May 7, 2013

U.S. House of Representatives
Washington, DC  20515

Dear Member of Congress:

The Sheet Metal and Air Conditioning Contractors National Association (SMACNA), represents more than 4,500 contributing contractors employing more than 150,000 highly skilled workers in the specialty sector of the construction industry. SMACNA’s contractor executives oppose H.R.1406, legislation that would amend the Fair Labor Standards Act (FLSA) to allow employers to substitute compensatory time for an employee’s earned overtime pay and benefits.

Currently one of the most abused and violated federal employment laws by unscrupulous employers, the FLSA would be even less of an effective federal employment protection if H.R. 1406 would become law. Further, it would be nearly impossible for the construction industry to track employee overtime/comp time due to the multiemployer nature of the industry where workers move from project to project throughout regions of the country. To appreciate the massive level of fraudulent behavior by employers under current law, members of Congress need look no farther than readily available reports from the Department of Labor, legal complaint reviews or a variety of studies available with minimal search effort. When adding “comp-time reform” to the widespread abuse of the independent contractor law, prevailing wage statutes and other wage related rules designed to limit workplace fraud, honest and responsible contractors would be at an even greater competitive disadvantage in today’s market place, particularly in the construction industry. Enforcement of federal, state and local labor standards is already strained by lack of funds and personnel, making implementation and proper enforcement of any new flex time law as proposed most unlikely. Employers wishing to offer greater time off with pay for special family events, holidays, sickness and the like may do so now.

Under H.R. 1406, irresponsible employers would pay far lower wage costs as generally low wage-low benefit workers take growing amounts of “voluntary” compensatory time off instead of receiving premium pay at the time-and-a-half rate. We also believe that enactment of a less effective FLSA would jeopardize worker safety and health as employees are encouraged or subtly forced to accept long and hazardous overtime assignments without pay fearing loss of future employment opportunities given the project-by-project nature of the construction employment process.

While it may be possible to draft comp time legislation that would improve employee work time discretion, greatly increase FLSA enforcement and employee protections, the current version of comp time reform does not meet the minimum conditions necessary for our support. Our 4,500 contractors urge a no vote on H.R. 1406.

Sincerely,

Stanley E. Kolbe, Jr.
Director, Governmental Affairs - SMACNA