



National Prevailing Wage Center Updates

May 16, 2019

**Office of Foreign Labor Certification
National Prevailing Wage Center
Employment and Training Administration
United States Department of Labor**

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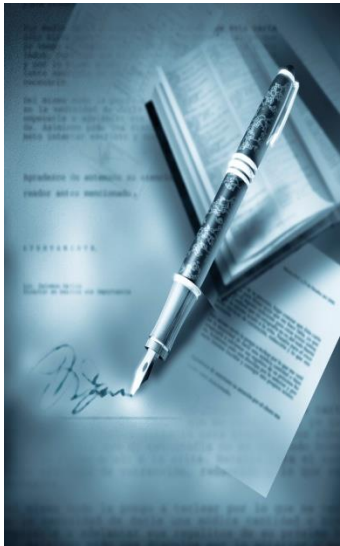
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- I. Organizations and Occupation Sets
- II. Filing Tips
- III. American Competitiveness and Workforce Improvement Act (ACWIA) Updates
- IV. CBA Documents
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Section I

Organizations and Occupation Sets

Department of Labor: Prevailing Wage Program Organizations - *Office of Management and Budget (OMB)*

- Established the Standard Occupational Classification (SOC) under Statistical Policy Directive No. 10
 - <https://www.whitehouse.gov/omb/information-regulatory-affairs/statistical-programs-standards/>
 - <https://www.federalregister.gov/documents/2017/11/28/2017-25622/standard-occupational-classification-soc-system-revision-for-2018>
- Established the SOC Revision Policy Committee and its successor the SOC Policy Committee
 - Comprised of representatives from 15 Federal Agencies
 - Solicits and reviews comments on SOC revisions
- Established the Standards for Defining Metropolitan and Micropolitan Statistical Areas
 - <https://www.federalregister.gov/documents/2000/12/27/00-32997/standards-for-defining-metropolitan-and-micropolitan-statistical-areas>
- Established use of North American Industry Classification System (NAICS)
 - Created in cooperation with Canada and Mexico
 - <https://www.federalregister.gov/documents/1997/04/09/97-8101/1997-north-american-industry-classification-system1987-standard-industrial-classification>
 - <https://www.census.gov/eos/www/naics/>

Department of Labor: Prevailing Wage Program Organizations - *Bureau of Labor Statistics*

- Oversees the Occupational Employment Statistics (OES)
 - <https://www.bls.gov/oes/home.htm>

- **Host the SOC website**
 - <https://www.bls.gov/soc/>

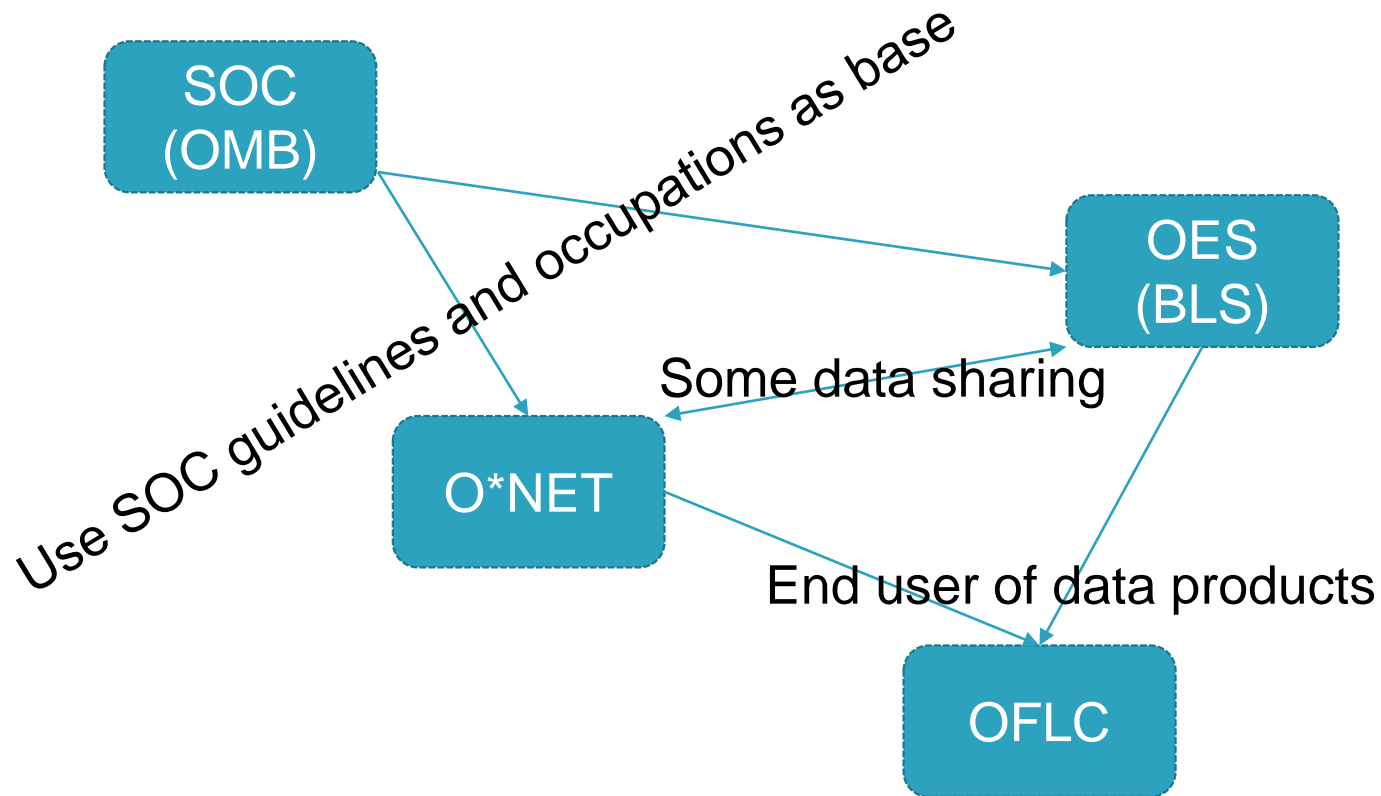
- Conducts several surveys
 - Surveys not directly used by OFLC
 - Current Employment Statistics
 - Current Population Survey
 - Others
 - Conducts the Occupational Employment Statistics (OES)
 - Establishes, along with state agencies, Nonmetropolitan Areas to extend the OMB areas
 - A version of the OES results is provided to OFLC
 - Uses expanding areas to provide wages for nearly all occupations and locations
 - Provides level and mean values so four wage levels can be issued

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Organizations: *Occupation Information Network, O*NET*

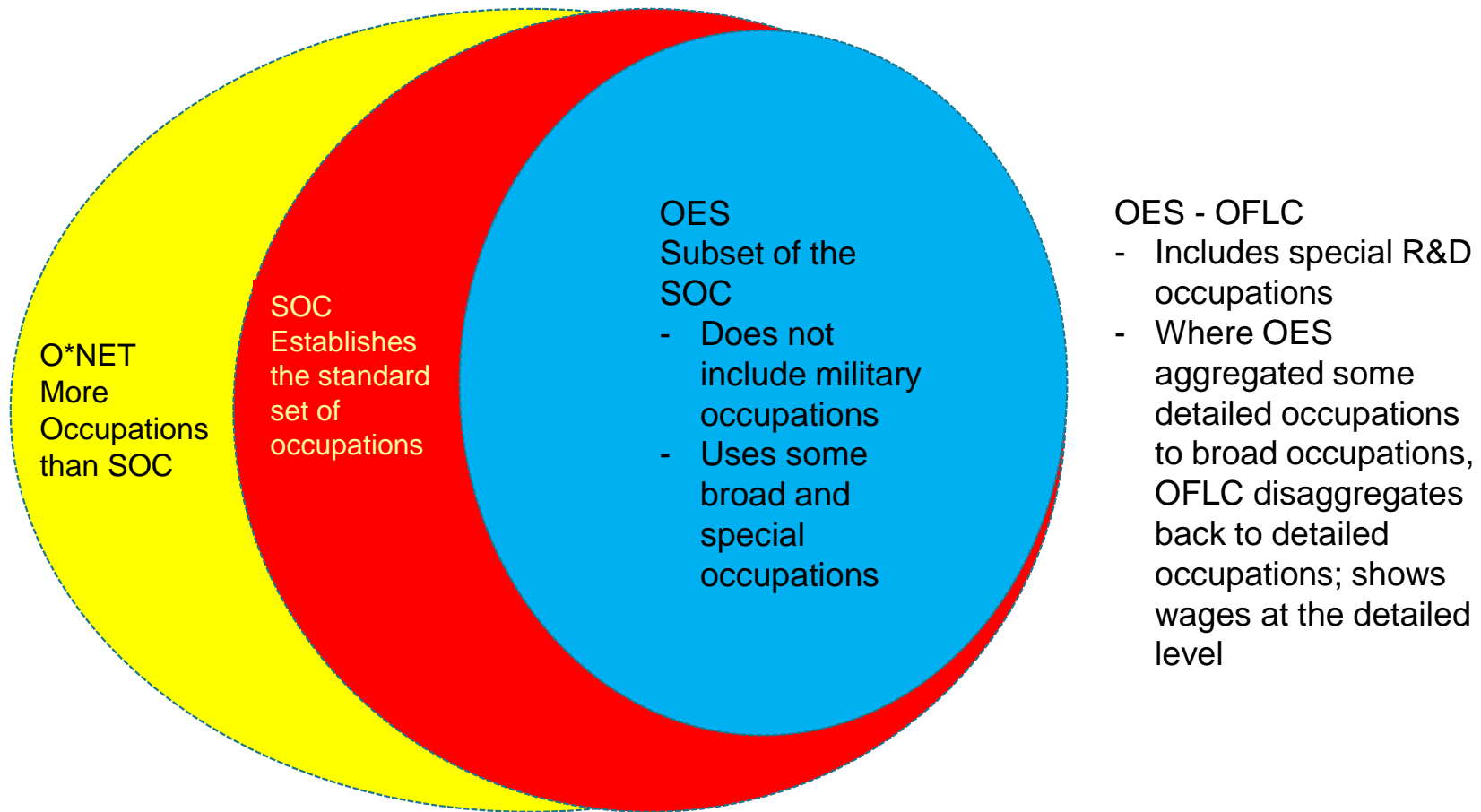
- A Federal, State and Private consortium
- Oversight and Grant by the Employment and Training Administration
- Operations by North Carolina Department of Commerce
- Project partners can be found at <https://www.onetcenter.org/overview.html#project-partners>
- O*NET OnLine <https://www.onetonline.org/>
 - Career Exploration Tool
 - Does not have the exact same data elements as either OES or OFLC programs
 - Extends the SOC for career exploration
 - Not designed to be a classification or leveling tool

Department of Labor: Prevailing Wage Program Organization Relationships



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Relationship of Occupation Sets





Section II

Filing Tips

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Documents sent to the NPWC

- All are available to the public under FOIA
- Should not include information about an individual
 - PWDs are for the position described in the application, not for a person
 - We have to purge any potentially sensitive documents from the system to prevent compromising an individual's information
- The PWD is forwarded in subsequent steps of filing process, the supporting documents are not – that is why we require all the information relevant to the decision process be on the face of the form

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NPWC Filing Tips

- ✓ When submitting requests for Prevailing Wage Determinations (PWDS) the filer should:
 - ✓ Ensure the Form ETA-9141 mandatory fields are complete.
 - ✓ Ensure job duties provided are detailed and include as much specificity as possible.
 - ✓ Ensure supervision tasks are detailed and include the occupations being supervised.

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NPWC Filing Tips

- ✓ NPWC May send a Request for Further Information (RFI) if the following is unclear:
 - ✓ Vague job duties.
 - ✓ Conflicting education and experience requirements.
 - ✓ Occupations being supervised.
 - ✓ Missing survey documents.
 - ✓ Missing or incorrect State/County information.

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NPWC Filing Tips

- ✓ Please remember that vague job tasks may overlap with other occupations. Thus, it is imperative to provide the specifics on the following:
 - ✓ Types of products being sold. (e.g. technical vs. non-technical)
 - ✓ Types of projects or services being managed. (e.g. sales)
 - ✓ Specific course(s) that will be taught.
 - ✓ Type of clinical care that will be provided. (e.g. pediatrics)
 - ✓ Type of products or processes that will be worked on.

Vague Job Duties vs. Detailed Job Duties

- ✓ The employee will oversee projects that will increase revenue for the organization and provide solutions to upper management.
- ✓ The employee will oversee sales related projects, which include, the distribution of products, sales territories and providing solutions to increase revenue for the organization.

Vague Job Duties vs. Detailed Job Duties

- ✓ The employee will teach math and science to students. He/she will also prepare lessons plans and assign homework as needed.
- ✓ The employee will teach math and science to elementary and middle school students. He/she will also prepare lesson plans and assign homework as needed.

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NPWC Filing Tips

- ✓ When the employer's job duties include two distinct tasks NPWC will assign a combination of occupations.
 - ✓ For example: Job duties indicate the employee will manage the marketing activities and programs for the organization. The employee will also design, create and modify the marketing website.
 - ✓ The job duties listed above will be assigned a combination of occupations of 11-2021.00 - Marketing Managers and 15-1134.00 - Web Developers as duties represent two distinct tasks and are not found within a single Standard Occupational Classification code (SOC code).

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NPWC Filing Tips

- ✓ Please take note of the following RFI reminders:
 - ✓ If you receive an RFI pertaining to job duties in question, you may provide details about job duties or elaborate on the duties; however, please NOTE that the original submitted job duties cannot be removed in the RFI response.
 - ✓ The removal of job duties may lead to the case being returned un-processed; thereby, causing the employer to submit a new Form ETA-9141.
 - ✓ Do not include irrelevant information such as the nature of the employer, working conditions, etc.



Section III

American Competitiveness and Workforce Improvement Act (ACWIA) Updates

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NPWC ACWIA Updates

- ✓ NPWC is aware that the ACWIA SOC codes (e.g. 15-1034 – Software Developer, Applications, Non R&D) were not being displayed on the issued Form ETA-9141. Rather the non-ACWIA SOC code and title was indicated, although the assigned wage was based on the ACWIA SOC code.
- ✓ At this time, the above issue has been resolved and the ACWIA SOC codes are indicated on the Form ETA-9141. However, the ACWIA SOC occupation title is not being fully displayed as it does not indicate R&D or Non-R&D in the occupation title.

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NPWC ACWIA Updates

- ✓ The American Competitiveness and Workforce Improvement Act (ACWIA) requires the Department of Labor to issue wages to Institutions of Higher Education and Research entities.
- ✓ The ACWIA SME Team at NPWC analyzes a specific set of employers for ACWIA coverage.
- ✓ If an employer is ACWIA covered, the NPWC must issue an ACWIA Wage.

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NPWC ACWIA Updates

- Identifying *potential* ACWIA Covered Employers:
 - ✓ Has 'College' or 'University' in their name.
 - ✓ Has a government agency in their name.
 - ✓ Has a North American Industry Classification System (NAICS) code of
 - ✓ 611310; 622110; 622310; 541712; 541711
 - ✓ Is a research organization and indicated their affiliation and non-profit status.
 - ✓ Includes a statement requesting the ACWIA wage, or requests ACWIA wages in section D1 of the Form ETA-9141 application.

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NPWC ACWIA Updates

- ✓ The employer must meet **at least one** of the definitions under **656.40(e)(1)** to qualify for ACWIA wages based on the definitions [paraphrased below]:
 - ✓ (i) the employer is a public or non-profit college or university that awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree, or issues a degree accepted for entry in to a graduate (post-baccalaureate) degree program;
 - (ii) an affiliated [with a covered college or university] non-profit entity with a shared ownership or control;
 - (iii) the employer is a non-profit or government organization primarily engaged in research in the sciences, social sciences, or humanities.

- ✓ To verify if the employer meets **656.40(e)(1) (i)** the Analyst will perform the following steps:
 - ✓ Research school's website to see if their admissions requirements state a high school diploma or GED is required; and if school is legally authorized within such state to provide a program of education beyond secondary education;
 - ✓ Check the employer's website for the degrees offered;
 - ✓ Use the National Center for Statistics website to verify that the school has a bachelors, masters, or associate program.

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NPWC ACWIA Updates

- ✓ To verify if the employer meets **656.40(e)(1) (ii)** the Analyst will perform the following steps:
 - ✓ Research employer's website for documents demonstrating ownership or control shared with an institute of higher education;
 - ✓ Research the employer's website to ensure non-profit status;
 - ✓ Employer is owned or operated by institution of higher education or vice versa meets the "affiliation" aspect of the regulation (e.g. Hospital owns University or vice versa)
 - ✓ Review any documentation sent with case

- ✓ To verify if the employer meets **656.40(e)(1) (iii)** the Analyst will perform the following steps:
 - ✓ Research employer's website to see if there is indication of non-profit status and an indication *primarily* engaged in basic research and/or applied research in the sciences, social sciences, or humanities;
 - ✓ Review any documentation sent with case

- ✓ *Please note that the steps outline above are not all inclusive; therefore, the Analyst may perform additional research duties to verify if the employer is ACWIA covered.*

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NPWC ACWIA Updates

The ACWIA team should request further information (RFI) (using the standard ACWIA RFI language*) to obtain documentation when the following is unclear :

- ✓ Non-profit status

- ✓ Affiliation with an educational institution (but affiliation agreement not attached to case)
 - ✓ Shared ownership either directly or by a parent entity. This includes branch, subsidiary and cooperative relationships.
 - ✓ An oversight group (board, committee, et al) has the authority to direct the both affiliate and the institution of higher education.
 - ✓ An agreement exists requiring a position to have decision making authority in both entities – example: The position of Chief of Radiology at the Hospital will also be the Chair of the Radiology Department at the Medical School.
 - ✓ Responsibility for conducting the qualifying activity is shared - example: The Medical School and the Hospital shall jointly establish the curricula for medical resident and fellowship programs.

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NPWC ACWIA Updates

- ✓ The employer is non-profit and primarily engaged in research.
- ✓ Website research does not clearly indicate that the employer is a public, nonprofit college that offers two year programs that are acceptable toward a four year degree or awards a degree that is acceptable for admission to a graduate or professional (post- baccalaureate) degree program.

** While there is standard ACWIA RFI language in place, the ACWIA team may tailor the RFI language in certain circumstances (e.g. requesting an affiliation agreement).*

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National Prevailing Wage Center Updates for Stakeholder Meeting



Section IV

CBA Documents

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What Documents do I submit for a CBA?

What documentation should I submit in addition to ETA Form 9141 when the job opportunity is covered by a collective bargaining agreement (CBA)?

When a job opportunity is covered by a collective bargaining agreement, the employer must submit the following at the time it submits the ETA Form 9141:

- A copy of the relevant portion of the CBA;

- A letter, on letterhead, from the employer, stating the relevant section of the CBA, the CBA job title, and the appropriate wage; and

- A letter, on letterhead, from the collective bargaining unit's (union) authorized representative, stating the relevant section of the CBA, the CBA job title, and the appropriate wage.

March 24, 2010

<https://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#q!483>

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Relevant Portions of the CBA

- The effective dates
 - When it goes into force and when it expires
 - Any extensions to the above
- Definitions of descriptions of job titles
- All pay factors and tables with explanations
- Signatures putting agreement into place

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What goes into the letters?

- The employer and union letters are to let the two parties tell the NPWC what wage ***the job opportunity on this application*** should receive
- There should only be one CBA position listed and one wage
- Please include citations to the provision(s) and table(s) used to for the wage presented
- The letters need to show the same wage and position information for us to accept

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Examples of problems on CBA letters

Listing several occupations	Lineman – \$24.12 per hour Electrician - \$22.19 per hour Conduit Layer - \$19.27 per hour
Listing more than one wage for a position	Staff Writer - \$2458 to \$3144 per month Assistant Professor - \$34,450 10 month Assistant Professor - \$46,150 12 month
Simply referring to section in the CBA	Assistant Professor – see table 4 as revised in 2017.



Section V

Surveys

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Published Surveys

- Age of Data
 - Must be most recent publication of the survey
 - Must be based on wages collected no more than 24 months before the date of publication
 - Must be the most **up-to-date wage data available for the survey - where the survey's wage data is updated on a more frequent basis than the survey's overall publication schedule**
 - The survey must be published within the last 24 months

Department of Labor: Prevailing Wage Program Surveys - Where does the survey have to get wages?

- The data must be from the area of intended employment
 - The definition of "area of intended employment" at 20 CFR 656.3 states:

Area of intended employment means the area within normal commuting distance of the place (address) of intended employment.

There is no rigid measure of distance which constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., normal commuting distances might be 20, 30, or 50 miles).

If the place of intended employment is within a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA), any place within the MSA or PMSA is deemed to be within normal commuting distance of the place of intended employment; however, not all locations within a Consolidated Metropolitan Statistical Area (CMSA) will be deemed automatically to be within normal commuting distance. The borders of MSA's and PMSA's are not controlling in the identification of the normal commuting area; a location outside of an MSA or PMSA (or a CMSA) may be within normal commuting distance of a location that is inside (e.g., near the border of) the MSA or PMSA (or CMSA). The terminology CMSAs and PMSAs are being replaced by the Office of Management and Budget (OMB). However, ETA will continue to recognize the use of these area concepts as well as their replacements.

Department of Labor: Prevailing Wage Program Surveys - When can a Survey Area be Expanded?

- The survey sample result must include at least three (3) employers and at least thirty (30) workers
- Expansion of the geographic area beyond the area of intended employment can be used when:
 - Sampling of similarly employed workers in the occupation in the area of intended employment results in fewer than 3 employers and/or fewer than 30 workers
 - Other statistically valid reason, such as a dominant employer
- Expansion of the area must be:
 - Smallest area that meets standards
 - Contiguous area; areas with economic and commuting ties have priority
 - May cross state lines

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Survey Job Duties

- The description of the occupation in the survey must reasonably match the position's duties described on the prevailing wage application
- The tasks an individual will be performing regularly
- The wages are to be from workers generally performing the Survey Job Duties as a whole
- The survey may gather wage information for more than one job (survey occupation).
 - Distinctions between the occupations must be clear
 - *Wage data must be provided for all occupations surveyed or a statement that there was not enough data to provide a wage*

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Survey Document Basics

- The survey methodology must be included
 - Must demonstrate that data collection methods are reasonable and consistent with recognized statistical standards.
- The sample should be representative of all workers in the occupation in the area of intended employment, regardless of the type/nature of the employer or the employer's industry.
- The data must be collected cross industry
- The sample must be selected randomly
- Wage calculations:
 - The prevailing wage is determined based on the survey's mean wage (average wage weighted by the number of employees)
 - If the survey does not normally provide an arithmetic mean, but provides a median wage, then the median wage may be used for the prevailing wage determination

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Survey Leveling and Survey Editions

- The survey leveling description must be included and must reasonably match the application's duties and major requirements.
- All portions of the survey documentation must be from the same survey and edition (year/quarter/month)
- List of Survey Participants:
 - The wage data must have been collected across the various industries and it must cover the specific occupational category for which the employer is seeking a prevailing wage determination.
- Not all surveys have leveling – it is not required

Department of Labor: Prevailing Wage Program Survey Requirements Summary

- Employers may submit an already published survey or they may conduct their own survey;
- All survey documentation submitted to the NPWC must be from the same survey source and within the same edition;
- Wage data must be for the area of intended employment, it must be weighted and it must contain the arithmetic mean of workers;
- Survey sample size must consist of at least 3 employers and 30 employees;
- Survey must be cross-industry;
- Survey must not limit the nature of the employer; and
- Survey methodology must demonstrate that data collection methods are reasonable and consistent with recognized statistical standards.