. 115, 303 (Feb. 17, 2009).

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to the Recovery Act, numerous federal programs that included construction projects were subject to the Davis-Bacon Act. Because these programs were already required to comply with Davis-Bacon requirements, they were not newly affected by the Recovery Act's prevailing wage provision. However, because the Recovery Act extended Davis-Bacon requirements to all construction projects that it supported through Division A of the act, some federal programs became subject to these requirements for the first time.

In this context, you asked us to (1) identify programs that are newly affected by the Recovery Act's prevailing wage provision and (2) examine the extent to which that provision is expected to affect each of those newly affected programs. Separately, we are also reporting on the extent to which federal requirements, including Davis-Bacon requirements, are expected to affect the timing of Recovery Act projects.<sup>4</sup>

To identify programs that are newly affected by the Recovery Act's prevailing wage provision, we requested data from 27 of the agencies that received funding under Division A of the act.<sup>5</sup> Although the Recovery Act was initially estimated to provide \$787 billion in spending and tax provisions, we focused on the appropriation portion because the act's prevailing wage provision only applied to Division A.<sup>6</sup>

The 27 federal agencies we reviewed consisted of departments and independent agencies that received funding for almost all projects under the act. Specifically, the departments of

- Agriculture
- Commerce
- Defense

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<sup>4</sup>GAO, *Recovery Act: Project Selection and Starts Are Influenced by Certain Federal Requirements and Other Factors*, [GAO-10-383](#) (Washington, D.C.: Feb. 10, 2010).

<sup>5</sup>GAO and the Recovery Act Accountability and Transparency Board received small amounts of Recovery Act funds to conduct oversight activities—not for construction purposes—and were excluded from our analysis, since by definition they will not have Recovery Act programs that are newly subject to Davis-Bacon Act requirements.

<sup>6</sup>The Recovery Act's prevailing wage provision—Section 1606—only applied to the provisions in Division A of the act. Section 1601 in Division B of the act applied Davis-Bacon requirements to projects financed with certain tax-favored bonds.

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- U.S. Army Corps of Engineers<sup>7</sup>
  - Education
  - Energy
  - Health and Human Services
  - Homeland Security
  - Housing and Urban Development
  - Interior
  - Justice
  - Labor
  - State
  - Transportation
  - Treasury
  - Veterans Affairs

The independent agencies included the

- Corporation for National and Community Service
- Environmental Protection Agency
- Federal Communications Commission
- General Services Administration
- National Aeronautics and Space Administration
- National Endowment for the Arts
- National Science Foundation
- Small Business Administration
- Smithsonian Institution
- Social Security Administration
- U.S. Agency for International Development

We asked each agency to specify which of its programs were newly subject to Davis-Bacon requirements under the Recovery Act. We verified the agency-provided data with agency officials and checked their appropriation figures with appropriation values in the Recovery Act. We also interviewed officials from the Department of Labor and the Congressional Research Service to learn about the universe of newly subject programs and the application of Davis-Bacon requirements.

To examine the extent to which the Recovery Act's prevailing wage provision is expected to affect each newly affected program, we conducted semi-structured interviews with federal officials from most of

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<sup>7</sup>The U.S. Army Corps of Engineers is the part of the Army that has both military and civilian responsibilities.

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these programs, and for the other programs we obtained federal officials' written responses to our questions. We also interviewed state and local officials in the 16 states and the District of Columbia that we are reviewing for our bimonthly reports to Congress on Recovery Act implementation.<sup>8</sup> These 16 states are Arizona, California, Colorado, Florida, Georgia, Illinois, Iowa, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, and Texas.<sup>9</sup> We also conducted interviews with, and obtained relevant documentation from, two national contractor associations (Associated General Contractors of America and Associated Builders and Contractors); a national union (AFL-CIO); the National Association of State Auditors, Comptrollers and Treasurers; the National Association of Counties; and the National Governors Association. To further understand how Davis-Bacon requirements might affect specific programs that are newly subject to those requirements, we interviewed and collected additional data from state and local officials and contractors associated with five of the programs that fell within the scope of our work.<sup>10</sup> We selected these five programs because they existed prior to the Recovery Act, are currently being implemented, and have a significant portion of their funding going toward construction activities. The local officials and contractors interviewed were referrals identified by federal and state officials. We ensured a range of officials and contractors were selected by asking for contacts from geographically dispersed states for different Recovery Act programs. The examples we provide in this report are illustrative only and not generalizable.

We conducted this performance audit from September 2009 to February 2010 in accordance with generally accepted government auditing

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<sup>8</sup>The Recovery Act specifies several roles for GAO, including conducting bimonthly reviews of selected states' and localities' use of funds made available under the act. The fourth report in response to the act's mandate is GAO, *Recovery Act: Status of States' and Localities' Use of Funds and Efforts to Ensure Accountability*, GAO-10-231 (Washington, D.C.: Dec. 10, 2009).

<sup>9</sup>The states selected for our bimonthly reviews contain about 65 percent of the U.S. population and are estimated to receive collectively about two-thirds of the intergovernmental federal assistance funds available through the Recovery Act. We selected these states and the District of Columbia on the basis of federal outlay projections; percentage of the U.S. population represented, unemployment rates, and changes; and a mix of states' poverty levels, geographic coverage, and representation of both urban and rural areas.

<sup>10</sup>The five programs were the Weatherization Assistance Program, State Energy Program, Clean Water State Revolving Fund, Drinking Water State Revolving Fund, and the Lead Hazard Reduction Program.

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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.

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## Background

The Davis-Bacon Act requires contractors and subcontractors working on federally funded contracts in excess of \$2,000 to pay at least locally prevailing wages to laborers and mechanics.<sup>11</sup> The act covers both new construction and the alteration or repair of existing public buildings and works. The Department of Labor sets prevailing wage rates for various job categories in a local area on the basis of periodic surveys it conducts of contractors, unions, public officials, and other interested parties.<sup>12</sup> The Davis-Bacon Act stems from a Depression-era practice of transporting workers from lower-paying areas to bypass local workers who would demand a higher wage. The prevailing wage requirement was meant to prevent this practice by ensuring that workers on federal projects were paid at least the locally prevailing wage. Congress has extended this requirement beyond projects funded directly by the federal government by including Davis-Bacon Act prevailing wage provisions in numerous related laws under which federal agencies assist construction projects through grants, loans, guarantees, insurance, and other methods. Examples of related laws include the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.<sup>13</sup> Contractors on projects subject to Davis-Bacon requirements may also be subject to additional prevailing wage requirements under state and local laws.

In addition to paying no less than locally prevailing wages, contractors for construction projects that are subject to the Davis-Bacon Act must pay their workers on a weekly basis and submit weekly certified payroll records. The federal contracting or administering agency has primary

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<sup>11</sup>Laborers and mechanics include workers whose duties are manual or physical in nature, including workers who use tools or perform a trade. Typically, a wage determination will have prevailing wage rates for different occupations and classifications.

<sup>12</sup>The local area used in making a wage determination will normally be a county.

<sup>13</sup>For a list of Davis-Bacon related laws, see 29 C.F.R. Part 1, Appendix A, *Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor*.

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responsibility for enforcing these requirements, while the Department of Labor has coordination and oversight responsibilities, including the authority to establish regulations and investigate compliance with labor standards as warranted.

The prevailing wage provision in section 1606 of the Recovery Act broadly applies Davis-Bacon requirements to all construction projects funded directly or assisted by the federal government under Division A of the act.<sup>14</sup> It reinforces Davis-Bacon Act coverage of construction projects where the federal government is a party to the contract, extends it to projects assisted in whole or in part by Division A of the act, and overrides any limitation to Davis-Bacon coverage in related laws under which federal agencies provide financial assistance, such as grants and loan guarantees, to recipients to use for construction projects. It also extends the prevailing wage requirement to some federally assisted projects that would not otherwise be subject to that requirement.

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<sup>14</sup>Both the Bureau of Indian Affairs' Construction appropriation provision and the Indian Health Service's Indian Health Facilities appropriation provision included an exemption for certain tribal contracts from Section 1606.

**Federal Agency Officials Reported That 40 Programs Are Newly Subject to Davis-Bacon Requirements because of the Recovery Act's Prevailing Wage Provision**

According to federal agency officials, 40 programs are newly subject to Davis-Bacon requirements as a result of the Recovery Act's prevailing wage provision, as shown in table 1.<sup>15</sup> These programs are spread across 12 of 27 federal agencies that received funding under Division A of the act. Most of the programs existed prior to the Recovery Act and are subject to Davis-Bacon requirements for the first time under the act, while some are newly created programs.

**Table 1: Programs That are Newly Subject to Davis-Bacon Requirements under the Recovery Act by Agency**

Dollars in millions

Agency	Program	Recovery Act funding
Department of Commerce	Broadband Technology Opportunities Program <sup>a</sup>	\$4,700
Department of Education	State Fiscal Stabilization Fund <sup>a</sup>	53,600
Department of Energy	Biomass Program	787
	Clean Coal Power Initiative	800
	Electricity Delivery and Energy Reliability Program	4,500
	Energy Efficiency and Conservation Block Grants	3,200
	Fuel Cell Technologies Program	43
	Geothermal Technologies Program	400
	Industrial Carbon Capture and Storage <sup>a</sup>	1,520
	Industrial Technologies Program	266
	Innovative Technology Loan Guarantee Program <sup>b,c</sup>	4,000
	Solar Energy Technologies Program	118
	State Energy Program	3,100

<sup>15</sup>Other provisions in the Recovery Act define the scope or reiterate the application of Davis-Bacon requirements to projects supported through Recovery Act appropriations for the Department of Housing and Urban Development's Green Retrofit Program for Multifamily Housing, the Department of Energy's Innovative Technology Loan Guarantee Program, and the Department of Transportation's Transportation Investment Generating Economic Recovery Discretionary Grants.

Dollars in millions

Agency	Program	Recovery Act funding
	Vehicle Technologies Program	2,815
	Weatherization Assistance Program	5,000
	Wind and Hydropower Technologies Program	140
Department of Health and Human Services	Capital Improvement Program and Facility Investment Program for Health Centers	1,500
	National Center for Research Resources Extramural Construction Program	1,000
Department of Homeland Security	Recovery Act Assistance to Firefighters Fire Station Construction Grants <sup>a</sup>	210
Department of Housing and Urban Development	Green Retrofit Program for Multifamily Housing <sup>a,c</sup>	250
	Lead Hazard Reduction Program	100
	Tax Credit Assistance Program <sup>a</sup>	2,250
Department of the Interior	Challenge Grant Program	40
	Colorado River Basin Salinity Control Program	10
	Fish and Wildlife Coordination Act	20
	Recreation Resources Management Program	10
	Water Reclamation and Reuse Program	135
Department of Justice	Correctional Facilities on Tribal Lands Program	225
	Edward Byrne Memorial Justice Assistance Grant Program	2,000
	Transitional Housing Assistance Grants for Victims of Domestic Violence, Dating Violence, Stalking, or Sexual Assault Program	50
Department of Transportation	Supplemental Grants for Assistance to Small Shipyards	100
	Transportation Investment Generating Economic Recovery Discretionary Grants <sup>a,c</sup>	1,500
Department of the Treasury	Community Development Financial Institutions Financial and Technical Assistance Program	90
	Native American Community Development Financial Institutions Assistance Program	8
Environmental Protection Agency	Clean Water State Revolving Fund	4,000
	Diesel Emission Reduction Act Grants	300
	Drinking Water State Revolving Fund	2,000
	Leaking Underground Storage Tank Program	200
National Science Foundation	Academic Research Infrastructure Program—Recovery and Reinvestment	200
	Major Research Equipment and Facilities Construction	400
<b>Total, 40 programs</b>		<b>\$101,587</b>

Source: GAO analysis of federal agency data.

Note: The numbers in this table are rounded to the nearest million.

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<sup>a</sup>This program was newly created by the Recovery Act.

<sup>b</sup>Public Law 111-47 rescinded \$2 billion from the \$6 billion provided for the Innovative Technology Loan Guarantee Program under the Recovery Act.

<sup>c</sup>The Recovery Act provision for this program includes a Davis-Bacon Act provision.

These 40 programs account for about \$102 billion of the \$309 billion that was appropriated by the Recovery Act for projects and activities, but a smaller amount of these funds will be subject to Davis-Bacon requirements because not all of the funds will be used for construction activities and only a portion of those funds will be used to pay labor wages. For example, the Environmental Protection Agency's Diesel Emission Reduction Act Grants program—intended to accelerate emission reductions from older diesel engines—received \$300 million under the Recovery Act. Program officials reported that less than 10 percent of those funds will be used for construction activities, and less than 5 percent of the funds will likely be spent on labor wages.<sup>16</sup> Officials for another program—the Department of Education's State Fiscal Stabilization Fund, which accounts for more than half of the \$102 billion available for programs that are newly subject to Davis-Bacon requirements—expected only a small percentage of the program's funds to be used for construction activities.<sup>17</sup> Moreover, none of the federal officials responsible for the 40 programs expected more than half of their program's Recovery Act funding to be spent on labor wages covered by the Davis-Bacon prevailing wage requirement.

All 40 programs that are newly subject to Davis-Bacon requirements have the federal government providing recipients with financial assistance, such as grants and loan guarantees, that can be used for construction activities. Thirty-three of the 40 programs existed prior to the Recovery Act. Federal officials responsible for 27 of the 33 existing programs reported that their programs were not previously subject to Davis-Bacon requirements because existing law did not require their projects to comply with those requirements. For example, the Department of Energy's Weatherization Assistance Program—which enables low-income families to reduce their

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<sup>16</sup>The program objective of the Environmental Protection Agency's Diesel Emission Reduction Grants program is to reduce diesel emissions. The agency will award grants to address the emissions of in-use diesel engines by promoting a variety of cost-effective emission reduction strategies, including switching to cleaner fuels; retrofitting, repowering, or replacing eligible vehicles and equipment; and implementing idle reduction strategies.

<sup>17</sup>The State Fiscal Stabilization Fund, administered by the Department of Education, was created in part to help state and local governments stabilize their budgets by minimizing budgetary cuts in education and other essential government services, such as public safety.

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energy bills by making long-term energy efficiency improvements to their homes—has been in place since 1976 but had not been required to comply with Davis-Bacon requirements prior to the Recovery Act.<sup>18</sup> Officials for 5 other existing programs reported that their programs were not previously subject to Davis-Bacon requirements because they did not previously fund construction projects. For example, prior to the Recovery Act, the Department of Energy’s Industrial Technologies Program funded research and development projects that did not involve construction work, while the Recovery Act provided the program funding for construction activities covered by Davis-Bacon requirements.<sup>19</sup> Officials for one existing program did not provide a response in time for our report about why their program was not previously subject to Davis-Bacon requirements. Finally, officials for 7 of the 40 programs stated that their programs were newly created by the Recovery Act. Officials for 2 of these new programs—the Department of Commerce’s Broadband Technology Opportunities Program and the Department of Education’s State Fiscal Stabilization Fund—indicated that, while these programs were subject to Davis-Bacon requirements for the first time under the Recovery Act, existing law would have made their projects subject to the requirements regardless of the Recovery Act’s prevailing wage provision.<sup>20</sup> Officials for the other 5 new programs indicated their projects would not have been subject to Davis-Bacon requirements if not for the Recovery Act.

The 40 programs were in different stages of implementation at the time of our review. Most program officials reported that financial assistance awards had been made and that some level of project implementation was under way. For example, the Department of Housing and Urban Development’s Lead Hazard Reduction Program—which provides grants

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<sup>18</sup>The Recovery Act appropriated \$5 billion for the Weatherization Assistance Program, which the Department of Energy is distributing to each of the states, the District of Columbia, and seven territories and Indian tribes. The program seeks to assist low-income families by making such long-term energy-efficiency improvements to their homes as installing insulation; sealing leaks; and modernizing heating equipment, air circulation fans, and air conditioning equipment.

<sup>19</sup>The Department of Energy’s Industrial Technologies Program partners with U.S. industry in a coordinated program of research and development, validation, and dissemination of energy efficiency technologies and operating practices.

<sup>20</sup>The Department of Commerce’s National Telecommunications and Information Administration administers the Recovery Act’s Broadband Technology Opportunities Program, which manages competitive grants to a variety of entities for broadband infrastructure, public computer centers, and innovative projects to simulate demand for, and adoption of, broadband.

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to states, localities, and Indian tribes to abate lead hazards and make homes healthy—had awarded its Recovery Act grants by May 2009 and reported that abatement efforts were under way.<sup>21</sup> Officials responsible for some programs indicated that applications were under review and that Recovery Act projects were not yet being implemented. For example, Department of Transportation officials reported they were in the process of reviewing applications for the Transportation Investment Generating Economic Recovery (TIGER) Discretionary Grants program in advance of a February 2010 award deadline.<sup>22</sup>

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## Program Officials' Views on Davis-Bacon Requirements

Federal, state, and local officials involved with the 40 Recovery Act programs that are newly subject to Davis-Bacon requirements differed on whether those requirements would increase program costs. However, these officials generally did not expect Davis-Bacon requirements to inhibit their ability to achieve Recovery Act and program goals. Federal officials responsible for most of the programs did not expect Davis-Bacon requirements to affect the timing of their program's Recovery Act efforts, though officials for some programs expected an impact.

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## Program Officials Differed on Whether Davis-Bacon Requirements Would Increase Programs' Costs

Federal officials responsible for programs that are newly subject to Davis-Bacon requirements—the prevailing wage rate requirement and the administrative requirements associated with weekly payroll processes—had mixed views on the extent to which they expected these requirements to affect program costs, as table 2 shows.

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<sup>21</sup>The Department of Housing and Urban Development's Lead Hazard Reduction Program has made nearly \$100 million in Recovery Act funding available to help eliminate dangerous lead-based paint and other health and safety hazards from low-income homes.

<sup>22</sup>The Department of Transportation's TIGER Discretionary Grants program will award grants for capital investments in surface transportation infrastructure on a competitive basis to projects that have a significant impact on the nation, a metropolitan area, or a region.

**Table 2: Expected Impact of Davis-Bacon Requirements on Program Costs as Reported by Federal Officials Responsible for 40 Programs Newly Subject to the Davis-Bacon Act Requirements**

	Little to no impact	Moderate impact	Large impact	Other <sup>a</sup>	Total
Prevailing wage rate	23	4	4	9	40
Administrative requirements	18	6	7	9	40

Source: GAO analysis of information from interviews and correspondence with federal officials.

<sup>a</sup>This category includes those that responded do not know, too early to tell, or mixed impact.

Officials for the 40 programs provided a range of explanations for the extent to which the prevailing wage rate requirement might impact program costs. Specifically:

- Little to no impact.* Department of Energy officials responsible for two programs said construction firms generally pay prevailing wage rates as a standard practice and therefore the prevailing wage rate requirement would have no impact on program costs. According to other program officials, the impact would be small because a relatively small amount of program funds are to be spent on construction activities that are subject to Davis-Bacon requirements. For example, Department of Justice officials responsible for the Transitional Housing Assistance Grants for Victims of Domestic Violence, Dating Violence, Stalking, or Sexual Assault Program said only a small number of grantees requested funds for construction and that less than 5 percent would be allocated for this purpose.<sup>23</sup> Department of Energy officials responsible for the Geothermal Technologies program noted that the prevailing wage rates were in line with what they expected, and Electricity Delivery and Energy Reliability program officials said existing wage rates paid by utility companies were generally high already

<sup>23</sup>The Department of Justice’s Transitional Housing Assistance Grants for Victims of Domestic Violence, Dating Violence, Stalking, or Sexual Assault Program focuses on a holistic, victim-centered approach to provide transitional housing services that move individuals into permanent housing. Grants support programs that provide assistance to victims of domestic violence, dating violence, sexual assault, and stalking who are in need of transitional housing, short-term housing assistance, and related support services.

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so any increase in wage expenses due to prevailing wage rates would probably be minimal.<sup>24</sup>

- *Moderate impact.* Officials from the Department of Energy's Weatherization Assistance Program explained that the prevailing wage rate requirement will have at least a moderate impact on program costs. They explained that weatherization projects in buildings taller than four stories will require that workers be paid commercial prevailing wage rates that are higher than the wage rates that would otherwise be used for weatherization projects.<sup>25</sup> Department of Energy officials responsible for the Wind and Hydropower Technologies program explained that the prevailing wage rates for construction workers are sometimes 20 percent higher than what would have been paid for similar work and could increase labor costs by 20 percent.<sup>26</sup> Conversely, these officials said the payment of higher wages could attract a more highly trained laborer and thus possibly result in savings in rework or in adherence to safety guidelines.<sup>27</sup>

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<sup>24</sup>The Department of Energy's Geothermal Technologies Program develops innovative geothermal energy technologies to find, access, and use the nation's geothermal resources. The department's Electricity Delivery and Energy Reliability program supports activities to modernize the electric grid.

<sup>25</sup>The Department of Labor determined that revised prevailing wage rates for weatherization workers were limited to multifamily residential buildings of four or fewer stories. However, the department's commercial prevailing wage rates (which apply to plumbers, carpenters, and other laborers) apply to multifamily residential buildings of five or more stories. As a result, local agencies conducting weatherization work on multifamily units in high-rise buildings must pay their workers wage rates that can be significantly higher than what local agencies pay weatherization workers for residential housing units.

<sup>26</sup>The Department of Energy's Wind and Hydropower Technologies Program leads the nation's efforts to improve the performance, lower the costs, and accelerate the deployment of wind and water power technologies through partnerships with the Department of Energy's national laboratories to conduct research and development activities through competitively selected, cost-shared research and development projects with industry and in partnership with federal, state, and other stakeholder groups.

<sup>27</sup>Some studies we reviewed in 2008 also concluded that higher wages attracted high-quality, highly skilled labor; enhanced productivity; and possibly offset potential labor cost savings from lower wages. These studies were performed by the National Alliance for Fair Contracting, a labor management organization, and the Construction Labor Research Council, an organization that researches construction labor costs, and were conducted in 1995 and 2004. We reported this in GAO, *Federal-Aid Highways: Federal Requirements for Highways May Influence Funding Decisions and Create Challenges, but Benefits and Costs Are Not Tracked*, GAO-09-36 (Washington, D.C.: Dec. 12, 2008).

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- *Large impact.* Department of Energy officials from the State Energy Program explained that in some of the areas hardest hit economically, construction workers are paid less than the prevailing wage rate for the county.<sup>28</sup> Therefore, paying the Davis-Bacon prevailing wage rate will increase costs. Likewise, Department of Justice officials responsible for the Correctional Facilities on Tribal Lands Program explained that in some cases the prevailing wage rate may be significantly higher than what the tribe would normally pay for construction.<sup>29</sup> Department of Energy officials responsible for the Energy Efficiency and Conservation Block Grants program anticipated a potentially large impact as a result of the large number of grantees and significant proportion of funds that would be spent on construction labor wages.<sup>30</sup>

State and local officials we interviewed also had mixed views about the expected impact of the prevailing wage rate requirement on program costs. District of Columbia weatherization officials explained that the prevailing wage rates were generally in line with what they would expect to pay and some state weatherization officials in California said the prevailing wage rates may be less than what some service providers are currently paying. Data provided by State Energy Program officials in Georgia indicated that contractor wage rates are higher than Davis-Bacon prevailing wage rates in a subset of counties. Conversely, Iowa state weatherization officials explained that the average cost increase would be about 9 percent per home, and one local Lead Hazard Reduction Program official reported that, based on historical experience, the prevailing wage rate requirement could increase program costs by 10 to 13 percent per home. One Mississippi contractor we interviewed said the wage rates would not have an impact on costs because the hourly rates that the

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<sup>28</sup>The goals established for the Department of Energy's State Energy Program are to increase energy efficiency to reduce energy costs and consumption for consumers, businesses, and government; reduce reliance on imported energy; improve the reliability of electricity and fuel supply and the delivery of energy services; and reduce the impacts of energy production and use on the environment.

<sup>29</sup>The Department of Justice's Correctional Facilities on Tribal Lands Program assists tribes in cost effectively constructing and renovating correctional facilities associated with the incarceration and rehabilitation of juvenile and adult offenders subject to tribal jurisdiction. This funding allows tribes to explore community-based alternatives to help control and prevent jail overcrowding due to alcohol and other substance abuse.

<sup>30</sup>The Department of Energy's Energy Efficiency and Conservation Block Grants program funds competitive and formula grants to units of local and state government and Indian tribes to develop and implement projects to improve energy efficiency and reduce energy use and fossil fuel emissions in their communities.

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company pays its employees are and always have been higher than the Davis-Bacon rates.

As table 2 also shows, federal officials reported mixed views on the extent to which they expected Davis-Bacon administrative requirements, such as paying workers weekly, to affect program administrative costs. For example:

- *Little to no impact.* Department of Health and Human Services officials responsible for the Capital Improvement Program and Facility Investment Program for Health Centers said the requirements should have no impact on program costs since grantees were asked to include Davis-Bacon compliance in their proposals. Department of Energy officials responsible for the Solar Energy Technologies program expected the administrative requirements to have a small impact because less than 5 percent of funds will be used for construction-related activities subject to Davis-Bacon requirements. Department of Housing and Urban Development officials responsible for the Green Retrofit Program for Multifamily Housing said the administrative requirements would have a small impact because the grant recipients had previous experience with the Davis-Bacon requirements through other federal housing programs and were accustomed to requirements such as paying workers on a weekly basis.<sup>31</sup> Environmental Protection Agency officials responsible for the Diesel Emission Reduction Act Grants program said the impact would be small because the majority of the grant funds are used to purchase equipment and are therefore not subject to the administrative requirements. These program officials added that while the requirements are new to most grantees, the grantees will become familiar with them over time.
- *Moderate impact.* State Energy Program officials noted that many construction companies involved with their projects do not maintain payroll records sufficient to meet Davis-Bacon requirements, and as a result, the administrative requirement to pay workers weekly may add to their administrative costs.

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<sup>31</sup>The Green Retrofit Program for Multifamily Housing makes grants and loans to existing Department of Housing and Urban Development-assisted multifamily eligible property owners to facilitate utility-saving and other green building benefits by retrofitting accepted properties for reduced energy demand, reduced water consumption, lower operating costs, improved resident quality of life (including comfort, and indoor air quality), and reduced overall impact on the environment.

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- *Large impact.* Federal officials responsible for the Weatherization Assistance Program and the Lead Hazard Reduction Program said Davis-Bacon administrative requirements would require a more detailed payroll tracking system, which would be particularly burdensome for small companies. According to Weatherization Assistance Program officials, smaller companies are the ones, generally speaking, that do not usually have experience with the Davis-Bacon requirement for certified weekly payrolls. For these employers, who often employ fewer than five people, it is particularly burdensome to certify payrolls weekly. Lead Hazard Reduction Program officials explained that additional administrative duties necessary for weekly payroll processing will increase administrative costs. To accommodate this increase, the agency is in the process of increasing the cap on how much recipients can spend on administrative costs from 10 to 15 percent of their award.

State and local officials we interviewed had mixed views on the impact of Davis-Bacon administrative requirements on program costs. Clean Water State Revolving Fund officials in Georgia and the District of Columbia said they do not anticipate any additional costs as a result of the administrative requirements, whereas program officials in Mississippi and New Jersey noted the requirements would likely increase project costs.<sup>32</sup> Local agencies involved with the Weatherization Assistance Program in California, Michigan, New York, and Ohio reported hiring new staff to process Davis-Bacon paperwork, and local weatherization officials from California noted that the administrative requirements might be particularly burdensome on smaller businesses. Local officials responsible for a Lead Hazard Reduction program in New York said their subcontractor is familiar with the administrative requirements, and the subcontractor has not indicated that these requirements are problematic.

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<sup>32</sup>The Environmental Protection Agency's Clean Water State Revolving Fund provides funds to states to establish state loan revolving funds that finance infrastructure improvements for public wastewater systems and other water quality projects.

**Program Officials Generally Expected Davis-Bacon Requirements to Have Little Impact on Achieving Program and Recovery Act Goals**

Despite these potential cost increases for some Recovery Act programs, most federal officials said the Davis-Bacon requirements will have little, if any, impact on their ability to support their program and Recovery Act goals. Federal officials responsible for 15 of the 40 programs said Davis-Bacon requirements would have no impact on their program’s ability to achieve its goals, and officials from 12 programs reported that the requirements would have little impact (see table 3). However, federal officials from four programs—the Weatherization Assistance Program, State Energy Program, Energy Efficiency and Conservation Block Grants, and Correctional Facilities on Tribal Lands Program—noted that the Davis-Bacon requirements could have a large impact on their ability to support the Recovery Act goal of preserving or creating new jobs. For example, Weatherization Assistance Program officials said that Davis-Bacon requirements will have a large impact in urban areas because they have to pay commercial construction rates to weatherize buildings over four stories tall. These commercial construction wage rates are higher than the wage rates officials were expecting to pay and officials said program goals would be affected because they will have to reduce the number of homes weatherized.

**Table 3: Expected Impact of Davis-Bacon Requirements on the Ability to Achieve Program and Recovery Act Goals, as Reported by Federal Officials Responsible for 40 Programs Newly Subject to the Davis-Bacon Act Requirements**

	Little to no impact	Moderate impact	Large impact	Other <sup>a</sup>	Total
Program goals	27	5	1	7	40
Recovery Act goals <sup>b</sup>	26	3	4	7	40

Source: GAO analysis of information from interviews and correspondence with federal officials.

<sup>a</sup>This category includes those that responded do not know, unclear, too soon to tell, or mixed impact.

<sup>b</sup>Data reported here are focused on the Recovery Act goal of preserving or creating new jobs.

State and local officials we interviewed and collected data from also reported that the Davis-Bacon requirements would generally have little impact on their ability to achieve program and Recovery Act goals. California state officials responsible for the State Energy Program stated that even though the requirements may have been an inhibiting factor for some applicants, they do not believe that the requirements will negatively affect the ability to achieve energy policy goals. While Ohio state officials responsible for weatherization said their program goals have not been affected, District of Columbia Lead Hazard Reduction program officials said they had to reduce the number of homes to be treated. Florida

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officials responsible for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs reported that the addition of Davis-Bacon requirements had little impact on their program's ability to support the underlying Recovery Act goals, such as creating jobs, in part due to the ultra-competitive behavior during the economic downturn and the enormous demand for environmental infrastructure funding. Conversely, Michigan state weatherization officials said the requirements might affect their ability to support the Recovery Act goal of job creation, especially for smaller businesses and contractors. According to these officials, some smaller local contractors who performed weatherization work before the Recovery Act sometimes may not have the capacity to take advantage of the Recovery Act weatherization work because of requirements such as the weekly payroll certifications.

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**Program Officials  
Generally Did Not Expect  
Davis-Bacon Requirements  
to Affect the Timing of  
Recovery Act Efforts**

According to federal officials responsible for most programs that are newly subject to Davis-Bacon requirements, the requirements are not likely to affect the timing of their program's Recovery Act efforts. However, officials for some programs expected an impact on their program's timing.

Federal officials for 23 of the 40 programs said they did not expect Davis-Bacon requirements to affect their program's timing. For example, an official for the National Science Foundation's Academic Research Infrastructure Program—Recovery and Reinvestment noted that while they had to spend time consulting with the Office of Management and Budget and the Department of Labor on Davis-Bacon requirements, this effort had not significantly altered the program's timing.<sup>33</sup> Federal officials for 2 programs were uncertain about how Davis-Bacon requirements might affect their program's timing, while officials for 7 programs did not provide a response in time for our report.

In contrast, federal officials for 8 programs expected Davis-Bacon requirements to have an impact on the timing of their program's Recovery Act efforts. For example, officials with the Department of Energy's Weatherization Assistance Program stated that Davis-Bacon requirements had significantly affected their program's timing because the program is newly subject to the requirements so prevailing wage rates for

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<sup>33</sup>The Academic Research Infrastructure Program—Recovery and Reinvestment is intended to enhance the nation's existing research facilities to enable next-generation research infrastructure that integrates shared resources across user communities.

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weatherization workers were not immediately available. Some states decided to wait to begin weatherizing homes until the Department of Labor had determined county-by-county prevailing wage rates for their state to avoid having to pay back wages to weatherization workers who started working before the prevailing wage rates were known.<sup>34</sup> For example, state weatherization officials in Arizona said that all but one of their local service providers decided to wait to weatherize homes using Recovery Act funds until the prevailing wage rates were determined because they were concerned about the time required to reconcile differences in wage rates. The timing of the Weatherization Assistance Program's Recovery Act efforts was also affected by concerns about complying with Davis-Bacon requirements. For example, Pennsylvania weatherization officials stated that delays occurred because some local agencies had initially submitted management plans that had not included language describing how they would comply with those requirements. Officials with the Department of Energy's Energy Efficiency and Conservation Block Grants and State Energy Program also expected Davis-Bacon requirements to affect the timing of their Recovery Act efforts, while officials with the Department of Housing and Urban Development's Lead Hazard Reduction Program reported that grantees were provided additional time to complete their work plans to ensure contractors understood the requirements.

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## Agency Comments and Our Evaluation

We provided a draft of this report to all 27 agencies and the Office of Management and Budget for their review and comment. Two agencies provided technical comments that were incorporated into the report as appropriate. The other agencies had no comments. We also provided a copy of relevant sections of the report to GAO teams responsible for reviewing Recovery Act work in the states mentioned in this report. In some cases, those teams forwarded relevant sections to officials within those states. We included these comments as appropriate.

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<sup>34</sup>In July 2009, the Department of Energy and the Department of Labor issued a joint memorandum to Weatherization Assistance Program grantees authorizing them to begin weatherizing homes using Recovery Act funds, provided they paid construction workers at least the Department of Labor's wage rates for residential construction, or an appropriate alternative category, and compensated workers for any differences if the Department of Labor established a higher local prevailing wage rate for weatherization workers. The Department of Labor completed its initial determination of wage rates for weatherization workers in each county in the United States by September 3, 2009. The wage rates were revised in December 2009.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to all 27 agencies reviewed in this report, and other interested parties. The report will also be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [daltonp@gao.gov](mailto:daltonp@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix I.

Sincerely Yours,

A handwritten signature in black ink that reads "Patricia A. Dalton". The signature is written in a cursive style with a large initial "P".

Patricia A. Dalton  
Managing Director, Natural Resources  
and Environment

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# Appendix I: GAO Contact and Staff Acknowledgments

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## GAO Contact

Patricia A. Dalton, (202) 512-3841 or [daltonp@gao.gov](mailto:daltonp@gao.gov)

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## Staff Acknowledgments

Other key contributors to this report were Mark Gaffigan, (Director), Ric Cheston (Assistant Director), Kim Gianopoulos (Assistant Director), David Marroni (Analyst-in-Charge), Angela Miles, and Alise Nacson. Important contributions were also made by Anne Rhodes-Kline, Carol Herrnstadt Shulman, and Barbara Timmerman.

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