

<b>U. S. Department of Labor</b> Employment and Training Administration Washington, D.C. 20210	<b>CLASSIFICATION</b> <b>Alien Labor Certification</b>
	<b>CORRESPONDENCE SYMBOL</b> <b>DFLC</b>
	<b>DATE</b> <b>May 16, 2000</b>

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 1-00

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : LENITA JACOBS-SIMMONS  
Deputy Assistant Secretary




SUBJECT : Availability and Use of Occupational Employment Statistics Survey Data for Alien Labor Certification Prevailing Wage Purposes

- 1. Purpose.** To make State staff aware of the availability of new Occupational Employment Statistics Survey (OES) data and to provide information on how it is to be used in light of the changes to prevailing wage determination practices as promulgated by the American Competitiveness and Workforce Improvement Act (ACWIA); and to transmit Prevailing Wage Policy "Q's & A's" (Attachment A) which provide policy and procedural guidance clarifying the intent of General Administration Letter (GAL) No. 2-98, particularly with regard to the use of employer-provided wage data.
- 2. References.** 20 CFR part 655, subpart A; 20 CFR part 655, subparts H and I; 20 CFR part 656; Technical Assistance Guide (TAG) No. 656, Labor Certifications; GAL No. 2-98, Prevailing Wage Policy for Nonagricultural Immigration Programs (October 31, 1997); and GAL No. 2-99, Availability and Use of Occupational Employment Statistics Survey Data for Alien Labor Certification Prevailing Wage Purposes (April 23, 1999).
- 3. Background.** The Bureau of Labor Statistics' (BLS) regional offices have recently provided new data files to Employment Security Agencies which contain the updated OES data. States are to use this data in making prevailing wage determinations during Calendar Year 2000. As was the case in 1999, there are two data sets. One set is composed of the ALC\_\_98f.dbf and \*.dat files, those with the prefix "ALC" and referred to as the "ALC" database. These files will be used to determine prevailing wages for occupations in most industries. The second set is composed of the EDC\_\_98f.dbf and \*.dat files, those with the prefix "EDC" and referred to as the "EDC" database. These files are to be used to determine prevailing wages in industries identified in ACWIA, as

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discussed below. These data sets should be used for making prevailing wage determinations immediately upon receipt.

This year's data are the third year of OES estimates and have been developed using 1996, 1997, and 1998 survey data that, when combined, cover approximately 1,200,000 sample units. As expected, wages for use in 2000 differ from those used in 1999. One of the results of the new sample is that the number of occupation/location cells whose data is based on data only obtained within the specific location has again increased from last year.

The ACWIA, enacted as part of the omnibus budget for Fiscal Year 1999, increased the H-1B quota and made several other changes to the program, including a change for the calculation of prevailing wages in all labor certification programs for all occupations with specific types of employers. The ACWIA states: "Section 212 (8 U.S.C.1182) is amended by adding at the end the following:

(p)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (n)(1)(A)(i)(II) [H-1B program] and (a)(5)(A) [permanent program] in the case of an employee of --

(A) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity; or

(B) a nonprofit research organization or a Governmental research organization, the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment . . . ."

Attachment B to this GAL contains the definition of "an institution of higher education" found in the Higher Education Act (HEA) of 1965. Any institution meeting this definition must be provided a prevailing wage determined by using the "EDC" database (unless an acceptable employer provided survey is offered). An institution which indicates that they are a nonprofit entity either related to or affiliated with an institution of higher education, as defined in the HEA, is also to use the "EDC" database. Finally, institutions which indicate that they are a nonprofit research organization (e.g., recognition by IRS of nonprofit status) or a Governmental research organization are also to be provided prevailing wages based on the EDC database (unless an acceptable employer-provided survey is offered).

The new law went beyond the recently published regulations referring to "researchers" in colleges and universities and selected research facilities. The ACWIA indicates that all occupations in institutions of higher education, a related or affiliated nonprofit entity, nonprofit research organization, or governmental research agency, should be provided prevailing wages using the "EDC" database or use the prevailing wage based on a sample of similar institutions.

4. Use of OES data. The OES wages in the "ALC" database from BLS are to be used to determine prevailing wages except: a) where a Davis-Bacon wage, an SCA wage, or a wage obtained from a collective bargaining agreement takes precedence, as outlined in

GAL 2-98; and b) where the occupation is in an industry described under ACWIA.

The OES survey collected wage data on occupations found in institutions of higher education (SIC 822). This is the "EDC" database (files listed as EDC\_\_98xxf.dbf and \*.dat where xx is the appropriate State postal code). The "EDC" database is to be used to determine the prevailing wage for occupations in organizations identified in ACWIA above (institutions of higher education, a related or affiliated nonprofit entity, nonprofit research organization, or governmental research agency).

The Davis-Bacon and Service Contract Act wages are not to be used as the prevailing wage for occupations in organizations identified in ACWIA because of the specific wording in the Act regarding the way in which prevailing wages are to be determined for these organizations. However, if a negotiated union agreement exists for the requested job in the facility where the job is being requested, the negotiated wage is to be used as the prevailing wage.

The provisions of GAL 2-98 continue to apply to the process of providing skill level I and skill level II as the appropriate prevailing wage for the requested occupation. Also applicable is the process described under GAL 2-98, Section J, Use of Employer-Provided Published Wage Surveys or Employer-Conducted Surveys. For occupations in organizations which were identified in ACWIA, employer-provided or conducted surveys must meet the criteria under GAL 2-98, Section J, except that criterion (5) will not apply. Instead, such surveys, in order to be acceptable, must include a representative sample of the occupation in similar institutions as required in the ACWIA.

We are currently discussing with BLS the possibility of obtaining wage data for "Governmental research organizations". Although BLS has data from OPM on Federal wages, we must determine if we can extract from that data those wages paid in organizations where the primary function is research. Until that information can be provided, the EDC database should be used to provide prevailing wage determinations in these organizations as well.

For users of ALCATS, that computer program has been revised to allow the user to select the use of the ALC or EDC database, as appropriate. The application is available to download by accessing the internet site "<http://edc.dws.state.ut.us>" and following the appropriate links to the ALCATS area. State Agency staff that would like to obtain a CD containing the application may obtain it either by using the order form available at that site, or by calling Gary Ray at 801-526-9455.

5. Action Required. State Administrators are requested to:

A. Provide this guidance to appropriate staff.

B. Ensure that the State OES coordinator has provided the 1998 Occupational Employment Statistics Survey to staff responsible for making prevailing wage determinations under the nonagricultural Alien Labor Certification programs.

C. Ensure that State staff start using these data for determining prevailing wages immediately upon receipt of the data.

6. Inquiries. Inquiries regarding this GAL should be addressed to your Regional Office.

7. Attachments.

A. Prevailing Wage Policy “Q’s & A’s”.

B. Definition of “institution of higher education” from the Higher Education Act of 1965.