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BY THE COMPTROLLER GENERAL

RELEASED

Report To The Chairman Committee On Government Operations House Of Representatives OF THE UNITED STATES

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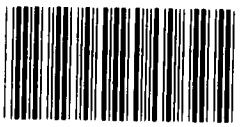
Service Contract Act Should Not Apply To Service Employees Of ADP And High-Technology Companies-- A Supplement

This report supplement contains GAO's evaluation and response to the Department of Labor comments on the September 16, 1980, report. Labor strongly disagreed with the report conclusion that the Service Contract Act should not be applied in the maintenance and repair of ADP and other high-technology commercial equipment. Labor charged that the report contained material errors of fact and law. However, Labor misread GAO's analysis of the act's congressional intent. Also, Labor did not adequately address the major issues that wage protection for service workers is not needed and that undue financial and administrative burdens result from applying the act to high-technology industries.

GAO continues to believe that actions are fully justified and needed to permanently exclude Federal contracts for ADP and other high-technology commercial product-support services from the act's coverage.



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HRD-80-102 (A)
MARCH 25, 1981

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-200149

The Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives

Dear Mr. Chairman:

In response to your January 22, 1981, letter, we have evaluated the Department of Labor's comments on our report to your Committee entitled "Service Contract Act Should Not Apply to Service Employees of ADP and High-Technology Companies" (HRD-80-102, Sept. 16, 1980).

Our report assessed the impact of Labor's June 5, 1979, ruling that all Federal contracts for the maintenance and repair of automatic data processing (ADP), telecommunications, and other high-technology commercial equipment are subject to the wage determination and other requirements of the Service Contract Act (SCA). We concluded that

--SCA was not intended to cover maintenance services related to commercial products acquired by the Government;

--Labor made no feasibility, cost/benefit, or impact studies to support its ruling;

--the ruling will impose an undue financial and administrative burden on the affected companies;

--wage protection for these service workers is not needed; and

--the ruling may cause Federal agencies to eliminate or curtail many crucial programs and services.

We recommended that the Congress amend SCA to make it clear that the act excludes coverage for ADP and other high-technology commercial product-support services--i.e., services the Government procures based on established market prices of commercial services sold in substantial quantities to the public. We also recommended that, pending such action by the Congress and to avoid further serious impairment to the conduct of Government business, the Secretary of Labor temporarily exempt from SCA's coverage certain contracts and contract specifications for ADP and other high-technology commercial product-support services.

In its December 31, 1980, response to our report, Labor took exception to our findings, conclusions, and recommendations. Labor charged that our report contained material errors of fact and law. However, Labor did not point out any errors of fact and, in our opinion, misread our analysis of the congressional intent of the act and its legislative history. Also, Labor did not adequately address the major issues in our report (1) that wage protection for service workers in the ADP and high-technology industries is not needed or (2) that an undue financial and administrative burden results from applying SCA to these industries. In addition, Labor still has not made any feasibility, cost/benefit, or impact studies on the application of SCA to these industries.

Our recommendations have been endorsed by the Office of Management and Budget, the Department of Energy, the General Services Administration (GSA), the National Aeronautics and Space Administration, and the Veterans Administration.

Following are summaries of Labor's comments and our evaluation. Appendix I to this report is the digest of our September 16, 1980, report. Appendix II is the full text of Labor's comments, cross-referenced to our detailed evaluation of the comments in appendix III.

DEPARTMENT OF LABOR COMMENTS

Labor contended that the central premise of our report is that Labor's June 5, 1979, ruling was its first attempt to apply SCA to the maintenance and repair of ADP and other high-technology equipment either under a schedule contract specification or under a contract calling only for services. Labor stated that our main conclusion is based on this premise and that both our premise and conclusion are in error.

According to Labor, we had previously upheld its position when, on April 23, 1979, we denied a bid protest which contended that a contract for lease, maintenance, and option to purchase minicomputer system equipment was principally for the procurement of computers rather than computer services and, therefore, was not subject to SCA. Labor also said that our September 16, 1980, report represented a reversal of a position we took in our report, "Review of Compliance with Labor Standards for Service Contracts by Defense and Labor Departments" (HRD-77-136, Jan. 19, 1978).

Other views that Labor presented to refute the merits of our report included:

--Our argument, that SCA should not apply to the ADP and high-technology industry because of the "allegedly unique" features of the industry, would open the way to a widespread rollback of the act's coverage in the whole universe of service contracts since many other types of services are sold to the Government under similar conditions.

--Labor's position on wage busting is that the presence or absence of this phenomenon is not a proper, relevant, or feasible basis for determining coverage under SCA.

--Our report's discussion of the "alleged" costs associated with the ADP and high-technology industry's compliance with the act is seriously flawed.

--Labor acknowledges the severe adverse impact on several vital Federal programs that would occur if companies should continue to refuse to contract with the Government because of the presence of the act's provisions in their contracts, but believes the SCA coverage issue should be addressed on its merits and not on the basis of a possible boycott by potential Government contractors.

GAO EVALUATION

We disagree with Labor's description of both the "central premise" and the "main conclusion" of our report. We also disagree that our premise and conclusion are in error. Throughout its response to our report, Labor argues that its June 5, 1979, letter to GSA did not constitute an initial decision to apply SCA to the maintenance and repair of ADP and other high-technology equipment purchased or leased by the Government. Rather, Labor contends that such application is longstanding in its regulations and that the June 1979 letter constituted a denial of GSA's request for a temporary exemption from this longstanding application, not an extension of SCA to a new area.

In various sections of our report, we acknowledged Labor's position on how it viewed the June 1979 letter to GSA. However, despite Labor's views, the Federal contracting community generally perceived Labor's June 1979 action as a new policy decision that expanded and extended SCA's coverage into a procurement area not previously covered and, in its view, not intended by the Congress in enacting this law.

Before Labor's June 1979 letter, GSA and other Federal agency procurement officials, including Labor's own procurement staff, had considered contracts for the purchase or rental of supplies and equipment, which included maintenance and repair services, to be subject only to provisions of the Walsh-Healey Public Contracts Act 1/ because the principal purpose of those contracts was to furnish supplies and equipment, not services. GSA, in fact, had a "more than 50 percent of the proposed contract price" criterion which it applied to proposed schedule contracts in determining SCA coverage using the "principal purpose" test in the act. 2/

GSA had generally not included SCA provisions and wage determinations in its annual schedule contracts for lease or purchase of equipment that included maintenance and repair services before Labor's June 1979 notice. Therefore, when vendors were later notified of Labor's action, they believed it to be a new decision extending the act's coverage to product-support services not previously covered, and they objected strongly. It was in this climate that we reviewed Labor's June 1979 action.

Consistency of GAO views

Labor's contention that we have upheld the Department's position on SCA coverage of separate bid specifications is in error. Labor's comment reflects a misunderstanding of two distinct issues.

First, there is no question of Labor's authority under SCA. We recognize that the act empowers the Secretary of Labor to administer it and to promulgate rules and regulations interpreting and implementing it. As discussed in our report, Labor's authority has been upheld by the Attorney General in a March 1979 opinion and in our bid protest decisions, including the April 23, 1979, decision cited by Labor.

Second, however, is the question of Labor's interpretation of SCA. We believe that Labor erroneously interpreted the legislative history of the act. We do not believe it was intended to cover maintenance services related to commercial products acquired by

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1/This act provides labor standards protection to employees of contractors manufacturing or furnishing materials, supplies, articles, and equipment to the Government. It applies to such contracts exceeding $10,000.

2/SCA provides labor standards protection to employees of contractors and subcontractors furnishing services to Federal agencies. The act applies when a contract's "principal purpose" is to provide services in the United States using service employees.

the Government. To the contrary, we believe the legislative history shows that SCA was intended to protect the labor standards of service workers on contracts for services previously performed in Government facilities by blue- or white-collar Government employees. The livelihood of such service workers depended primarily on wages paid on labor-intensive contracts. ADP and other high-technology commercial product-support service contracts, where Government sales represent a relatively small portion of a company's total sales, do not have the same characteristics, or incentives, for contractors to pay low wages to successfully bid on Government contracts. Accordingly, Labor's application of SCA to contractor services sold primarily in the commercial sector, such as provided by ADP and other high-technology industries, in our view, is inappropriate.

In our April 23, 1979, bid protest decision, we did not "uphold" Labor's position. We merely concluded that Labor's interpretation was not clearly contrary to law and therefore not subject to formal legal objection. We took this position in recognition of Labor's broad authority to interpret and implement the act. We did not, however, ever agree that Labor's position was the appropriate one or that it reflected the legislative history of the act. Our September 1980 report sets forth at length the basis for our conclusion that Labor's application of SCA to ADP and other high-technology industries is inappropriate.

We also disagree with Labor that our September 16, 1980, report represents a reversal of a position we took in our January 19, 1978, report. Our position, and that of agencies we contacted, is the same in both reports concerning the act's coverage. In our 1978 report, we discussed Labor's investigation of several service contracts which did not contain the required wage determinations. Those contracts were principally for maintenance of ADP or other equipment and, under Labor's regulations, were subject to SCA. Our report did not question SCA's application to those contracts. Under Labor's current regulations, those contracts would still be subject to Labor's wage determination requirements. However, on the basis of our review of the act's legislative history and the merits of industry arguments as presented in our September 1980 report, we believe that coverage of contracts for ADP and other high-technology commercial product-support services was not intended by the Congress, is not needed, and should be exempted.

Appropriateness of SCA coverage

Regarding Labor's comment that not applying SCA to the ADP and high-technology industry could "open the way to a widespread rollback of SCA coverage in the whole universe of service contracts," our report deals only with the ADP and other high-technology industries, and we cannot comment on other potential

SCA coverage problems. However, industry officials we contacted did not view the issue as a rollback of coverage; instead, they were concerned with halting what they perceived to be Labor's administrative expansion of SCA coverage in recent years to contracts outside the language and intent of the act.

Labor's application of SCA to ADP and other high-technology commercial product-support services, in our view, is inappropriate and not in the best interest of the Government or the affected industries.

Wage busting issue

We disagree with Labor that the "no wage busting" argument presented in our report is improper, irrelevant, or unfeasible for determining SCA's coverage. The prevention of wage busting was the central purpose of the act. Exemption action in an area where wage busting does not exist, or has no potential to exist, could in our opinion be supported by the Secretary of Labor within the act's language. Thus, the presence or absence of wage busting is a proper, relevant, and feasible basis for determining SCA coverage.

Cost of SCA coverage

We disagree with Labor's charge that our discussion of the alleged costs associated with the ADP and high-technology industry's compliance is seriously flawed. As a result of Labor's June 5, 1979, ruling, GSA's fiscal year 1981 ADP and Federal Supply Service schedule contracts for rental and purchase of equipment, including maintenance and repair services, contain the act's provisions for the first time. Most Federal agencies use the GSA schedules, either exclusively or in part, to satisfy equipment maintenance requirements. Industry compliance with SCA's requirements would not be a problem for contractors whose entire work force is paid at or above the issued wage determination rates. However, where some employee wage rates are lower, the contractors would have to alter assignment practices or adjust wage rates established under merit pay principles. Recordkeeping systems would have to be revised to provide the data needed to assure compliance with the act. Establishing such systems would be costly and burdensome.

Impact on Federal programs

Regarding the adverse impact on Federal programs if the ADP industry continues to refuse to contract with the Government because of the presence of SCA provisions in its contracts, we do not believe that Labor has adequately considered the merits of the situation. In our opinion, Labor has so broadly interpreted SCA that

its provisions are being applied to the ADP and high-technology industries without adequate consideration of (1) the act's legislative history and (2) Federal procurement agencies' or industry's views.

CONCLUSION

The conclusions and recommendations in our report are based on voluminous data gathered from many sources, including Labor itself, and on an extensive analysis of the congressional intent and legislative history of SCA. We continue to believe that actions are fully justified and needed to permanently exclude Federal contracts for ADP and other high-technology commercial product-support services from the act's coverage.

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As arranged with your office, unless you publicly announce its contents earlier, we will make no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to the Chairmen, House and Senate Committees on Appropriations, Senate Committee on Governmental Affairs, House Committee on Education and Labor and its Subcommittee on Labor-Management Relations, and Senate Committee on Labor and Human Resources and its Subcommittee on Labor. Copies will also be sent to the Chairman, Presidential Task Force on Regulatory Relief; the Secretary of Labor; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

APPENDIX I

COMPTROLLER GENERAL'S REPORT TO THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

SERVICE CONTRACT ACT SHOULD NOT APPLY TO SERVICE EMPLOYEES OF ADP AND HIGH-TECHNOLOGY COMPANIES

D I G E S T

The Service Contract Act of 1965 protects workers' wages on Federal contracts when the contracts' principal purpose is to provide services in the United States using service employees. For contracts over $2,500, the minimum wages and fringe benefits must be based on rates the Secretary of Labor determines as prevailing for service employees in the locality.

LABOR'S CONTROVERSIAL DECISION

On June 5, 1979, the Department of Labor notified the General Services Administration (GSA) that the maintenance and repair services specifications of all Federal contracts for the purchase or rental of supplies or equipment were subject to the act. Previously, GSA and other Federal contracting agencies had not considered these contracts to be subject to the act.

Soon thereafter, several major automatic data processing (ADP) and other equipment manufacturers announced their refusal to accept any Government contract subject to the act.

THE COMMITTEE'S REQUEST

Labor's decision could seriously affect maintenance and repair of the Government's computers--more than 14,300 computers valued by GSA at more than $5.4 billion--many of which are critical to national defense and security. On November 23, 1979, the Chairman, House Committee on Government Operations, asked

GAO to review Labor's decision. Later, the Committee's Ranking Minority Member asked GAO to broaden its study to cover other commercial equipment industries affected by Labor's decision.

LABOR'S EFFORTS TO IMPLEMENT ITS DECISION

Contractor refusals to accept the act's coverage caused immediate problems for Government agencies in awarding contracts.

To alleviate the immediate impact, on August 10, 1979, Labor granted a 90-day temporary exemption from the act's coverage for certain ADP and telecommunications equipment purchase or rental contracts. Contracts for maintenance and repair services only and those involving high-technology and other commercial products were not exempted. Federal agency requests that Labor also exempt maintenance-only contracts were generally denied.

At the end of the 90 days, Labor decided not to extend or make permanent its temporary exemption. Thereafter, Labor has required that all contracts with equipment maintenance and repair specifications contain the applicable provisions of the act and Labor's wage and fringe benefit rate determinations.

However, to further minimize the initial impact of its decision and to buy time while appropriate wage and fringe benefit data could be gathered from the ADP industry, on November 30, 1979, Labor issued an interim, nationwide wage determination covering ADP maintenance and repair services. This determination accepted currently paid wages and fringe benefits as prevailing for such services. Nevertheless, major ADP and other equipment manufacturers continued to reject Government contracts subject to the act.

By March 1980 Labor had developed a proposed average entrance-level wage rate of $5.24 to be the minimum hourly rate that could be paid to the industry's service technicians subject to the act. Labor planned to apply the rate nationwide to all ADP, scientific, and medical apparatus equipment maintenance and repair contracts and contract specifications, and to GSA's Federal Supply Service schedule contracts for purchase and rental of automated office/ business machines and related equipment having maintenance and repair specifications.

In early June 1980, a senior Labor official advised the industry that this rate would be issued soon. However, Labor's attorneys raised serious legal and policy questions concerning use of a nationwide entrance-level wage rate. In mid-June, Labor shelved the $5.24 rate and issued wage determinations that, in effect, extend and expand the November 1979 interim determination, while Labor officials continue to study the problem.

LABOR'S DECISION INAPPROPRIATE

Labor contends that the act applies to all contracts, as well as any contract specification, whose principal purpose is to provide services through use of service employees.

GAO believes Labor's position is not supported by the act's language and legislative history, by Labor's own regulations, or by its administrative manual.

The Service Contract Act was not intended to cover maintenance services related to commercial products acquired by the Government. ADP, high-technology, and other commercial product-support service contracts, where Government sales represent a relatively small portion of a company's total

sales, do not have the same characteristics, or incentives, for contractors to deliberately pay low wages to successfully bid on Government contracts.

Accordingly, Labor's application of the act to contractor services sold primarily in the commercial sector, such as provided by ADP and other high-technology industries, in GAO's view, is inappropriate.

LABOR'S WAGE PROTECTION UNNEEDED

The industries' central argument, that the act's application to commercial product-support services is not needed, has merit.

GAO contacted 18 corporations that manufacture, sell, and service ADP, high-technology, and other equipment. These corporations stressed their belief that the act's intent was not to cover industries providing commercial product-support services to the Government at established catalog prices. Of these corporations, 17 presented convincing evidence to GAO through financial statements, payroll records, price catalogs, and other documents that the act should not apply because:

--Substantial quantities of their products and services are sold commercially at established catalog prices.

--Government business represents a small portion of their total business.

--Their field service technicians receive adequate wages under merit pay systems, thereby eliminating the need for wage protection.

The most significant force behind the act was the Congress' desire to eliminate "wage busting" and prevent payment of substandard wages to persons whose employment either

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totally or substantially depended upon Government contracts awarded solely on the basis of price competition. Industry contended, Labor officials acknowledged, and GAO's review confirmed, that wage busting is not a problem in these industries.

INDUSTRY COMPLIANCE WOULD BE COUNTERPRODUCTIVE AND COSTLY

Without an exemption or indefinite continuance of the interim determinations, Labor's decision to enforce the act's coverage would adversely affect operations in the ADP, office equipment, and other scientific and high-technology industries.

The most serious concerns presented by the 18 corporations GAO contacted were that Labor's decision would eventually

--increase the administrative burdens and operating costs of each corporation and

--hinder employee productivity and morale by disrupting merit pay systems and staff assignment practices.

In addition, several corporations stressed the inflationary impact Labor's wage determinations could have on the industries' wage rates.

One corporation said a new system estimated to cost almost $1 million would be needed to track data on employees servicing approximately 700,000 machines within the Government. Another corporation estimated that the cost to develop and implement new data processing systems and modify existing systems would be $1.5 to $2 million. A third corporation estimated the cost to design, develop, and install its system at over $1 million, with annual maintenance costs of $250,000.

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The first corporation also stated that, to maintain its merit pay system and still comply with the act, a separate work force would have to be created for the Federal contracts. To do this, the corporation estimated it would incur developmental and implementation costs of $9.35 million--including the almost $1 million for a new system--and annual recurring costs of $3.3 million.

One corporation said the first-year inflationary impact on its field service technician wages would be $648,000. Another corporation estimated the impact at $12 million. A third and much larger corporation said the inflationary impact on technician wages would be $100 million the first year.

IMPACT ON FEDERAL AGENCY OPERATIONS

GAO obtained information on the act's application at 114 Federal agency installations. At 42 of the installations, contracting difficulties developed because contractors refused to accept contracts subject to the act.

To minimize impact or avoid shutdown of programs and activities, agency contracting officials either awarded contracts during Labor's 90-day exemption period or circumvented the act by:

--Issuing numerous purchase orders valued under $2,500 (22 installations).

--Designating or accepting contractor designations that the service technicians assigned to the contract qualified as exempt professionals (7 installations).

--Exercising contract options, extending terms, or adding to the scope of existing exempt contracts, sometimes due to misinterpretation of instructions (3 installations).

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--Issuing delivery orders against GSA's exempt fiscal year 1980 ADP schedule contracts (10 installations).

At 21 of the installations, agencies also attempted or considered attempting to acquire maintenance services through third-party contractors--firms other than the original equipment manufacturers. Some third-party arrangements proved successful; others did not.

One Army installation had to permanently shut down its $12 million computer system because the sole-source contractor would not accept a follow-on maintenance contract containing Service Contract Act provisions. The system is expected to be scrapped, and replacement computer services are being obtained from sources at much higher cost and considerable inconvenience.

Various Federal officials cited other impacts they believe would occur if maintenance and repair services under existing contracts expiring during fiscal year 1980 were discontinued and could not be renewed.

--Complete stoppage of the space shuttle program.

--Inability to monitor and record vital signs of critically ill or postsurgical patients at a veterans' medical center.

--Loss of support to U.S. Army Health Service Command activities throughout the world.

--Delay or shutdown of test and research programs on the F-15 and F-16 fighters and B-1 bomber.

--Serious programmatic impact on the design, development, test, production, and retirement of nuclear weapons.

Presently, many major corporations strongly object to coverage under the act in any form but appear willing to accept contracts containing Labor's latest interim wage determinations, including GSA's proposed fiscal year 1981 ADP schedule contracts. However, they caution that this situation might exist only as long as the interim wage determinations remain in effect.

If the Labor/industry basic disagreement on the act's coverage is not permanently resolved, GAO believes the future impact on Federal agency programs and operations could be severe.

RECOMMENDATIONS

The Congress should amend the Service Contract Act to make it clear that the act excludes coverage for ADP and other high-technology commercial product-support services--i.e., services the Government procures based on established market prices of commercial services sold in substantial quantities to the public.

Pending such action by the Congress and to avoid further serious impairment to the conduct of Government business, the Secretary of Labor should temporarily exempt from the act's coverage certain contracts and contract specifications for ADP and other high-technology commercial product-support services.

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At the request of the House Committee on Government Operations, GAO did not follow its normal practice of obtaining advance agency and industry comments on the report.

APPENDIX II

(Comments dated December 31, 1980, from the Department of Labor are presented below in their entirety and are cross-referenced to our evaluation contained in appendix III.)

	FOR GAO EVALUATION SEE: APPENDIX III COMMENT NO.	PAGE(S)

U. S. Department of Labor's Response To
The Final General Accounting Office Report
Entitled ---

Service Contract Act Should Not
Apply to Service Employees of ADP
and High-Technology Companies

Recommendation:

"Pending action by the Congress to amend the act, and to avoid further serious impairment to the conduct of Government business, we recommend that the Secretary use his authority in section 4.(b) of the act to temporarily exempt from SCA coverage all contracts and contract specifications calling for equipment maintenance and/or repair services which meet the requirements set forth in the above recommended amendment to section 7 of the Act."

Response:

The Department does not concur and strongly disagrees with any conclusion or implication that the Act does not cover repair and maintenance of ADP and high technology equipment. While the Department has under study various approaches as to how the Act should be applied to these industries, in the interim, the Department has used the regulatory flexibility available to it to permit each company to continue to pay its employees the rates currently paid on non-government work. | 1 | 28-29

Comments:

The GAO Report - Overview

The Department of Labor, which was not afforded the usual opportunity to comment on the draft version of the report, has now completed its review of the published document and has reached the conclusion that the report makes material errors of fact and law, and proposes a legislative amendment which, in the Department's view, is already inconsistent with the original intent of the Service Contract Act. | 2 | 29-31

FOR GAO EVALUATION
SEE: APPENDIX III

	COMMENT NO.	PAGE(S)
The central premise of the GAO report is that a June 5, 1979, letter from the Department of Labor to the General Services Administration denying that agency's request for a Service Contract Act exemption for certain ADP and office equipment "schedule" contracts containing separate specifications for the purchase or lease of the equipment and for its maintenance or repair constituted this Department's first attempt to apply the SCA to the maintenance and repair of ADP and "other high-technology" equipment either under a "schedule" contract specification or under a contract calling only for services. GAO's main conclusion is that the policy decision which it believes is embodied for the first time in our June 5, 1979, letter is unwarranted and the SCA should not apply to this work. As will be shown by this paper, GAO's premise and conclusion are both in error.	3	31-33

The Service Contract Act - Legislative History

The SCA applies to "(e)very contract (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500, except as provided in section 7 of this Act, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees." The law was enacted in 1965 "to provide labor standards for the protection of employees of contractors and subcontractors furnishing services to or performing maintenance service for Federal agencies". S. Rep. No. 798, 89th Cong., 1st. Sess. 1 (1965); see also, H. R. Rep. No. 948, 89th Cong., 1st. Sess. 1 (1965). Congress explained that service contracts were "the only remaining category of Federal contracts to which no labor standards apply," since construction contracts were subject to the Davis-Bacon Act and supply contracts were subject to the Walsh-Healey Public Contracts Act. S. Rep. 798, supra at 1; H. R. Rep. 948, supra at 1. Thus, the SCA was enacted to fill the gap in coverage between the Davis-Bacon Act and the Walsh-Healey Act. See statement of Rep. James O'Hara, co-author and sponsor of the House Bill, 111 Cong. Rec. 19292 (1965); Service Contract Act of 1965: Hearings on H. R. 10238 Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 89th Cong., 1st Sess. 15 (1965).	4	34-35

FOR GAO EVALUATION
SEE: APPENDIX III
COMMENT NO. PAGE(S)

The Department of Labor's Application of the Act

A. Opinions

The Department's positions as to the applicability of the SCA are based upon the explicit statutory mandate that all contracts and bid specifications therefor, principally for services not specifically exempted, are covered; on the legislative history which clearly reflects Congressional intent to "close the gap" in labor standards coverage for employees working on Government contracts by providing protections to employees performing services under contract; and on the generally accepted principle that coverage of remedial legislation is to be construed broadly.

Following these guidelines, the Department has, since 1966, consistently held the maintenance and repair of all types of equipment, including ADP equipment, scientific and medical apparatus, office and business machines, and "other high technology" equipment, covered under the SCA, regardless of whether the equipment is commercially available. An early example of our conclusion that SCA coverage applies to the maintenance of ADP equipment is contained in an August 16, 1966 opinion letter relating to a contract for the maintenance of an analog computer at the NASA Flight Research Center, Edwards, California. This opinion was rendered approximately 8 months after the law became effective in January 1966. See Appendix 1. [See GAO note.] 5 35-36

In addition, the Department has also consistently held since 1966 that a contract containing a separate bid specification which is principally for the furnishing of services through the use of service employees is subject to the Act regardless of the principal purpose of the other specifications in the contract or the contract as a whole.

An early example of our position that the SCA applies to a separate bid specification for the furnishing of services is set forth in a July 15, 1966, opinion letter which concluded that the service portion of a contract containing separate specifications for the construction of a building and for the furnishing of cafeteria and food services was covered by the Act. See Appendix 2. [See GAO note.] 6 36-37

GAO note: Because of the volume of pages (more than 100) involved in the eight appendixes to Labor's December 31, 1980, statement on GAO's report, the referenced appendixes have been excluded from this appendix.

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SEE: APPENDIX III
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B. DOL Regulations

The Department's position that the Act applies to the maintenance and repair of ADP equipment and office machines, as well as all other types of equipment, was incorporated in the original regulations which were published for notice and comment in 1967 and codified in 1968 by the final adoption of Regulations, 29 CFR Part 4. Specifically, section 4.130, which provides illustrative examples of various types of covered service contracts, lists "electronic equipment maintenance and operation" (section 4.130(h)) and "maintenance and repair of office equipment" (section 4.130(t)) as services subject to the SCA.

As noted in the GAO report, the Department's position that the SCA applies to a separate bid specification within a procurement which also calls for the furnishing of supplies is set forth in section 4.132 of Regulations, 29 CFR Part 4. This section, like the bulk of 29 CFR Part 4, was codified in 1968. It reads as follows:

> If the principal purpose of a contract specification is to furnish services through the use of service employees within the meaning of the Act, the contract to furnish such services is not removed from the Act's coverage merely because, as a matter of convenience in procurement, it is combined in a single contract document with specifications for the procurement of different or unrelated items. For example, a contracting agency may invite bids for supplying a quantity of new typewriters and for the maintenance and repair of the typewriters already in use, under separate bid specifications. The principal purpose of the latter, but not the former, would be the furnishing of services through the use of service employees. A typewriter company might be the successful bidder on both items and the specifications for each might be included in a single contract for the convenience of the parties. In such a case, the contract obligation to furnish the maintenance and repair services would be subject to the provisions of the Act. The "principal purpose" test would be applicable to the specification for such services rather than to the combined contract. The Act would not apply in such case to the contract obligation to furnish new typewriters, although its performance would be subject to the provisions of the Walsh-Healey Public Contracts Act if the amount was in excess of $10,000.

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FOR GAO EVALUATION
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	The Department's position on SCA coverage of separate specifications calling for services is also explicitly stated in section 4.116(c) of 29 CFR Part 4, which relates to SCA coverage of service specifications in contracts which also contain separate specifications for construction work subject to the labor standards provisions of the Davis-Bacon Act. Both sections 4.116(c) and 4.132 were formally adopted in 1968 after being published as part of the proposed 29 CFR Part 4 with opportunity for comment. In its comments on those proposed Regulations, GSA expressed a desire to have the term "bid specification" more precisely defined; however, GSA did not express any disagreement with the application of the principal purpose test to separate service specifications as such. In addition, no other procurement agency expressed objections to the requirements of proposed sections 4.116(c) and 4.132. The only adverse comment filed at the time which disagreed with the Department's interpretation of the statutory language on this issue was filed on behalf of the Electronic Industries Association. However, since the Department believed its interpretation of the statute was sound and consonant with the express language of the statute, the Electronic Industries Association's suggestion that section 4.132 be withdrawn was rejected. It is also interesting to note that the Department of Labor's position on specifications subject to differing labor standards is also clearly reflected in section 12-1002.1 of the Defense Acquisition Regulation which controls Department of Defense Procurement. See Appendix 3. See also DAR 12-106 and FPR 1-18.701-2 for a discussion of similar principles.	7 8	37-39 39-40
[See GAO note, p. 11.]			
	Indeed, the GAO itself has upheld the Department's position on SCA coverage of separate bid specifications. In Digital Equipment Corporation, Comp. Gen. Op. No. B-194363, 79-1 CPD, Par. 283 (April 23, 1979), the Comptroller General denied a bid protest which contended that a contract for lease, maintenance, and option to purchase mini-computer system equipment was principally for the procurement of computers rather than computer services, and therefore, was not subject to SCA. In this Decision, the Comptroller General quoted extensively from section 4.132 of Regulations, 29 CFR Part 4, and concluded as follows:	9	40-41

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Here, while computer equipment is to be obtained on a rental basis with an option to purchase, the contractor is also responsible for the maintenance and repair of the equipment. It is apparent that under the DOL regulations the provision of the maintenance services is subject to the SCA, and we find no basis to conclude that DOL's position is clearly contrary to law. (Emphasis supplied. See Appendix 4.) [See GAO note, p. 11.]

GAO's Attempt to Distinguish the Instant Situation

It is abundantly clear from the above that SCA coverage of separate bid specifications calling for services has long been well documented by the applicable regulations, and that GAO has in the recent past agreed with us on this point. Thus, we cannot understand the rationale for the statement on page 8 of the GAO report that the Department's position is not supported by the language of the regulations. The only specific discussion of this matter in the GAO report is on page 26, which cites a contention by GSA that section 4.132 does not serve to support SCA coverage of maintenance specifications in contracts also containing specifications for the purchase and/or lease of ADP and telecommunications equipment because such contracts are not so structured "merely as a 'matter of convenience in procurement' or to circumvent application of SCA," and because the maintenance requirements therein are part of "acquisition contracts with totally related specifications required to carry out GSA's responsibilities under the Brooks Act to coordinate and provide for the economic and efficient purchase, lease, and maintenance of ADP equipment for use by Federal agencies". However, while GSA's argument is presumably correct in its characterization of the combination of the purchase, lease, and maintenance specifications in a single contract document as being required under the Brooks Act, it does not in any way provide a basis for holding that the position on SCA coverage of the maintenance specifications set forth in section 4.132 of the Regulations is unusual or incorrect.

Also, in this regard, neither the GSA argument nor any other portion of the GAO report acknowledges the fact that Federal agencies can and do purchase only maintenance services under GSA "schedule" contracts in support of ADP equipment obtained under other contracts, and that agencies can and do purchase both equipment and maintenance services for a certain period

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of time under a single contract and subsequently enter into separate service-only contracts for the maintenance of that same equipment in later years. Thus, it is clear that the omission of SCA coverage from contracts originally containing both lease/purchase and maintenance specifications would serve to circumvent the application of the Act to maintenance work on equipment not purchased or leased under that contract. Conversely, this would result in a situation where the Act is applied to work performed in later years on the same equipment which was previously maintained without SCA coverage. These anomalous situations would violate the longstanding principle that SCA coverage depends upon the nature of the work being performed rather than the form of the contractual arrangement involved.	11	41
The GAO report, on page 8, also refers to the service work done under combined lease/purchase and maintenance contracts as being performed pursuant to "an incidental maintenance and repair specification". However, figures supplied by GSA during discussions regarding this problem show that the cost of the maintenance services performed under such specifications on GSA contracts alone amounts to several hundred million dollars per year. This volume of work can hardly be characterized as "incidental".	12	41-42

Genesis of the Present Controversy

As discussed on pages 20 and 21 of the GAO report, the current dispute on the applicability of the SCA to separate bid specifications arose as a result of discovery by the Department in the course of a 1977 labor standards investigation that GSA had not included the SCA stipulations and applicable wage determination in a "schedule" contract for the purchase, rental, repair, and maintenance of copying machines, and the further finding that the SCA provisions had been omitted from a GSA ADP schedule contract containing separate maintenance specifications. It should be pointed out that the firm under investigation was found to be paying its photocopy machine service technicians at wage rates as low as $4.25 per hour. Corrective action was requested by DOL at that time. GSA did not take such action and the coverage dispute was not finally resolved until June 5, 1979, when DOL wrote GSA to deny a request for an SCA exemption for such contracts and to confirm a schedule for the implementation of the SCA provisions therein. See Appendix 5. [See GAO note, p. 11.]

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GAO's Assertion of Expansion of SCA Coverage by DOL

However, notwithstanding the availability of the full record described above, GAO, in its principal theme, from which it appears to have fashioned the focus of its study, its findings, and its recommendations, nevertheless, persists in emphasizing that our June letter constituted the Department's first effort to apply the SCA to ADP and other equipment support services. The premise that no such services had previously been covered by the Act continues despite the record noted above. For example, the summary on the cover of the report begins:

> On June 5, 1979, the Department of Labor ruled that all Federal contracts for the maintenance and repair of ADP, telecommunications, and other high-technology commercial equipment are subject to the wage determination and other requirements of the Service Contract Act.

In addition, on page 5 of the report, the first objective stated is to:

> Determine and assess the rationale for Labor's June 1979 decision to apply SCA to ADP and telecommunications equipment maintenance and repair services.

Also, in the Conclusions section of Chapter 7, the report states (on page 95):

> We believe Labor's June 5, 1979, determination to apply SCA to ADP and other equipment support services is not well supported by the Act's legislative history, serves no remedial purpose, and is inconsistent with Labor's implementing SCA regulations.

As was clearly illustrated by the prior discussion of the Act, its legislative history, the SCA Regulations in effect since 1968, and the opinion letters which have been issued as far back as 1966, it is simply misleading for GAO to characterize the Department's June letter as "an unannounced change in the application of the Act" (page 21, GAO report), rather than as simply a denial of a request for an exemption from a long-standing provision of law, regulation, and policy. Moreover,

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as will be made clear below, the Department's position in this matter has been widely implemented for several years. For these reasons, the Department of Labor quite properly gave no consideration to conducting feasibility, cost/benefit, or impact studies in connection with the June letter. 13 42

Extending its misconception of the SCA's application to all types of equipment maintenance services prior to the June letter, the GAO report likewise distorts the plain facts of the matter by characterizing the refusal of major ADP firms to accept any contracts subject to the SCA subsequent to the June letter as reactions to a new assertion of SCA coverage on the part of this Department. The truth of the matter is that most of the 18 major ADP firms which were contacted by GAO for its report (listed in Appendix IV), and which vigorously protested our "new" assertion of SCA coverage of ADP and other equipment maintenance and repair services, had for years prior to the June 5, 1979 letter entered into numerous contracts for these very services which contained SCA stipulations and/or wage determinations, without voicing widespread protest of the type evident after that letter. See Appendix 6 containing a sampling of SF-98s, Notice of Intention to Make a Service Contract, and related wage determinations, showing most of these 18 firms as incumbent contractors on contracts for the maintenance and repair of ADP or related equipment which contain SCA requirements. 14 42-43

[See GAO note, p.11]

GAO's Current Stance - Departure from the 1978 GAO Report

The GAO report is particularly troublesome in another aspect. GAO itself is well aware of the longstanding, routine application of the SCA to ADP and other equipment maintenance and repair contracts. In a 1978 report to the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor entitled "Review of Compliance with Labor Standards for Service Contracts by Defense and Labor Departments", GAO severely criticized the Department of Defense for either failing to request SCA wage determinations for, or failing to include wage determinations in numerous contracts, a substantial portion of which were for the maintenance and repair of ADP and other equipment performed by many of these same 18 firms. See Appendix 7. 15 43-44

[See GAO note, p. 11.]

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In that report, GAO also criticized the Department of Labor for failing to conduct a vigorous enforcement program to insure that service employees performing on service contracts subject to the SCA, including ADP maintenance contracts, received the benefits to which they were entitled. The Department believes this represents a reversal of GAO's previous position.		
In connection with its 1978 study, GAO requested the Department to investigate specific contracts from which GAO determined that SCA provisions had been improperly omitted. As discussed on pages 12 and 13 of the 1978 GAO report, our investigation, which covered 11 contracts awarded by Wright-Patterson Air Force Base, Ohio, disclosed that nine employees working on 2 of the 11 contracts investigated would have been entitled to additional wages and fringe benefits had the SCA been properly implemented. It should be pointed out that of the contracts investigated at the request of GAO, seven were for the maintenance and repair of ADP or "other high technology" equipment. Of these seven contracts, one was awarded to Honeywell, Inc. for the modification of a security system (No. F33601-75-90026) and one to that firm for the maintenance of a central surveillance system (No. F33601-75-90031); two were awarded to Hewlett-Packard for preventive maintenance of ADP equipment (Nos. F33601-75-90105 and F33601-75-90111); one was awarded to the International Business Machines Corporation for the reconditioning of computers (No. F33601-75-90363); one to Systems Research Laboratories, Inc. for the maintenance and repair of ADP equipment (No. F33601-76-90013); and one to GTE Sylvania, Inc., Electronic Systems Group, for the maintenance of laser equipment (No. F33601-75-90214). None of this group of contractors was found to be paying less than the wages and fringe benefits called for in the SCA wage determinations, which had been improperly omitted from the contracts.	15	43-44
Wage determinations were issued for ADP, office equipment and hundreds of other high technology contracts throughout the country over at least the past 8 years. Copies of such wage determinations were shown to GAO auditors by Department officials during the course of the current study, but GAO's final report does not mention this fact.	16	44

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DOL's Rejoinder to Specific GAO Arguments

The above facts amply illustrate that until the recent controversy, there were practically no questions raised as to the propriety of the Department's positions that separate bid specifications for the furnishing of services generally are covered by the SCA. Contracts and bid specifications for the maintenance of equipment of all types, including ADP, office and business, and "other high technology" equipment, had appropriately been covered by the SCA for years.

Consequently, although this does not attempt to be an exhaustive point by point rebuttal, the Department would like to have the Congress and the public have the right to hear more than one side of the argument.
report.

A. Charges of DOL Inconsistency

Page 29 of the GAO report contains a discussion of a May 1980 determination by this Department that the SCA does not apply to GSA Teleprocessing Services Program contracts. GAO characterizes this determination as "inconsistent" with the Department of Labor's position on the application of the SCA to the service specifications of ADP schedule contracts. This is simply not so. As the GAO report acknowledges, our determination was based on GSA's representation that the primary contract requirement involved the acquisition of computer or teleprocessing capabilities without the use of any service employees, and that a separate specification for technical assistance services would be performed essentially by administrative or professional employees not covered by the SCA, with the use of service employees being only a minor factor (within the meaning of section 4.113(a)(2) of Regulations, 29 CFR Part 4). As GAO also notes, GSA did not at any time advise the Department of the existence of a maintenance specification in such contracts. Thus, since the "facts" given us by the contracting agency (GSA) gave absolutely no indication of a substantial use of service employees, the Department of Labor obviously had no reason to issue an opinion. GAO's argument on inconsistency is thus clearly without basis.

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B. The "Commercially Offered Services" Argument

In Chapters 2 and 4 of its report, GAO states its agreement with various arguments made by what it terms the automatic data processing, office equipment, and other high-technology industries in support of the view that SCA coverage of "commercially offered services" or "commercial product-support services" was not intended by Congress and is not needed. Among these arguments are contentions that the SCA was enacted to prevent wage busting, which, it is claimed, does not occur in these industries, that substantial quantities of these firms' products and services are sold commercially at established catalog prices, that Government contracts constitute only a small portion of their total business, and that the highly paid and highly skilled employees involved are adequately compensated under merit pay systems.

In enacting the SCA, Congress was certainly concerned with the problem of "wage busting" on service contracts. However there is no evidence in the legislative history or elsewhere for the assertion on page 41 of the GAO report that Congress intended to extend the Act's protections only to the "persons whose employment either totally or substantially depended upon Government contracts awarded solely on the basis of price competition", nor is there any support for the argument that the Act was *not* meant to apply to contracts for "commercially offered services" or "commercial product-support services" in the ADP, office equipment, and "other high-technology" industries. Of particular note in this regard is the fact that nowhere in the GAO report is a definition given of what is meant by "other high-technology" industries, let alone any citations of statutory or regulatory language defining such industries or legislative history indicating an intent not to cover them. There is nothing in the Act which even arguably supports such a restriction on coverage.

During hearings before the Special Subcommittee on Labor, House Committee on Education and Labor, on the House Bill (H. R. 10238) which was later enacted as the Service Contract Act of 1965, the then Solicitor of Labor, Charles Donahue, stated, in illustrative explanation, that the Act would apply to "janitorial, custodial, maintenance, laundry, dry cleaning, hauling, pest extermination, clothing and equipment repair, and cleaning service employees." All of the enumerated services, as well as virtually all other types of services

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to which the SCA indisputably applies, are "commercially available". In addition, with respect to many of these types of contracts, employees often spend a substantial amount of time performing non-Government work as well, and the revenues from Government contracts often constitute only a small portion of the firm's income. Laundry and cleaning services present a particularly appropriate example. In many cases, the amount of Government contract business may represent only a small portion of a laundry or dry cleaning firm's business and require only a small portion of the employees work time and such firms may be charging the Government their commercially offered rates. Yet, the legislative history is quite clear that Congress intended the Act to be applicable to laundry and dry cleaning contracts in spite of the fact that it was universally known that these services were "commercially" available. Linen supply (rental and cleaning of materials) is another clear example of a commercial service. The repair of automobiles and typewriters are good illustrations of contracts for commercial product support services, all sharing these characteristics.

GAO's arguments that the SCA should not apply to the ADP industry because of allegedly unique features of the industry would open the way to a widespread rollback of SCA coverage in the whole universe of service contracts since many other types of services are sold to the Government under similar conditions. GAO's collateral argument that services sold at commercially established catalog or market prices pursuant to exemptions from the Truth-in-Negotiations Act and the Cost Accounting Standards Act should be treated under the SCA in the same manner as those services which are sold at prices set by law or regulation and are statutorily exempt from SCA coverage, is also misplaced. As acknowledged on page 45 of the GAO report, these procurement laws are concerned with "assuring the reasonableness of prices charged to the Government for goods and services, not to employee labor standards". Obviously, there is no logical basis for assuming that contracts executed in this fashion will have the effect of protecting the labor standards of the employees involved, as the SCA is expressly designed to do.

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C. The "No Wage-Busting" Argument

With respect to the GAO's "no wage busting" argument, the Department's position is that the presence or absence of this phenomenon is not a proper, relevant, or feasible basis for determining coverage under the SCA. As pointed out in the GAO report on page 54, adopting this ill-defined criterion for determining applicability of the SCA would be a usurpation of legislative authority by an agency in the executive branch of the Government in the form of a rewriting of a law. Can anyone really contemplate or desire the uproar from the business community, organized labor, and unorganized employees if this Department took it upon itself to decide whether corporate pay practices in any industry, or a particular firm, are grounds for determining coverage under the Act? The end result would be a "crazy quilt" of coverage patterns. As an interesting detail, it should be noted that, while we do not have the data to prove or disprove that there has been wage busting in the ADP, office equipment, and "other high technology" industries, investigations by the Department over the years have revealed SCA violations by firms engaged in the maintenance and repair of ADP, office, and business equipment. Currently, five such firms appear on the list of ineligible bidders as the result of debarment for SCA violations.

D. The "Highly Skilled - Highly Paid" Employee Argument

GAO accepts the industry argument that the employees performing as service technicians on ADP and "other high technology" equipment are highly skilled and highly paid and, therefore, do not need the labor standards protections of the SCA. As discussed below, this argument is severely deficient for at least two major reasons.

First, many highly skilled and paid employees have received the Act's protection over the years, and both the need for such protection and the Congressional intent to provide for it have been amply demonstrated. For example, abuses, including wage busting suffered by technical contract employees (including electronics technicians) working on the space program at Kennedy Space Center was the subject of Congressional hearings which led to the adoption of a new section 4(c) of the Act as part of the 1972 Amendments. In many cases, the skill and pay of the employees involved at Kennedy Space Center, some of whom were engaged in the operation or maintenance of ADP and "other high technology" equipment, were equivalent to or higher than that of service technicians working on the contracts at issue.

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In this regard, it should also be pointed out that in an official statement made at the time he signed the 1972 SCA Amendments into law, President Nixon specifically named "computer services" among others as "typical of services covered" under the Act.		
Second, the 1976 Amendments were specifically enacted to clarify Congressional intent that the SCA should apply to "white collar" as well as "blue collar" employees. Congress took this action in light of two Federal District Court decisions, Descomp, Inc. v. Sampson, 377 F. Supp. 254 (D. Del., 1974), and Federal Electric Corporation v. Dunlop, 419 F. Supp. 221 (M. D. Fla., vacated as moot (C.A.5.), 1976), denying SCA coverage of "white collar" employees. In particular, the Federal Electric case involved service employees in "white collar" job classifications relating to computer operations, some of whom were highly skilled and paid.	22	48
The GAO report argues both sides of the "high compensation" proposition. On the one hand, GAO accepts the industry position that the employees in question are well paid and do not need the protections afforded by the Act. On the other hand, GAO notes its agreement with a study by the Computer and Business Equipment Manufacturers Association (CBEMA) which states that even if an entry level $5.24 hourly wage rate were established under wage determinations applicable to service technicians, it would disrupt the industry's merit pay system because 5 of the 11 corporations surveyed paid wage rates to such employees which were less than $5.24 per hour (see pages 51-53 of the GAO report). If the payment of a $5.24 minimum wage were in fact to require some firms to raise wages not only at the entry level but at the next three wage levels, as indicated by the CBEMA survey, then the employees involved certainly cannot be characterized as being "highly paid" by any standard.	23	48-49
E. The "Cost of Compliance" Argument		
The alleged "costs" associated with the ADP industry's compliance with the SCA are discussed extensively in Chapter 5 of the GAO report, entitled "Industry Compliance With SCA Would be Counterproductive and Costly". However, that discussion is seriously flawed.	24	49

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Furthermore, as indicated by the title of Chapter 5, the GAO report approaches the examination of the "costs" of SCA compliance from the premise that SCA coverage of the ADP and "high technology" industry did not exist prior to the time of our June 5, 1979, letter denying GSA's request for an exemption for certain GSA schedule contracts containing service specifications, and therefore, that the "costs" of SCA compliance are prospective and a new concern for the industry. This is stated in the first two paragraphs of the title, which read:		
Without the exemption or indefinite continuance of the interim determination, Labor's decision to enforce application of SCA to contracts for commercial product-support services would adversely affect operations in the ADP, office equipment, and other scientific and high-technology industries.	24	49
As a result of their concern over Labor's decision, most of the corporations we contacted, as well as many others, had refused specific Federal contracts with SCA provisions after Labor's June 1979 decision. ADP and high-technology corporations are strongly opposed to Labor's decision and are deeply concerned about the adverse effects it will have on industry operations if Labor issues wage determinations following its normal procedures.		
In fact, as has been previously demonstrated, most of the firms which GAO contacted in the course of its study and which provided information as to the "costs" and other "adverse effects" of SCA compliance, as well as many other firms in the ADP and "other high technology" industries, had entered into numerous contracts for equipment maintenance and repair services which contained SCA prevailing wage determinations for a number of years prior to June of 1979. As noted in the discussion of the investigations Labor conducted at GAO's request of 5 ADP and "high technology" firms with contracts at Wright-Patterson Air Force Base, the Department did not find the payment of wages lower than those in the wage determinations that should have been included in those contracts. Although the Department have also noted that it is aware of some compliance problems in this industry as a result of other investigations, presumably most of the firms in the industry have complied with the SCA requirements of their contracts over the years. In any event, there was no outcry from the industry regarding SCA compliance prior to the present controversy.	25	50
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It does not appear that GAO inquired as to how the industry had complied with SCA prior to June of 1979 or, alternatively, determined whether there had been massive non-compliance prior to that time, and, also, why compliance with SCA would be more costly and burdensome after June 1979.	26	50
In arguing that the cost of SCA compliance is too high, the GAO report also states that "Most ADP and high-technology equipment manufacturers do not accumulate and maintain the data needed to track maintenance hours and dollars attributable to each customer's account. Compliance with SCA would require the firms to be able to account for the time technicians spend on Government versus commercial accounts", (p. 50). The Department of Labor continues to believe that the principles of sound business administration would lead most, if not all, of the firms involved to routinely maintain such information for purposes of accuracy in billing their customers and maintaining efficient management control over employees' work time. The SCA would not, in any event, create the proliferation of records by asking for more information than is essentially required under FLSA recordkeeping requirements as claimed by the industry in various discussions with DOL.	27	51-52
Moreover, GSA's ADP schedule contracts require that all contractors furnishing ADP maintenance services thereunder provide a report of each maintenance call that includes, among other things, the date and time of arrival of maintenance personnel, the type and model number(s) of machine(s) serviced, and the time spent for repair. See Appendix 8, GSA Schedule Solicitation for Offers No. GSC-CDPS-C-00013-N-7-11-79, page 30. The GSA ADP schedule contract also requires that work other than preventive maintenance be billed on an hourly basis. See Appendix 8, page 32. [See GAO note, p. 11.]	28	52
The GAO report also accepts industry's estimates of alleged exorbitant administrative costs that would be entailed in raising all service technicians' pay to at least that required under SCA wage determinations or, alternatively, creating a segregated work force to perform only on Government contracts. According to GAO, one or the other of these actions would be required by virtue of the wage rates contained in SCA wage determinations. Both the industry and GAO claim either alternative would be highly inflationary. The claims of higher administrative costs arise essentially from the GAO report's undocumented assumption that SCA wage rates are inflationary.	29	52-53

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The GAO report contains nothing to differentiate the impact of SCA wage determinations on the ADP industry from that on other covered industries. The report describes no unique features of the ADP industry which would cause the SCA to have peculiarly inflationary impact upon it. The Department believes that there are no special circumstances in the ADP industry on which to base such a claim. Moreover, GAO cited no definitive studies which show that the application of the SCA has had an inflationary impact on any industry.	29	52-53
F. The "Adverse Impact on Federal Programs" Argument		
In Chapter 6 of its report, GAO describes the severe adverse impact on several vital Federal programs which would occur if the ADP industry should continue to refuse to contract with the Government because of the presence of SCA provisions in its contracts. The Department does not disagree with that assessment. However, Labor cannot ignore what appears to be the underlying cause of the industry's entrenchment. The refusal to perform on contracts containing SCA requirements and the concurrent attempts to seek administrative exemption from the Act represent a concerted effort to roll back long established SCA coverage. We are not dealing with a new and unjustified policy decision by the Department of Labor.	30	53
For example, the contracts for ADP services at the Redstone Arsenal, Alabama and White Sands Missile Range, New Mexico, discussed in the GAO report at pages 80-84, have contained SCA requirements for several years previous to the current controversy.	31	53-54
This type of "adverse impact" could also occur if companies decided to refuse to enter into contracts with the Federal Government because of the presence of equal employment opportunity or small/minority business set-aside provisions in the contracts, or because of a failure to agree on contract price, or for any number of other reasons. Obviously, the coverage issue should be addressed on its merits and not on the basis of a possible boycott by potential government contractors.	32	54
G. Conclusion		
The GAO report is incorrect in concluding that the SCA does not, by its terms, cover maintenance work performed on ADP equipment. Beyond the legal issue, the policy arguments forwarded by GAO for exempting such work are unpersuasive.	33	54

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During the course of this controversy, the Labor Department has utilized the flexibility available to it under SCA to try to work with affected industries in reaching a result which is fair to them and fair to the workers who are to be protected by the Act's prevailing rate provisions in accordance with the Department's statutory responsibilities.	33	54

GAO EVALUATION OF

DEPARTMENT OF LABOR COMMENTS

The numbered comments below are keyed to the specific statements made by the Department of Labor in its December 31, 1980, response to our September 16, 1980, report. Labor's response is presented in full in appendix II of this report and is cross-referenced to the numbered comments in this appendix.

1. Labor's strong disagreement with our recommendation was consistent with its rejections of repeated industry and Federal agency requests that automatic data processing (ADP) and other high-technology commercial product-support services be exempted by the Secretary of Labor from Service Contract Act (SCA) coverage.

Labor's December 31, 1980, statement that it had under study various approaches as to how SCA should be applied to the ADP and high-technology industries is misleading. Labor's Deputy Assistant Secretary for Employment Standards advised us on February 9, 1981, that no studies were underway and no study documents existed. Rather, he said Labor's response should be read to mean that Labor had considered and was considering several alternative approaches to deal with the issue at hand, including:

--Continue indefinitely the current "interim" wage determinations, which require only that the affected companies continue paying their service employees the wages currently paid on non-Government work.

--Issue wage determinations reflecting an entry-level wage rate for "field service technicians" and require conformed wages for all other service employees working on the Government contracts.

--Revert to Labor's normal wage determination procedures and practices and issue prevailing wage determinations for all classes of service employees of the affected companies.

--Administratively exempt the companies from SCA coverage, as authorized in section 4(b) of the act.

The latter alternative to administratively exempt companies from SCA coverage as authorized in section 4(b) of the act, which was cited by the Deputy Assistant Secretary and which we recommended, was apparently not being seriously considered. Labor's amended SCA regulations issued January 16, 1981, would have precluded this as an alternative because the regulations incorporated coverage of ADP and high-technology maintenance and repair services. These regulations, however, were suspended by the Secretary of Labor on February 12, 1981, pending consideration by the new administration.

2. Labor's conclusion that our report contains material errors of fact and law is not supported by its lengthy response to our report. In its detailed response, Labor did not cite any statements in our report that contained "errors of fact." However, Labor did misread our analysis of the congressional intent of the act and its legislative history. (See comment 9, p. 40.)

We recommended that the Congress amend section 7 of SCA to make it clear that the act excludes coverage for ADP and other high-technology industries' commercial product-support services--i.e., services procured from these industries on the basis of established market prices of commercial services sold in substantial quantities to the public. We disagree with Labor's assertion that this recommended legislative amendment to SCA is "already inconsistent" with the act's original intent.

In enacting SCA, the Congress did not intend to impose this remedial legislation and its attendant regulatory requirements on ADP and other high-technology commercial product-support service industries and their service workers, whose wages are adequately protected through commercial market forces and who, therefore, do not need SCA's labor standards protections. The legislative amendment we recommended is supported by the same rationale the Congress applied in exempting, in section 7 of the act, the transportation, communications, and public utilities industries, whose prices are set by law or regulation. The competitive pressures to reduce employee wages in order to compete for Federal contracts--the very situation which gave rise to SCA's enactment in 1965--are not present in these industries. Also, the rationale supporting the exemption provided by the Secretary of Labor to certain transportation industry contracts in 1967 (see pp. 44 and 45 of our report) directly parallels the current industry position. (See comment 21 on p. 47 for a more detailed discussion of this point.)

Moreover, the language of our recommended amendment to SCA, as stated in full on pages 96 and 97 of our report, contains three restrictive provisos designed to assure that ADP and high-technology contractors qualifying for exemption will not engage or attempt to engage in wage busting in competing for or performing under a Federal contract or contract specification for commercial product-support services. Specifically, our recommendation provides that:

--The contractor's product-support service price to the Government must be based on an established commercial market price for the same or similar service sold in substantial quantities to the public.

--The contractor must use the same wage and fringe benefits plan for all of its service employees, regardless of whether they are servicing equipment under the Government contract or are assigned to commercial customers.

--The contractor must certify to these stipulations in the Government contract.

Implicit in our recommended amendment to the act is that the exempted contractor would be on notice that failure to live up to the certification would result in disqualification for continued exemption and initiation of appropriate enforcement actions by the Federal contracting agency and/or Labor. Thus, the labor standards of service employees working on such Federal contracts would be adequately protected.

Our recommendation was endorsed by the Deputy Director of the Office of Management and Budget (OMB) in a November 10, 1980, letter to the Chairman, House Committee on Government Operations, in which he responded to the Chairman's request for OMB's comments on our report. The Deputy Director stated:

> "* * * GAO is to be commended for its efforts in reviewing this particular application of the Service Contract Act by the Department of Labor. The report clearly highlights the problems involved in applying the Service Contract Act to the procurement of services for ADP and other high technology products, and the need for clarification of the intent of Congress in passing the Act."

The Deputy Director added that OMB interposed no objection and had no disagreement with our recommendations to Labor and to the Congress.

In addition, our recommendations have been endorsed by the Departments of Defense and Energy, the General Services Administration (GSA), the National Aeronautics and Space Administration, and the Veterans Administration.

3. We disagree with Labor's description of both the "central premise" and the "main conclusion" of our report. We also disagree that our premise and conclusion are in error. Throughout its response, Labor argues that its June 5, 1979, letter to GSA did not constitute an initial decision to apply SCA to the maintenance and repair of ADP and other high-technology equipment purchased or leased by the Government. Rather, Labor contends that such application is longstanding in its regulations and that the June 1979 letter constituted a denial of GSA's request for a temporary exemption from this longstanding application of SCA, not an extension of SCA to a new area.

On pages 8, 20, 21, and 22 of our report, we recognized Labor's position and how it viewed the June 1979 letter to GSA. However, despite Labor's position, the Federal contracting community generally perceived Labor's June 1979 action as a new policy decision that expanded and extended SCA coverage into a procurement area not previously covered and, in its view, not intended by the Congress in enacting SCA. Before Labor's June 1979 letter, GSA and other Federal agency procurement officials, including Labor's own procurement staff, had considered contracts for the purchase or rental of supplies and equipment, which included maintenance and repair services, to be subject only to provisions of the Walsh-Healey Public Contracts Act 1/ because the principal purpose of those contracts was to furnish supplies and equipment, not services. GSA, in fact, had a "more than 50 percent of the proposed contract price" criterion which it applied to proposed schedule contracts in determining SCA coverage using the "principal purpose" test in the act. 2/

1/This act provides labor standards protection to employees of contractors manufacturing or furnishing materials, supplies, articles, and equipment to the Government. It applies to such contracts exceeding $10,000.

2/SCA provides labor standards protection to employees of contractors and subcontractors furnishing services to Federal agencies. The act applies when a contract's principal purpose is to provide services in the United States using service employees.

On June 22, 1979, GSA issued an "all-agencies" message notifying all Federal contracting agencies of Labor's June 5, 1979, action. This message stated, in part:

> "This is to inform you of a recent Department of Labor (DOL) determination regarding the applicability of the Service Contract Act (SCA) of 1965 to certain ADP contracts. The DOL has determined that the SCA is applicable to maintenance and repair services performed under any specification therefore in contracts for ADP equipment. The SCA is applicable to the maintenance and repair portions of those contracts whether or not the equipment is leased or purchased. In order to provide for an orderly implementation of the SCA * * *."

The tone of this message conveyed a clear impression to many agencies that Labor had issued a new ruling extending SCA coverage to previously noncovered contracts. As we pointed out on page 28 of our report, even Labor's own procurement staff referred to Labor's June 1979 action as a "new decision extending coverage to an area not previously covered." None of Labor's contracts for lease and maintenance of ADP equipment awarded before Labor's June 1979 action contained SCA provisions and wage determinations.

GSA had generally not included SCA provisions and wage determinations in its annual schedule contracts for lease or purchase of equipment that included maintenance and repair services before Labor's June 1979 notice. Therefore, when vendors were later notified of Labor's action, they believed it to be a new decision extending SCA coverage to product-support services not previously covered, and they objected strongly. It was in this climate that we reviewed Labor's June 1979 action.

While our review focused primarily on Labor's June 1979 action in denying GSA's request that ADP and telecommunications equipment maintenance and repair services be temporarily exempted from SCA coverage, and Labor's rationale for that action, we also addressed the following related issues:

- --The cost and other impacts of Labor's June 1979 exemption denial decision on Government operations.
- --The cost and other impacts of Labor's June 1979 decision on industry operations.
- --The merits of industry arguments that their commercial product-support services provided to the Government should be exempted from SCA coverage.

APPENDIX III

--The need for administrative and/or legislative actions to equitably resolve these issues.

On the basis of our extensive review and the voluminous data gathered from Labor and many other Federal agencies, from ADP and high-technology companies and their trade associations, and from other data sources, the results of which were presented in our report, we concluded that:

--Labor's application of SCA to equipment maintenance and repair service specifications in contracts having the principal purpose of leasing or purchasing the equipment is not supported by the act's language and legislative history, by Labor's own regulations, or by its administrative manual.

--Federal agencies experienced serious operational problems when contractors resisted SCA coverage, but were generally able to work around these problems, sometimes by directly circumventing application of the act.

--SCA coverage of ADP and high-technology industries' commercial product-support services was not intended by the Congress and is not needed, since wage busting does not exist in these industries and their service technicians are adequately compensated through merit pay systems.

--Industry compliance with SCA would be counterproductive, administratively burdensome and costly, disruptive of employee merit pay and job assignment practices, and highly inflationary.

--Both administrative and legislative actions are needed to permanently resolve the continuing Labor/industry impasse by exempting the industries' commercial product-support services from SCA coverage.

Each of these conclusions is supported in our report. We continue to believe our recommendations to the Secretary of Labor and to the Congress, if implemented, will resolve the existing Labor/industry disagreement on SCA coverage. Because we believe quick action on our recommendations is needed, on January 31, 1981, we resubmitted our report to the Secretary of Labor-Designee for his early consideration.

4. The primary disagreement raised with Labor by GSA and other Federal agencies concerns the interpretation of the terms "bid specification" and "principal purpose" in the language of the act.

GSA and other Federal agencies disagreed with, or had not followed, Labor's interpretation in applying SCA to ADP contracts that included incidental maintenance services. GSA's Federal schedule program contracts and some agency contracts are primarily for the purchase, lease, or rental of ADP, telecommunications, or other equipment. Agencies have consistently considered such contracts outside the coverage of SCA, subject only to the Walsh-Healey Public Contracts Act. GSA officials believe that the parenthetical phrase in section 2(a) of the act "(and any bid specification therefor)" is a clear reference to the entire solicitation sent to contractors requesting offers or bids. They agree that, when a contract is principally for the procurement of services and not equipment, the required SCA provisions must be included in the contract and the earlier solicitation. Conversely, Labor believes that the parenthetical phrase relates to individual contract specifications rather than the entire solicitation.

We believe that the legislative history cited by Labor in its response, and the other citations discussed at length in chapter 2 of our report, support GSA's and other Federal agencies' interpretations.

The committee reports Labor cited did note that SCA was enacted to "fill the gap" since service contracts were the the only remaining category of Federal contracts to which no labor standards applied--the Davis-Bacon Act covered workers on construction contracts and the Walsh-Healey Public Contracts Act covered workers under supply and equipment contracts. However, the congressional intent to "fill the gap" cannot be taken as literally as Labor implies. The Congress appeared to recognize, in discussing the "principal purpose" language of the act, that not all contracts having service employees would, or even should, be covered. The colloquies we cited on pages 15 to 17 of our report, concerning services associated with contracts for leased space, clearly show that the gap would not be completely closed. Under the types of contracts cited, service employees, such as janitors, could be employed, but because the contracts were principally for leasing of space--not for services--the contracts were not considered subject to SCA.

Further, SCA could not fill all of the gap that existed in 1965 when SCA was enacted, because Labor had earlier abandoned its administration of the prevailing minimum wage determination program established under the Walsh-Healey Public Contracts Act for employees of contractors manufacturing or furnishing materials, supplies, articles, and equipment to the Government. No wage determinations have been issued under that act--which we estimated in 1978 covered about 95 percent of the more than 30 million workers of companies that had Federal contracts--since 1964, 1 year before enactment of SCA. (By contrast, SCA, according to Labor estimates in 1979, covered about 574,000 workers.)

In 1964 a decision by a U.S. Court of Appeals 1/ held that, since the wage determinations issued were subject to the Administrative Procedures Act (5 U.S.C. 551, et seq. (1976)), interested parties had the right to inspect records on which the determinations were based. Labor maintained that it could not permit such inspection because much of this information was confidential. Rather than disclose such information, Labor has not issued any wage determinations under the Walsh-Healey Public Contracts Act since the court decision. Without wage determinations, employees working on contracts subject to the act are covered only by the minimum wages specified in the Fair Labor Standards Act of 1938, as amended. Thus, Labor's actions in these circumstances have made it impossible to entirely "fill the gap" through application of SCA or otherwise.

5. We do not disagree with Labor that it had long applied SCA to contracts having a principal purpose of maintaining and repairing ADP equipment and office machines, the subject of the opinion included in appendix 1 of its comments. As noted in our report on pages 19, 24, and 28, GSA and other agencies contacted during our review had, over the years, accepted Labor's position and had included SCA provisions in contracts that were principally for the procurement of such services. However, we concluded that SCA coverage in commercial product-support service contracts served no remedial purpose, would be counterproductive and costly to both industry and the Government, and could seriously affect agency operations if contractors continued to refuse to bid on or accept such contracts.

1/Wirtz v. Baldor Electric Company, 337 F. 2d 518 (D.C. 1964).

Of the major issues identified in our report, the one that generated the current controversy concerns coverage of maintenance and repair specifications under contracts principally for the lease or purchase of ADP and other equipment. This involves interpreting language in the act concerning the "principal purpose" of contracts and the expression "(and any bid specification therefor)." Labor's response provides no new insight into the rationale supporting its interpretations of these two key phrases in the act that was not previously discussed in our report.

We agree that SCA was remedial in nature and that such legislation is to be construed broadly. However, the remedy pertained to contracts awarded as a result of the Government's contracting-out practices initiated in the mid-1950s. These related to the continuance of a Government activity or operation provided for its own use, that could also be provided by private enterprise. Commercial product-support services such as those provided to the Government by the ADP and high-technology industries were not a part of the contracting problem requiring the remedial legislation. (See comment 18 on p. 45 for additional discussion on contracting-out practices.)

6. Despite its assertion to the contrary, Labor has not consistently applied its interpretation that a contract containing a separate bid specification which is principally for furnishing services through use of service employees is subject to SCA regardless of the principal purpose of the other specifications in the contract or the contract as a whole. On May 5, 1966, 2 months before the opinion letter referred to in its appendix 2, Labor, in an official response to a question concerning application of SCA, stated:

> "The Service Contract Act applies generally to contracts which have as their principal purpose the furnishing of services through the use of service employees * * *. The act will apply as long as what is being contracted for is chiefly services and the furnishing of any tangible items, though important in themselves, is of secondary import to the main purpose of the contract * * *.
>
> "In determining whether the [Walsh-Healey] Public Contracts Act applies to contracts entered into with household storage and moving companies to perform work with respect to personal and household effects of Government personnel, we have distinguished between two situations. In the first, the contract typically calls for crating and packing such effects for overseas shipment, or according to specifications designed to put them in the

> hazards of subsequent movement by the Government. Ordinarily under such a contract both the quantity of materials required and the nature of the packaged end product desired by the Government, * * * make it clear that the contract is one for the manufacture or furnishing of the packaged end product in the form the Government wants. The packing services and any transfer, storage, and delivery services called for by the contract contribute to producing this desired end product. Such a contract is not excluded from the application of the Walsh-Healey Act merely because the furnishing of services may be an independent or related purpose of the contract, or because the furnishing of the services which will result in the desired end product are called for rather than the end product itself." (Underscoring supplied.)

This interpretation essentially agrees with the SCA regulation cited on pages 25 and 26 of our report--29 CFR 4.122, entitled "Work subject to requirements of Walsh-Healey Act." Concerning overlapping coverage of the Walsh-Healey Public Contracts Act and SCA, the regulations state that the principal purpose test is to be applied to contracts as a whole, as follows:

> "Nor is there an overlap if the principal purpose of the contract is the manufacture or furnishing of such materials, etc., rather than the furnishing of services of the character referred to in the McNamara-O'Hara Act [SCA], for such contract is not within the general coverage of the latter act. * * *" (Underscoring supplied.)

This interpretation can be extended to the current GSA situation with respect to leasing or purchasing ADP equipment. In effect, the end product desired by the Government is an operating ADP system. The preventive maintenance or remedial repair services called for by the lease or purchase contract contribute to furnishing this desired end product--directly related to the contract's purpose.

7. Our responses to Labor's comments on the regulations cited, 29 CFR 4.130 and 4.132, and Labor's interpretations of "bid specification" and "principal purpose" are presented in comments 4, 5, and 6 above. Basically, Labor has presented no additional data to refute the legislative history citations in our report that show that "bid specification" was meant to be interpreted as the bid solicitation documents, not individual contract specifications, and that the Congress meant for SCA to be applied only to contracts principally for services.

A literal reading of 29 CFR 4.132, as quoted in full in Labor's comments and on pages 22 and 23 of our report, shows that Labor's interpretation of "bid specification" at the time the regulations were first published in 1968 agrees with the GSA interpretation that it was intended to mean the bid solicitation documents. The language, "* * * a contracting agency may invite bids * * * under separate bid specifications * * *," clearly equates "bid specifications" with bid solicitation documents. The congressional testimony of former Assistant Secretary Gruenwald in 1972, as quoted on pages 18 and 19 of our report, reinforces this interpretation.

Section 4.116(c) of 29 CFR Part 4 is somewhat similar to section 4.132, in that Labor qualifies the example cited in section 4.116(c) as an instance where, "for the convenience of the Government," instead of awarding two separate contracts, one for construction work subject to the Davis-Bacon Act and another for services of a different type to be performed by service employees, the contracting officer may include separate specifications for each type of work in a single contract calling for performance of both types of work. This appears to us to be designed to preclude avoidance of SCA coverage by devious means.

On pages 24 and 25 of our report, we cited the key regulation covering the principal purpose criterion and application of SCA to contracts to furnish services, as follows:

> "Section 4.111 Contracts 'to furnish services'
> (a) 'Principal purpose' as criterion. * * * If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract for another purpose, the act does not apply. * * *"

Further, the next paragraph in section 4.111 identifies the legislative intent to apply the "principal purpose" test to entire contracts--not contract specifications--as follows:

> "(b) Determining whether a contract is for 'services,' generally. * * * In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for 'services' those contracts which have as their principal purpose the procurement of something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. * * *"

All of the above regulatory citations conform to the language in the act and the legislative history concerning the "principal purpose" test for SCA coverage determinations.

8. Labor's comment implies that the Department of Defense agrees with Labor's interpretation that the principal purpose test is always applied to individual contract specifications rather than the contract as a whole. This is not so.

Labor's first comment relates to a note added in a September 17, 1979, revision to the Defense Acquisition Regulation (DAR). The note, inserted at the end of section 12-1002.1, states:

> "(Note: In contracts having separate and severable requirements for supplies and services, the principal purpose test is applied to the service requirement, thereby possibly bringing it within the Act's coverage.)" (Underscoring supplied.)

We discussed the rationale behind the addition of this note in the DAR revision with present and former members and staff of the DAR Council. They told us that they added the note to assure that contracting officers understood that the principal purpose language in the law and Labor's regulations did apply to contracts as a whole. However, in cases where service specifications were "separate and severable," SCA might apply. They cited the example in Labor's SCA regulation, 29 CFR 4.132 (see comment 7, p. 37), where totally unrelated specifications were combined in a single contract, as the basis for the note. The legal meaning applied to the words "separate and severable" is that there are two distinct, freestanding obligations, both independent variables, neither related to the other.

The example cited in 29 CFR 4.132--specifications for supplying new typewriters and other specifications for maintenance and repair of typewriters already in use--are clearly "separate and severable" specifications to which the note might be applied. The example cited in appendix 2 to Labor's comments--combining a requirement for construction of a warehouse with another unrelated requirement for furnishing cafeteria and food services--would also be subject to the note. In any event, the DAR Council members believed the act and the regulations clearly related the principal purpose language to entire contracts--the note in DAR 12-1002.1 would only be applied in unusual situations.

The other references Labor cited, DAR 12-106 and Federal Procurement Regulations (FPR) 1-18.701.2, give defense and civil agency procurement officials guidance about provisions of the Davis-Bacon Act in contracts involving both construction and non-construction work. Neither the Davis-Bacon Act nor the Walsh-Healey Public Contracts Act contains the "principal purpose of the contract" language found in SCA; therefore, coverage of these acts, regardless of the principal purpose of the contract, might be required in any contract in excess of $2,000 involving construction or contracts in excess of $10,000 involving the procurement of materials, supplies, articles, or equipment, respectively. The Davis-Bacon Act applies to:

> "* * * the advertised specifications [clearly the solicitation documents in this case] for every contract in excess of $2,000 * * * for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works * * * and which requires or involves the employment of mechanics and/or laborers * * *."

Similarly, the Walsh-Healey Public Contracts Act applies to:

> "* * * any contract * * * for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000 * * *."

Sections 4.111, 4.113, 4.122, and 4.134 of 29 CFR Part 4 (see pages 24, 25, and 26 of our report) support our interpretaion that the SCA principal purpose language is applicable to contracts as a whole, not individual contract specifications. Labor did not comment on these sections of its regulations.

9. Labor's contention that GAO has upheld the Department's position on SCA coverage of separate bid specifications is in error. Labor's comment shows a misunderstanding of two distinct issues.

First, there is no question of Labor's authority under SCA. We recognize that the act empowers the Secretary of Labor to administer it and to promulgate rules and regulations interpreting and implementing it. Labor's authority, as discussed on pages 2, 8, and 9 of our report, has been upheld by the Attorney General in a March 1979 opinion and in our bid protest decisions, including the April 23, 1979, decision cited by Labor.

Second, however, is the question of Labor's interpretation of SCA. We believe that Labor erroneously interpreted the legislative history of the act. We do not believe it was intended to cover maintenance services related to commercial products acquired by the Government. To the contrary, we believe the legislative history shows that SCA was intended to protect the labor standards of service workers on contracts for services previously performed in Government facilities by blue- or white-collar Government employees. The livelihood of such service workers depended primarily on wages paid on labor-intensive contracts. ADP and other high-technology commercial product-support service contracts, where Government sales represent a relatively small portion of a company's total sales, do not have the same characteristics, or incentives, for contractors to pay low wages to successfully bid on Government contracts. Accordingly, Labor's application of SCA to contractor services sold primarily in the commercial sector, such as provided by ADP and other high-technology industries, in our view, is inappropriate.

In our April 23, 1979, bid protest decision, we did not "uphold" Labor's position. We merely concluded that Labor's interpretation was not clearly contrary to law and therefore not subject to formal legal objection. We took this position in recognition of Labor's broad authority to interpret and implement the act. We did not, however, ever agree that Labor's position was the appropriate one or that it reflected the legislative history of the act. Chapter 2 of our report sets forth at length the basis for our conclusion that Labor's application of SCA to ADP and other high-technology industries is inappropriate.

10. We do not agree with Labor on this point. Our responses in comments 4 to 7 and 9 above point out that Labor's current interpretation is inconsistent with its published regulations, the language of the act, and the act's legislative history. Labor's comments do not refer to those pertinent sections of the SCA regulations and the act's legislative history, cited in chapter 2 of our report, that support both our position and that of the contracting agencies on this issue.

11. We recognize that, under current regulations, the anomalous situations described in Labor's comments exist. However, as discussed more fully in comments 4, 5, and 18 of this appendix, we do not believe SCA should apply to commercial product-support services, whether they are incidental to the principal purpose of the contract or they are the principal purpose of the contract.

12. Labor challenges our use of the phrase "incidental maintenance and repair specification" to describe such specifications when included in contracts having a principal purpose of leasing or purchasing equipment. Labor argues that the "several hundred million dollars per year," which it asserts the Government spends

for maintenance services performed under such specifications in GSA contracts alone, can hardly be characterized as "incidental." We agree that such dollar amounts in absolute terms are large. However, our use of the term "incidental" was intended in the same context as used in 29 CFR 4.134(b), which states:

> "* * * where the Government contracts for a lease of building space for Government occupancy and as an incidental part of the lease agreement the building owner agrees to furnish janitorial and other building services through the use of service employees, the leasing of the space rather than the furnishing of the building services is the principal purpose of the contract, and the Act does not apply * * *." (Underscoring added.)

In this regard on September 30, 1978, GSA reported that the Government occupied 207 million square feet of leased space in the United States costing about $763 million. A GSA official told us about 90 percent of the GSA leases (which represent about two-thirds of the dollar value above) provide that the owner furnish services, such as utilities, cleaning, maintenance and minor repairs, protection, and other miscellaneous services. On the basis of discussions with several GSA officials, we estimate that labor-intensive services (excluding utilities) in the total lease costs could amount to more than $150 million. We agree that this is not "incidental" in the sense of being a small amount of money, but using Labor's characterization in the regulations, such services are "incidental" to the principal purpose of the contract.

13. On February 12, 1981, the Secretary of Labor announced the postponement of the effective date of recently revised SCA regulations, which were to have become effective on February 17, 1981, and which incorporate Labor's express coverage of ADP and high-technology equipment maintenance and repair services. In making this announcement, the Secretary cited Labor's failure to conduct cost/benefit, impact, or feasibility studies of these revised regulations.

14. We disagree that we had any misconception about application of SCA to all types of equipment maintenance. As noted previously, SCA stipulations had been generally included by most agencies in contracts principally for maintenance and repair services. Industry representatives and Government procurement officials, including those in the Department of Labor, asserted that the "new" SCA coverage included contracts principally for lease and purchase of equipment. (See also comment 3, pp. 31 to 33, for a more detailed discussion of this issue.)

Labor furnished 13 Standard Form (SF)-98's, Notice of Intention to Make a Service Contract (wage determination requests), as appendix 6 to its comments to show that most of the 18 firms we contacted were incumbent contractors on contracts containing SCA requirements. Our evaluation of the data on these forms shows that most of the 18 firms contacted by us had not entered into many contracts containing SCA stipulations. The 13 documents listed as incumbent contractors 9 of the 18 contractors we contacted. Eight of the 13 documents indicate that the incumbent contracts did not contain wage determinations. The SF-98's show that only five of the incumbent contractors had contracts with SCA stipulations.

Moreover, only 1 of the wage determination requests related to equipment rental and maintenance services--the other 12 involved maintenance or repair services only. In our opinion, the examples Labor furnished indicate that its interpretation of coverage for rental and maintenance contracts, even though it may have been long held by Labor, was not widely understood by the procurement community.

15. We disagee with Labor that our September 1980 report represents a reversal of a position we took in our 1978 report. 1/ Our position, and that of agencies we contacted, is the same in both reports, and is in agreement with Labor's interpretation and regulations that SCA applies to every contract for which the principal purpose is to furnish services through use of service employees. In our 1978 report, we discussed Labor's investigation of several service contracts which we found did not contain the required wage determinations. Those contracts were principally for maintenance of ADP or other equipment and, under Labor's regulations, were subject to SCA. Our report did not question SCA's application to these contracts. Under Labor's current regulations, those contracts would still be subject to Labor's wage determination requirements. However, on the basis of our review of the act's legislative history and the merits of industry arguments, as presented in our September 1980 report, we believe that coverage of contracts for ADP and other high-technology commercial product-support services was not intended by the Congress, is not needed, and should be exempted.

1/Report to the Chairman, Subcommittee on Labor-Management Relations, House Committee on Education and Labor, entitled "Review of Compliance With Labor Standards for Service Contracts by Defense and Labor Departments" (HRD-77-136, Jan. 19, 1978).

We believe it is significant that the results of Labor's SCA compliance investigations into the wages and fringe benefits paid to the service employees working on the seven contracts Labor cited in its response support our conclusion that applying SCA to the industry serves no remedial purpose. None of the service workers had been paid less than Labor would have required; they were apparently well paid even without the act's protection.

16. We acknowledged in our report that agencies generally included SCA provisions in contracts principally for ADP maintenance and repair services. We have evaluated the data that Labor stated had been shown to us during our review but not commented on in our report. The data, consisting of 54 SF-98's, represented an effort by Labor staff to draw from their files a sampling of documents showing that Labor had issued wage determinations for contracts in the industry between 1974 and 1979. The 13 SF-98's included as appendix 6 to Labor's response were included in the sample of 54. (See comment 14.)

Of the 54 SF-98's, 30 (or 55 percent) showed that incumbent contracts did not have wage determinations. The SF-98's listed 28 contractors with 63 Federal contracts; 39 (or 62 percent) did not include wage determinations.

These data tend to show that, contrary to what Labor intended to demonstrate, incumbent contractors did not generally have wage determinations in contracts before June 1979.

17. Labor's description of our discussion, on page 29 of our report, of its May 1980 determination is accurate. However, we continue to believe that Labor's May 1980 determination was inconsistent with its June 5, 1979, notification to GSA. The maintenance specification in GSA's contract documents for teleprocessing services, the issue involved in Labor's May 1980 determination of noncoverage, is similar to a specification in the lease/rental section of GSA's ADP schedule contracts and the Federal agency nonschedule ADP contracts, to which Labor insists SCA must apply. In view of the importance of Labor's May 1980 determination of noncoverage, it is reasonable to assume that Labor reviewed, or should have reviewed, the contract documents GSA furnished, before finalizing its SCA coverage decision.

18. We disagree that the legislative history does not support our argument that commercial product-support services were never intended to be covered by the act. The only examples discussed in the hearings on the act, and in hearings on earlier similar bills, related directly to the Government's contracting-out practices initiated in the 1950s. These practices grew out of the policy that the Government would not start or carry on commercial-type activity to provide a product or service for its own use if such product or service could be procured from private enterprise through ordinary business channels.

Accordingly, the activities considered for contracting out were those carried on by full-time Government employees, with Government-furnished supplies and materials, at Government installations or buildings. Contractor costs consisted primarily of replacing Government workers with a contractor work force--wage rates paid to this work force represented the controlling influence on the successful offeror's price. Lower wages equaled lower bids and a better chance to be the low bidder. Typical activities or operations discussed were contracts for

--janitorial services;

--motor pool operations, including automotive maintenance and repair;

--cafeteria and food service operations;

--laundry and dry cleaning plant operations; and

--guard service activities.

Each of the examples cited had common characteristics, in that:

--Federal workers were displaced by contractor employees.

--Contractors established a lower paid permanent work force dedicated essentially to full-time work; i.e., their livelihood depended solely on work at the activity or operation under the contract.

--Government-furnished materials and equipment were used in the operation in Government-owned buildings or plants.

We believe that the Congress intended to remedy the "wage busting" practices being engaged in by contractors in these types of contracting-out situations.

Most of the Government's ADP and high-technology product-support services are being obtained by contract, none of which have the same characteristics as those let under the Government's contracting-out policy. We continue to believe that the incentives for "wage busting" to be a successful bidder on Government contracts did not exist before 1965, and do not exist now, among product-support service contractors, and that the Congress never intended to cover these services under the act.

We agree that the terms "commercially offered services" and "commercial product-support services" do not appear in the legislative history on the enactment of SCA. However, in 1977 hearings on a proposed amendment to extend the act to cover professional employees, we note that the question of coverage of commercial product-support services was specifically discussed. In a colloquy between the Chairman of the House Education and Labor Subcommittee on Labor-Management Relations, who was also Chairman when SCA was enacted in 1965, and the President of the Computer and Business Equipment Manufacturers Association (CBEMA), the Chairman acknowledged that it had not been the intent of the Subcommittee when it drafted the original legislation to include under the act's coverage product-support service personnel who serve both commercial and Government establishments, all charged at commercial rates. 1/

19. Labor argues that not applying SCA to the ADP and high-technology industry could "open the way to a widespread rollback of SCA coverage in the whole universe of service contracts." Our report deals only with the ADP and other high-technology industries, and we cannot comment on other potential SCA coverage problems. However, industry officials we contacted did not view the issue as a rollback of coverage, but rather were concerned with halting what they perceived to be Labor's administrative expansion of SCA coverage in recent years to contracts outside the language and intent of the act. ADP and other high-technology commercial product-support service contracts, where Government sales represent a relatively small portion of a company's total sales, do not have the same characteristics, or incentives, for contractors to pay low wages to successfully bid on Government contracts. Accordingly, Labor's application of SCA to such contractor services sold primarily in the commercial sector, such as provided by ADP and other high-technology industries, in our view, is inappropriate and not in the best interest of the Government or the affected industries.

1/Hearings on H.R. 314 and H.R. 7388 before the Subcommittee on Labor-Management Relations, House Committee on Education and Labor, 95th Cong., 1st Sess., 214 and 218 (1977).

20. Our citations, on pages 44 and 45 of our report, of the the Truth-in-Negotiations Act and the Cost Accounting Standards Act are noted primarily to show a precedent in which regulatory requirements have been relaxed in situations where remedial purposes were not served and regulation was not needed--the costs of contractor compliance and agency enforcement far exceeded the benefits to be achieved.

21. We disagree that the "no wage busting" argument presented in our report is improper, irrelevant, or unfeasible for determining SCA coverage. Preventing wage busting was the act's central purpose; exemption action in an area where wage busting does not exist, or has no potential to exist, could surely be supported by the Secretary of Labor within the act's language. Thus, the presence or absence of wage busting is a proper, relevant, and feasible basis for determining SCA coverage. Invoking the authority granted by law to the Secretary can hardly be characterized as a "usurpation of legislative authority" or a "rewriting of a law."

Labor's current administration of SCA already results in a "crazy quilt" of coverage patterns. Application of SCA to the Air Force engine overhaul program--originally deemed by Labor as subject to the Walsh-Healey Public Contracts Act, later changed to SCA, then to part Walsh-Healey Public Contracts Act and part SCA, and finally exempted from SCA pending further study--has yet to be fully resolved. (See pp. 20 and 21 of our report.) Also, SCA is not applicable, according to Labor's regulations, to service employees associated with leased space in buildings (see comment 12, p. 41), but Labor insists on coverage of service employees associated with maintenance on leased equipment. Further, Labor's amended SCA regulations, published in the Federal Register on January 16, 1981, but currently being reconsidered by the new administration, would extend SCA coverage to research and development contracts and timber sales contracts.

We asked Labor to identify the five firms it cited as appearing on the list of ineligible bidders as a result of debarment for SCA violations, and the bases for their debarment. The documentation Labor furnished shows that all five firms were small businesses operating in California and employing small numbers of service workers. Four of these firms had Government service contracts to repair and/or maintain office machines, including typewriters, adding machines, multipliers, and calculators--not ADP or high-technology equipment. The fifth firm had two Government service contracts in the amounts of $18,650 and $20,000 for "electronic computer maintenance." In all five cases, the SCA violations involved failure to pay the minimum wages stipulated in SCA wage determinations included in the contracts. One firm also failed to pay the Fair Labor Standards Act minimum wage to one of its two employees.

22. Labor's comments avoid the basic issue brought out in our report. The problems at the Kennedy Space Center and in the two Federal district court cases, which led to adoption of the 1972 and 1976 SCA amendments, were examples of the same type of contracting-out problems that led to enactment of SCA. The contracts involved covered full-time operations of Government activities or facilities, in which employees' livelihood depended on working on the contract. These examples, and those cited in the legislative history, are contractor activities that were clearly distinct from the commercial product-support services discussed in our report.

Despite Labor's comments, none of these employees in the Kennedy Space Center example cited received any protection under SCA. Labor had not issued a wage determination covering wages for service employees working under the contract at the Center. The abuses involved the successor contractor paying wages, in accordance with its existing nationwide collective bargaining agreement, that were lower than rates in the predecessor contractor's collective bargaining agreement with the same union. The Congress did amend SCA in 1972 to add a new subsection 4(c) to remedy this type of problem.

The 1976 SCA amendments were enacted to clarify congressional intent that SCA cover white-collar as well as blue-collar employees. This was deemed necessary because Federal courts, in the two cases Labor cites (which we also cited on p. 12 of our report), ruled that the Congress had not intended the act to cover white-collar employees. The questions of white-collar employee coverage and the responsibilities of successor contractors are not at issue in our report and should not have been raised by Labor as issues now.

23. In chapter 4 of our report, we discuss in considerable detail the characteristics of the ADP and other high-technology industries which provide commercial product-support services to the Government. Their service technicians are compensated through merit pay systems that provide ranges of pay within each of the skill levels recognized in those systems--from the inexperienced, newly hired trainee to the very highly trained, experienced specialist or "trouble-shooter." Each employee is compensated and promoted on a pay-for-performance basis, and the merit pay scales are reviewed and adjusted upward periodically to reflect increases in the costs of living, both nationally and in specific geographic areas.

The composite chart of field service technician wage rate ranges, on page 52 of our report, was prepared by us--not CBEMA--on the basis of data it furnished from its 17-member survey of both computer and office equipment field service technicians' wages, made in early 1979. We do not know how many of the 17 member companies furnished the specific data which were the basis for our chart. We included the chart in our report to illustrate the effect on the industry's merit pay systems of Labor's imposition of an arbitrary minimum rate of $5.24 for all field service technicians in the industry--even newly hired trainees at the lower end of the wage rate range we identified as composite level "1" (see chart on p. 52 of our report).

The hourly rates of pay shown in the table on page 53 of our report, for 11 of the 18 companies we contacted during our review, were their minimum rates of pay for entry-level technician trainees. Only 7 of these 11 companies had coincidentally participated in CBEMA's 17-member survey. The variations in the companies' hourly rates shown in the table could be attributed to a number of factors unrelated to their receipt of Government contracts, including (1) the company's size, (2) the level of technical sophistication of the specific commercial products manufactured and serviced, (3) the company's competitive position in the commercial marketplace, and (4) whether the company's merit pay plan contained varying rates within the same skill levels to reflect differences in the costs of living in various areas of the United States. Our recent contacts with three of the five companies which had minimum merit pay rates below Labor's proposed $5.24 entry-level rate disclosed that all three had since increased their minimum rates.

In contrast to the above industry pay practices, Labor's $5.24 entry-level rate reflected the median rate for Class C electronic technicians--fully qualified technicians, not entry-level trainees. The Bureau of Labor Statistics' nationwide wage survey data, which provided the basis for Labor's $5.24 median rate, covered a broad range of hourly rates from $3.50 to $7.50. (See p. 36 of our report.)

24. We disagree with Labor's comment that the discussion in chapter 5 of our report is seriously flawed. (See comments 3, 14, and 16 above.)

25. Labor believes that it demonstrated in its earlier comments that companies in the industry had entered into "numerous" contracts with SCA prevailing wage determinations for a number of years before June 1979. Our analysis of the data Labor used to support its comment showed the opposite. (See comments 14 and 16 on pp. 42 and 44.) The asserted substantial numbers of SCA-covered contracts were not evident to us during our onsite reviews at the 42 agency installations we visited, or in the SF-98's Labor sampled from its files. In fact, the fiscal year 1981 GSA ADP and Federal Supply Service schedule contracts for rental and purchase of equipment, which include maintenance and repair services specifications, contain SCA provisions (and Labor's "interim" wage determinations) for the first time. Most, if not all, agencies use GSA's schedule contracts, either exclusively or in conjunction with separate contracts with individual firms, to fulfill their total equipment maintenance requirements.

26. Labor's comment about noncompliance in those few instances where contracts contained SCA wage determinations is correct--contractors did not maintain the records that would have been required by SCA, where employees spent only part of their time servicing equipment under Government contracts. However, Labor compliance reviews were unheard of on these product-support service contracts during that period, and our discussions with Labor's local Wage and Hour Division compliance investigators confirmed that no complaints of alleged SCA violations had been filed against the contractors. Thus, there was no basis for an "outcry from industry regarding SCA compliance."

Labor's controversy with GSA, which began in 1977 and culminated in the June 1979 denial of an exemption request, alerted industry management to the SCA compliance provisions. (See comment 3, pp. 31 to 33.) Many industry officials believed that the push for Federal agency compliance with Labor's interpretation of the act would soon be followed by enforcement reviews of contractor records. This would have been no problem for contractors whose entire work force was paid at or above the SCA wage determination rates (as was apparently the case at Wright-Patterson Air Force Base).

However, where some employee wage rates may be lower due to the ranges of rates inherent in merit pay systems, assignment practices would have to be altered, or wage rates, established under merit pay principles, would have to be increased. In either case and as pointed out by examples in chapter 5 of our report, sophisticated and most likely expensive automated recordkeeping systems would be required to assure SCA compliance. Establishing such systems would be costly and burdensome.

27. We disagree with Labor's view that the minimal records required under the Fair Labor Standards Act would be sufficient to satisfy SCA requirements under contracts awarded to companies in the commercial product-support services industry.

As noted in our report, Federal contractors in this industry may have only a small portion of their work covered by Government contracts in a locality. This could be true even where several Government agency contracts, with SCA wage determinations in each, are involved. It would not be unusual, under Labor's current wage determination procedures, to have different wage rates in each of the contracts. To assure proper compliance with SCA regulations, time spent by each worker servicing each of the Government contracts would have to be maintained, along with all time spent on commercial accounts.

To compound the problem, parts or even whole equipment units may occasionally be sent for repair to a service center operated by the contractor in another locality, where it is commingled with commercial parts or units being repaired. Again, each employee's time spent on that part or unit repaired under each contract would have to be properly segregated and accounted for under the SCA regulations. Rather than following sound business principles, the end results are added recordkeeping systems and added records, needed only to satisfy the SCA requirements imposed by Labor on only a small portion of a contractor's total work. SCA, in our opinion, does require more information and more burdensome recordkeeping systems than are essentially required under the Fair Labor Standards Act.

In fact, early in its administration of the act, Labor recognized the added administrative burdens imposed on contractors having most of their business in the private sector. We noted in our report on pages 44 and 45 that the Secretary of Labor had granted an exemption from all SCA provisions to contracts for the carriage of mail by rail, air, bus, and ocean vessel, when performed on regularly scheduled runs over established routes and when it accounts for an insubstantial portion of the revenue therefrom. In publishing this variance in the Federal Register in January 1967, the Administrator, Wage and Hour and Public Contracts Divisions, noted:

> "* * * application of the Act to such contracts will result in unnecessary administrative burdens on these contractors and the Government agencies

concerned, and will present difficulties in applying the Act that could lead to serious impairment of the conduct of Government business. * * *"

28. Labor cites two references in GSA's ADP schedule contracts in an apparent effort to show that adequate records of the type needed to satisfy the SCA regulations are already required of the contractors. The first reference is to a requirement for certain data in what Labor describes as a "report of each maintenance call." This is not a report for each call, but rather a "malfunction incident report"--prepared only when the equipment has become inoperative. Agencies and manufacturers use the report primarily to track equipment problems and to provide a documented basis for billing credits to the user agency for the time the equipment was inoperable.

Labor's second reference, to the contract requirement that work other than preventive maintenance be billed on an hourly basis, is also in error. Both remedial and preventive maintenance are included in the contractor's basic monthly charge when performed during the principal period of maintenance. As specified in a contract, this period could range from 8 hours a day, 5 days a week, to 24 hours a day, 7 days a week. Only when service is provided on an on-call basis outside that designated period are service charges billed on an hourly basis. Thus, some data are reported, but only on an equipment malfunction. In neither case cited by Labor will the data generated provide sufficient information to verify SCA compliance.

29. We accepted the industry estimates of increased costs of SCA compliance, due to merit pay disruptions or the creation of a segregated work force, only after we reviewed and evaluated the reasonableness, supporting rationale, and validity of the data used in computing the estimates. In our opinion, the estimates were reasonable and factually supported. As noted in our report (pp. 75 and 76), Labor's Assistant Secretary recognized the existence and validity of the industry argument on merit pay systems versus establishment of a segregated work force. Labor's development of the proposed $5.24 entry-level wage rate was believed by Labor officials to be a good-faith effort to alleviate the recognized impact that normal wage rate determination procedures would have on the industry. However, as we pointed out in comment 19 on page 46, and on pages 51 to 53 of our report, even this rate would have been inappropriate.

Labor commented that we cite no definitive studies showing that applying SCA has had an inflationary impact on any industry. However, each of the examples cited in chapter 5 of our report summarizes definitive studies by individual contractors showing the increased administrative costs or inflationary wage impact of complying with SCA. Because much of the data furnished us was

confidential and proprietary, we only summarized pertinent points in our report. However, in our opinion, the studies represent a serious effort, at considerable expense by several industry contractors, to determine the specific administrative and/or wage impact of SCA on their operations.

Prevailing wages based on the mean or median rate in a wage survey are inherently inflationary, especially when imposed on a merit pay system. A viable merit pay system would have employees being paid wages both above and below the median or mean rate. However, when such a rate is stipulated in a contract under an SCA wage determination, that rate automatically becomes the minimum that can be paid to that classification of employees working on the contract. In such a situation contractors can (1) adjust all other wages, with commensurate increases in each rate within the merit pay ranges, (2) adjust work assignment practices, (3) segregate the work force, (4) stop accepting contracts subject to SCA, or (5) continue business as usual and, upon being later found by Labor to be in noncompliance, face potential debarment from Government contracting. Most companies would find all of these alternatives inflationary, counterproductive, or otherwise unacceptable.

30. While Labor agrees with our assessment of the adverse impact on Federal programs, it apparently does not view the matter as being as serious as portrayed in our report. The potential adverse impacts are serious, and they could affect major civil and defense programs and missions. Labor states that it cannot ignore what it perceives to be "the underlying cause of the industry's entrenchment"--a concerted effort to roll back long established SCA coverage. However, Labor ignores industry's basic arguments that the act was never intended to cover commercial product-support services, was generally not being incorporated into GSA and other agency contracts, is not needed, and would be expensive to implement. Rather than desiring a roll back of existing SCA coverage, the industry officials we contacted were seriously concerned with halting Labor administrative expansions of SCA coverage in recent years to contracts outside the language and intent of the act.

31. Labor's comment concerning SCA-covered contracts at White Sands Missile Range and Redstone Arsenal is only partly accurate. During our review we examined contracts for repair and maintenance services on ADP and other equipment at each installation visited. White Sands had six major contracts, of which five had SCA wage determinations. However, at Redstone Arsenal, we found the reverse--there were no wage determinations in five of the six major contracts. At White Sands, one contractor representative told us that Labor's previous enforcement efforts consisted only of requesting that the contractor certify that it was conforming to the SCA wage determination. At Redstone, the one contract that

contained a wage determination was being performed by a third-party contractor, not the equipment manufacturer which has refused to accept contracts with SCA wage determinations.

32. We agree that the SCA coverage issue should be addressed and decided on its merits. The Federal program and operational impacts cited in our report are intended to fully disclose the consequences of Labor's imposition of burdensome and costly regulatory requirements where, in our opinion, such requirements were not intended by the Congress and are not needed.

33. We disagree that our reported conclusions are incorrect. Our conclusions are based on voluminous data gathered from many sources, including Labor itself, and on an extensive analysis of the congressional intent and legislative history of SCA. We continue to believe that actions are fully justified and needed to permanently exempt the industries' commercial product-support services from SCA coverage.

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