



## SHEET METAL AND AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION

July 23, 2014

Ms. Mary Ziegler  
Associate Administrator  
Director, Division of Regulations, Legislation and Interpretation,  
Department of Labor Wage and Hour Division  
200 Constitution Avenue, Room S-3502  
Washington, DC 20210

### Re: Federal Register Notice 2014–13380

Dear Ms. Ziegler:

As President of the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), I am pleased to offer SMACNA's comments with regard to information collection of Davis-Bacon Certified Payroll as published in Federal Register Notice 2014–13380 filed on June 6, 2014. SMACNA National is supported by more than 4,500 construction firms engaged in industrial, commercial, residential, architectural and specialty sheet metal construction throughout the United States in the private and public sector. Our organization represents the high-skilled leading edge sector of the construction industry, providing the top tier wages, health and welfare and pension benefits, necessary for a trained, dependable, skilled workforce.

SMACNA commends the Department of Labor Wage and Hour Division for its continuing efforts to reduce paperwork and respondent burdens on compliant employers and also for its diligent effort to maintain strong enforcement efforts on projects covered by Davis-Bacon law. In response to the items selected by the Wage and Hour Divisions for review we offer the following comments:

- 1) The collection of the proposed information is most certainly necessary for the proper performance of the prescribed functions of the agency. SMACNA is a strong proponent of aggressive enforcement by the Wage and Hour Division. The information collected is vital to the enforcement function.**
- 2) SMACNA is particularly interested in commenting on the enhancement, quality, utility and clarity of the information to be collected under the Davis-Bacon Act. It has come to SMACNA's attention that agencies receive Davis - Bacon Certified Payroll forms that indicate employers made payments to individuals who "pay their own taxes" or otherwise are listed as "independent contractors" for construction work on an hourly basis. SMACNA National would advocate that the Department of Labor Wage and Hour Division update Davis Bacon Act record-keeping in ways that would help identify contractors who misclassify workers or otherwise commit payroll fraud on federal/federally assisted work.**

The contracting agencies, including the Department of Labor, in examining Certified Payrolls should "red flag" forms that include payments to workers for whom no FICA, Withholding or other deductions are included and on forms where the contractor includes information that the worker was an independent contractor or otherwise pays his or her own taxes. The reporting forms and regulations should require more information on those particular workers and should require that 1099s to those workers be maintained in the record for three years as is required for the Certified Payroll forms. Training sessions for contracting agency staff should include information about misclassification and other forms of payroll fraud.



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**Unfair and abusive employment practices are widely acknowledged by public policy experts to be epidemic in the construction industry.** Construction projects are temporary by nature, engage multiple levels of contractors and subcontractors, and employ a highly mobile workforce, all of which combine to make the industry especially vulnerable to abuse. Ever-evolving schemes give unscrupulous employers a huge advantage in a highly competitive, head-to-head bid industry.

Study after study shows that a significant portion of construction employers misclassify their employees as independent contractors. The result is that federal, state and local governments lose millions, if not billions, of dollars annually. The result is also that lawfully compliant contractors are put at an unfair competitive advantage by contractors who are willing to cheat or game the system. The U.S. Department of Labor and the Obama Administration have noted the increasing trend in this practice and the Department of Labor itself has expanded its investigation and enforcement efforts to stem the practice so updating the payroll reporting forms would seem a logical extension of their efforts.

SMACNA National believes that stronger Davis-Bacon reporting requirements are needed to stop the misclassification of workers because **businesses that avoid properly classifying workers as employees do not have to pay unemployment insurance taxes, workers' compensation premiums, or the employer's portion of Social Security and Medicare taxes.**

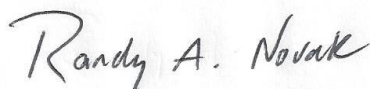
When a contractor performs federal or federally assisted work, there should be increased due diligence by all agencies to ensure contractors are following all federal laws. Therefore, we believe there should be increased scrutiny of Certified Payroll forms by all agencies, including DOL, to include closer examination of construction companies that include independent contractors in their payroll certifications. Cracking down on payroll fraud and misclassification of workers at every level is a step towards stopping the unlawful anti-competitive practices by unscrupulous employers that make legitimate contractors less competitive in the public and private marketplace.

It is worth noting that unscrupulous employers are deliberately trying to avoid tax and employment requirements by stretching the law in creative ways. No longer do they simply misclassify employees as independent contractors. Scofflaw companies in construction and other industries employ techniques such as using labor brokers, forming LLCs so that employees become owners filing not a 1099 but a K1, establishing elaborate check cashing schemes, and illegally requiring workers to purchase a shell franchise. The government needs to be likewise creative to stem the unlawful practices. Therefore it is even more important that Davis-Bacon form requirements be updated to increase the utility of the reports.

**3) To minimize the burden of reporting requirements, SMACNA contractors appreciate the application of modern technology which eases reporting record-keeping and submission. We would suggest that reporting could be reduced to monthly or quarterly reporting to reduce contractor burdens without compromising the utility of the information.**

Thank you for the opportunity to respond to this notice.

Sincerely,



Randy Novak  
SMACNA President