

# SCA Wage Determinations

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# Outline

- American Reinvestment & Recovery Act of 2009
- McNamara-O'Hara Service Contract Act
- Introduction to SCA Wage Determinations
- SCA Prevailing Wage Determinations
- SCA Conformance Procedures
- SCA Investigative Procedures
- Your Questions

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# TITLE

## American Reinvestment & Recovery Act of 2009

# Overview of ARRA

- Signed into law on February 17, 2009
- Division A of ARRA appropriates substantial funding for:
  - Construction, alteration and repair of federal buildings
  - Infrastructure projects such as roads, bridges, public transit, water systems, and housing
  - Various activities that federal agencies may contract out for service employees to perform

# Labor Standards Coverage on ARRA Funded Projects

- DBA requirements apply to:
  - Federal contracts funded by ARRA
  - Most ARRA-assisted construction projects
- Reorganization Plan No. 14 of 1950 gives:
  - Federal agencies responsibility to ensure that laborers and mechanics are paid at least the prevailing rates established by DOL
  - DOL has regulatory authority and oversight responsibility and can investigate compliance

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# ARRA Labor Standards Implementation

- Federal agencies must:
  - Ensure that bid solicitations and resulting covered contracts contain labor standards and wage determinations in accordance with the FAR
  - Generally, require contractors and subcontractors to pay laborers and mechanics employed on covered ARRA-assisted construction at least the DBA prevailing wages

# ARRA Division B

- Requires application of Davis-Bacon prevailing wage requirements to projects financed with certain tax-favored bonds
  - New clean renewable energy bonds
  - Qualified energy conservation bonds
  - Qualified zone academy bonds
  - Qualified school construction bonds
  - Recovery zone economic development bonds
- As defined in relevant Internal Revenue Code provisions
- If issued after ARRA enacted 2/17/09)

# DOL ARRA Guidance

- All Agency Memorandum No. 207, dated May 29, 2009, provides DOL basic guidance on Davis-Bacon labor standards applicability to federal and federally assisted construction work funded under ARRA
- Advisory letters, such as those issued to the DoE and Department of Interior, provide further guidance



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# MCNAMARA-O'HARA SERVICE CONTRACT ACT

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# The SCA

- Took effect in January 1966
- Amended in 1972 and 1976
- Most recent of government contract labor standards laws administered by the Wage and Hour Division

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# SCA Legislative History & Purpose

- To “close the gap” in labor standards protection between supply and manufacturing contracts subject to PCA and construction contracts subject to DBA
- To remove wages as a bidding factor in the competition for federal service contracts

# SCA Requirements (29 CFR 4.6)

- Contracts in excess of **\$2,500** must contain labor standards clauses with:
  - ❑ Minimum monetary wages and fringe benefits determined by the DOL
  - ❑ Recordkeeping and posting requirements
  - ❑ Safety and health provisions
  - ❑ Statement of rates paid to federal employees

# Elements of SCA Coverage (29 CFR 4.107, 4.108 & 4.110)

- Contracts entered into by Federal Government and District of Columbia
- Contracts principally for services
- Contracts performed in the U.S.
- Contracts performed through the use of service employees

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# Federal Contracting Agencies (29 CFR 4.107 & 4.108)

- Agency or instrumentality (*e.g.*, DoD)
- Wholly-owned corporations of the Government (*e.g.*, U.S. Postal Service)
- Non-appropriated fund activities (*e.g.*, military exchanges)
- Contracts entered into by the District of Columbia

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# Contracts to Furnish Services (29 CFR 4.111 & 4.130)

- Examples of service contracts:
  - Security and guard services
  - Janitorial services
  - Cafeteria and food services
  - Support services at Federal installations

# Contracts “in the US” (29 CFR 4.112)

Any portion of a contract principally for services performed in the United States including:

- 50 States
- District of Columbia
- Puerto Rico
- Virgin Islands
- Outer Continental Shelf
- American Samoa
- Guam
- Wake Island
- Johnston Island
- Northern Marianas



# Use of “service employees” (29 CFR 4.113)

- Section 8(b) of SCA defines service employees as:
  - Any person engaged in performance of contract, except
  - Employees who qualify for exemption as **bona fide** executive, administrative or professional employees under the FLSA (29 CFR Part 541)
- Employee coverage does not depend on contractual relationship (29 CFR 4.155)

# Contracts Not Covered by SCA (29 CFR 4.134)

- Contracts primarily for something other than services (e.g., construction)
- Contracts for leasing of space
- Contracts for professional services
- Federally-assisted contracts for services entered into by state governments (e.g., Medicaid and Medicare programs)
- Contracts excluded by statutory exemptions
- Contracts excluded by regulatory exemptions

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# INTRODUCTION TO SCA WAGE DETERMINATIONS

# Basic Statutory Requirement

- Sections 2(a)(1) and (2) of SCA provide that covered contracts in excess of \$2,500 contain a wage determination
  - 2(a)(1) — Wages
  - 2(a)(2) — Fringe Benefits

# Applying Wage Determinations

(29 CFR 4.143–4.145)

- Agencies must obtain new WD at least once every two years
- New WD may be required each year if:
  - Contract subject to annual appropriations
  - Annual contract option being exercised
- Most contract extensions, even if shorter than 1 year, require a new WD

# Obtaining an SCA WD (29 CFR 4.4)

- Regulations no longer require agencies to submit Standard Form (SF-98) or an electronic form (e98)
- Agencies have option to download WD directly from website, or submitting an e98 to DOL, at [www.wdol.gov](http://www.wdol.gov)
  - Other approaches no longer utilized include the blanket WD program, memorandums of understanding with agencies
  - SF-98 and -98a removed from the FAR

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# 2 Types of Wage Determinations

- Prevailing — includes union dominance wage determinations
- 4(c) — based on the previous contractor's collective bargaining agreement

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# SCA PREVAILING WAGE DETERMINATIONS



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# SCA Prevailing WD Principles

- WDs must be based on data
- WDs must reflect a consistent wage and salary structure

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# Basis for Prevailing WDs

- The best available data — usually BLS surveys
- WDs may also be based on:
  - Non-appropriated fund surveys
  - Wage Board surveys and rates
  - General Service locality pay schedules

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# BLS Surveys

- National Compensation survey
- Occupational Employment Statistics survey

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# How are BLS Data Used for SCA WDs?

- NCS is the primary data source
- OES is used to supplement NCS, or is primary data source for those areas not surveyed by NCS

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# SCA Directory of Occupations

- Contains standard position descriptions for most SCA occupations listed on prevailing WDs
- Contains Federal Grade equivalencies
- If WD occupation is not listed in the Directory, the position description may be included on WD

# Obtain SCA WDs on WDOL.gov

- Wage determinations on-line
- On WDOL homepage click on “Selecting SCA Wage Determinations”
- Respond to each logic question
- Two “Standard” prevailing WDs for each locality
  - Odd-Numbered WD
  - Even-Numbered WD

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# SCA CONFORMANCE PROCEDURES

SCA Regulations  
29 CFR 4.6(b)(2)

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# Conformance (Adding Missing Class of Work to WD)

- Work not performed by a class on WD
- Proposed rate must bear a reasonable relationship to those listed on WD:
  - No single formula
  - Look at comparable classes on WD
  - No specific analytical process to determine conformable rate



# Conformances may not be used to:

- Artificially subdivide classes listed in WD
- Combine two or more classes listed in WD to create a new class
- Establish a job level lower than lowest level listed in WD for a job classification family (e.g., Computer Operator I through V)
- Establish helper and trainee classes

# Conformance Request Preparation

- Contractor prepares conformance request (SF 1444) or other format
- Request:
  - Proposes class of worker and job description
  - Proposes hourly rate and rationale
  - Submitted to contracting agency no later than 30 days after employee performance
  - SF 1444 available on [WDOL.gov](http://WDOL.gov)

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# SCA INVESTIGATIVE PROCEDURES

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# Preliminary Steps in Conducting Investigations

- Obtain the following information:
  - Copy of labor standards clauses in contract
  - Copy of WD in contract, including any instructions for multiple schedules
  - Copies of time records & check register
  - Employer identification number

# The Investigation Process

- Initiate contact with employer
- Examine time records
- Examine payroll journal or check register
- Check for compliance with apprenticeship and/or trainee requirements
- Determine if a conformance is necessary

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# Employee Interviews

- Are essential to the investigation
- Information provided is confidential
- Interview statements should contain:
  - Place and date of interview
  - Name and address of employer/employee
  - Employment status and classification
  - Alleged violations

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# Determining Compliance

- Determine compliance with prevailing wages, including FBs
- Determine compliance with CWHSSA
- Compute any back wages and liquidated damages

# Conclusion of Investigation

- Final Conference Procedure
  - Inform contractor of investigation findings
  - Detail steps to eliminate violations
  - Consider additional evidence that may impact on findings (*e.g.*, conformance)
  - Request payment of back wages and any liquidated damages under CWHSSA
  
- Submit for Debarment if no agreement



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# Withholding of Funds

- In refusal-to-pay cases, contracting agency can withhold funds to cover back wages
- Contracting agency can withhold funds from other contracts which have same prime contractor (cross-withholding)
- Contracting agency should immediately notify WHD if contractor may be filing for bankruptcy

# Your Questions



This presentation will be available on the NCMA San Diego Chapter web site in the near future!

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# 2009 Prevailing Wage Conferences

- Most of the material for this presentation is taken from the 2009 Prevailing Wage Conferences conducted by the DOL
- This 1-hour topical presentation was condensed from that material to provide information on specific SCA topics

# Acronyms — A–D

- AAM—All Agency Memorandum
- ARRA—American Reinvestment & Recovery Act of 2009
- BLS—Bureau of Labor Statistics
- CFR—Code of Federal Regulations
- CWHSSA—Contract Work Hours and Safety Standards Act
- DBA—Davis-Bacon Act
- DoD—Department of Defense
- DoE—Department of Energy
- DOL—Department of Labor

# Acronyms — E–O

- e98—Online request form
- ETA—DOL Employment and Training Administration
- FAR—Federal Acquisition Regulation
- FB—Federal Employees' Compensation Act Bulletin
- FLSA—Fair Labor Standards Act
- GSA—General Services Administration
- MSA—Metropolitan statistical area
- NCS—National Compensation Survey
- OES—Occupational Employment Statistics
- OMB—Office of Management and Budget

# Acronyms — P–W

- PCA—Public Contract Act
- SCA—Service Contract Act
- WD—Wage determination
- WDOL—Wage Determinations Online
- WHD—DOL Wage and Hour Division

And for any other acronym used in WD, go to

<http://www.dol.gov/whd/recovery/pwrb/Tab1AcronymsLinks.pdf>

# On-line Help

- Wage Determinations — <http://www.wdol.gov>
- Wage and Hour Division — <http://www.dol.gov/esa/whd>
- Office of the Administrative Law Judges Law Library — <http://www.oalj.dol.gov>
- Administrative Review Board — <http://www.dol.gov/arb>
- Debarred Bidders List — <http://www.epls.gov>
- Wage Determinations On-Line (WDOL) — <http://www.wdol.gov>
- SF1444, Request for Authorization of Additional Classification and Rate — <http://www.wdol.gov/docs/sf1444.pdf>
- e98 — <http://www.wdol.gov/e98.aspx>

# WDOL.gov

- Created by an inter-agency task force including DOL, DoD, OMB, GSA, DoE, and the National Technical Information Systems
- The purpose was 2-fold, to:
  - Meet the presidential initiative for e-government
  - Enhance the public's ability to obtain WDs



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# WDOL.gov Features

- The system is menu driven
- Reduces WD processing time
- Ensures consistent application of labor standards
- Provides an “alert” service to notify users of the latest updates

# WDOL.gov Provides Access

- SCA WDs
- DBA Wage Decisions
- Archived SCA and DBA WDs
  - 5<sup>th</sup> Edition of the Service Contract Directory of Occupations
  - e98
  - Agency Labor Advisors
  - DOL and FAR regulation cites
  - User's guide
  - AAMs

# ARRA Website & HUD Clarification

- Wage and Hour Division ARRA website—AAM No. 207, important links, and other relevant information is posted:  
[www.dol.gov/esa/whd/recovery](http://www.dol.gov/esa/whd/recovery)
- The scope of Davis-Bacon applicability to certain specific HUD programs is affected by a provision in the Supplemental Appropriations Act of 2009, enacted on June 24, 2009 (Pub. L. 111-32)
- Related ARRA information  
<http://www.dol.gov/whd/recovery/index.htm>

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# Code of Federal Regulations

## 29 CFR Part

- 1 - Procedures for Predetermination of Wage Rates under the Davis-Bacon Act
- 3 - Payment & Reporting of Wages on Federal Construction Contracts
- 4 - Federal Service Contracts
- 5 - Labor Standards Provisions Applicable to Federal Construction Contracts
- 6 - Rules of Practice for Administrative Proceeding

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# Code of Federal Regulations

## 29 CFR—Part

7 & 8 - Rules for DBA/SCA appeals before the ARB

525 - FLSA (Workers with Disabilities)

531 - FLSA (Credit for tips, meals, & lodging)

541 - FLSA (Exempt - Salaried employees)

778 - FLSA (Overtime)

785 - FLSA (Hours Worked)

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# Labor Standards Statutes

The Davis-Bacon Act (DBA)

Davis-Bacon and Related Acts (DBRA)

Contract Work Hours and Safety Standards Act  
(CWHSSA)

Copeland “Anti-Kickback” Act (CA)

Walsh-Healey Public Contracts Act (PCA)

McNamara-O’Hara Service Contract Act (SCA)

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