

STEWART WEINBERG  
DAVID A. ROSENFELD  
WILLIAM A. SOKOL  
BLYTHE MICKELSON  
BARRY E. HINKLE  
CHRISTIAN L. RAISNER  
JAMES J. WESSER  
THEODORE FRANKLIN  
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KRISTINA L. HILLMAN ••  
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CAREN P. SENCER  
ANNE I. YEN  
KRISTINA M. ZINNEN  
JANNAH V. MANANSALA  
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KERIANNE R. STEELE •••  
GARY P. PROVENCHER  
EZEKIEL D. CARDER ••••  
MONICA T. GUIZAR  
SHARON A. SEIDENSTEIN  
LISL R. DUNCAN

**WEINBERG, ROGER & ROSENFELD**  
**A Professional Corporation**  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501  
TELEPHONE (510) 337-1001  
FAX (510) 337-1023

JACOB J. WHITE  
SEAN D. GRAHAM  
JOLENE KRAMER  
STEPHANIE L. MARN •  
ANTHONY J. TUCCI  
ROBERT E. SZYKOWNY  
MICHAEL D. BURSTEIN

VINCENT A. HARRINGTON, Of Counsel  
PATRICIA M. GATES, Of Counsel  
ROBERTA D. PERKINS, Of Counsel  
NINA FENDEL, Of Counsel

• Admitted in Hawaii  
•• Also admitted in Nevada  
••• Also admitted in Illinois  
•••• Also admitted in New York

August 8, 2014

*Via Electronic Mail*  
(WHDPRAComments@dol.gov)

Ms. Mary Ziegler, Director  
Division of Regulations, Legislation  
and Interpretation  
Wage & Hour Division  
U.S. Department of Labor, Room S-3502  
200 Constitution Avenue NW  
Washington, D.C. 20210

Re: Supporting Statement—Davis Bacon Certified Payroll Form WH-347  
OMB Control Number 1235-0008

Dear Director Ziegler:

These comments are submitted in response to the June 9, 2014 Notice published by the Wage and Hour Division, 79 Fed. Reg. 33001, *et seq.* concerning the proposal to extend Office of Management and Budget (“OBM”) continued collection of certified payrolls and Statements of Compliance from contractors and subcontractors engaged in federally funded or federally assisted construction projects. The Notice solicited comments addressing specific issues. We limit this comment to evaluation of whether the proposed collection of information is necessary for the proper functions of the agency, including whether the information is useful on a practical level to the government and the taxpayer.

Weinberg, Roger & Rosenfeld is one of the preeminent labor law firms in the United States. The firm represents numerous Unions in construction industries in California and the Pacific Northwestern Region. The firm regularly advises, trains, and assists Labor Management Compliance Committees (“LMCCs”) established pursuant to 29 U.S.C. § 185a, many of which operate exclusively in the construction industry. Unions and LMCCs monitor federal and state funded construction projects in California, Arizona, and Nevada to ensure that workers are being paid the proper wage rates and fringe benefits under the Davis Bacon Act and state law. Prevailing wages strengthen our country’s middle class. It is the middle class, most especially hourly paid construction workers, who have suffered the brunt of the 2008 recession with flat wages and massive layoffs. Now is not the time to eliminate any of the enforcement tools designed to ferret out contractors who violate wage protections provided by laws

like the Davis Bacon Act. The WH-347 is a form that is essential to protecting workers, contractors who play by the rules and taxpayers from wage theft and fraud.

The collection of information provided in the Certified Payroll Form is indispensable to the agency's performance of its enforcement functions. Under the Davis-Bacon Act and the Copeland Anti-Kickback Act, each contractor and subcontractor must provide to the federal contracting agency a weekly statement of the wages and fringe benefits paid to each of its workers engaged in work covered by the Davis Bacon Act and Davis Bacon Related Acts. The federal contracting agencies place a provision mandating this requirement in the contracts for public works and an approved form is offered by the government that meets regulatory requirements. See <http://www.dol.gov/esa/whd/forms/wh347instr.htm>. The statement is signed by an officer of the contractor or subcontractor who supervises the payment of wages. It must be certified as truthful on the "Statement of Compliance" form. Falsification of any of the required information on the weekly payroll report can lead to civil and criminal penalties.

The weekly certified payroll reports provide a critically important investigation tool allowing the federal government to ensure compliance with the wage and fringe benefit requirements of the Davis-Bacon Act. Armed with certified weekly payroll records, federal agencies can interview workers and contractors and can compare the certified payroll records to other employer and worker records to determine if there has been underpayment of wages, misclassification of workers, fringe benefit abuses, or illegal kickbacks on federal construction projects.

Construction workers tend to work in many different places over a relatively short period of time. Consequently, they also tend to either move frequently or travel a great distance to work. If government investigators do not have easy access to at least the last known addresses of workers who have left a construction site, they will have no means to track down workers or to conduct investigations once a project is completed and the contractors, subcontractors and workers are long gone from the site of the work.

Many reports documenting the "underground economy" point to the construction industry as the segment of the economy where the volatility and transient nature of the work make cash payments and noncompliance with wage and hour law rampant. Depriving monitoring organizations and government investigators of this critically important tool for verification of wages will build insurmountable barriers against labor compliance and enforcement.

In addition, if the use of the WH-347 form is eliminated, enforcement of prevailing wage laws at the state level will be undermined in the states which require only that contractors submit the federal payroll reporting form (WH Form 347) for state-funded projects covered by their "little Davis-Bacon" acts. In those states, failing to maintain the WH-347 will translate to weakened enforcement by state labor agencies.

We submit that in addition to the collection of information on the certified payroll records, the agency's enforcement functions are assisted by the monitoring efforts of Unions and LMCCs. In monitoring public works projects for compliance with prevailing wage laws, Unions and LMCCs work as adjuncts to the Department of Labor ("DOL"). Recognizing that individual workers do not have a private right of action under the Davis Bacon Act to recover wages that were not paid at the proper rate, these

organizations monitor compliance on federally funded or federally assisted construction projects with the goal of reporting violations and inconsistencies to the DOL for enforcement. Monitoring frequently takes the form of worker interviews, collecting payroll documents and information from workers, and site visits. In order to determine if the pay rate reported was in fact paid to workers, it is critical to compare what is reported by the contractor on the payroll form with what the worker says he or she was paid.

Review of Certified Payroll Forms is essential to compliance monitoring of wages and fringe benefits. The review is more than simply confirming that the Davis Bacon rate is paid; it includes a review to determine whether the proper classification of laborer or mechanic was applied and a review of the hours worked per day and per week to determine if overtime pay is due. The payroll data contained in the Certified Payroll Form is not available to Unions or LMCCs from any other source aside from a Freedom of Information Act ("FOIA") request under 5 U.S.C. § 552 to the federal contracting agency. So the fact that these forms are required by the Department of Labor to be submitted by contractors and maintained by federal agencies is crucial to the compliance activities of Unions and LMCCs.

The DOL is short-staffed and does not have the time or resources to perform a comprehensive review of all payroll records on all federally funded construction projects. Rather, the DOL generally waits until a complaint is filed before investigating wage theft. Unions and LMCCs dedicate the time and the staff to undertake a close review of Certified Payroll Forms on selected projects to ensure compliance with the Davis Bacon Act and other federal and state laws. When possible, these organizations also reach out to workers to determine if they received what was reported. If there was no written submission by the contractor, all investigations, whether by the DOL or other entities, would be undermined. In investigations by LMCCs when the Certified Payroll Forms or the worker interviews reveal non-compliance, the violations are reported to the DOL for investigation and enforcement.

The critical role Certified Payroll Forms play in compliance monitoring is best illustrated in those unfortunate situations where a contracting agency chooses to redact substantial amounts of information from the records before disclosure to the requesting public. For example, the Department of Energy is an awarding agency that consistently responds to FOIA requests by providing Certified Payroll Forms that are essentially meaningless. Aside from providing worker classifications, the agency asserts FOIA Exemptions 4 and 6 to redact the number of hours worked by each worker per day and per week, the total amount paid to each worker, and the amount of fringe benefits paid.<sup>1</sup> This lack of basic information makes monitoring for compliance with prevailing wage requirements impossible on public works projects let by the Department of Energy. In these circumstances contractors are encouraged to underpay because organizations that would normally assist in enforcement are left in the dark. An example of the types of redactions that undermine the investigative use of the WH-347 is attached to this comment. (See Exhibit A.)

In summary, Certified Payroll Forms provide vital pieces of information that are essential to the DOL, the government and the taxpayer. They provide critical information to Unions and LMCCs, which allows these organizations to fight wage theft by assisting the DOL and federal awarding agencies

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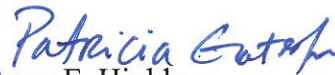
<sup>1</sup> Interestingly, the contracting agency initially redacted the workers' rates of pay. It did concede as part of the FOIA appeal process that the rates established under the Davis Bacon Act were public information and that there was no basis to withhold the rate of pay.

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enforcing the Davis-Bacon and Copeland Anti-Kickback Acts. The collection of weekly Certified Payroll Forms from contactors on federally funded and federally assisted construction projects must be continued. We urge the Department to circulate information to all contracting agencies advising that in the Department's view, the WH-347 is critical to assuring that prevailing wages are enforced and that when made available to the public without unnecessary redactions, it assists the Department in protecting workers and the taxpayers from contractors who cheat to compete on this nation's public construction projects.

These recordkeeping requirements ensure that there is a meaningful and easily accessible tool in the hands of government investigators and private monitoring organizations to enforce the Davis-Bacon Act on thousands of federal and federally assisted construction projects around the nation. Without these vital reports, fraud on federal construction projects will be encouraged and workers in this transient and volatile industry are more likely to be cheated out of their hard-earned wages and fringe benefits. This is not the time to weaken enforcement of the wage and fringe benefit protections for construction workers. Prevailing Wages support the middle class in our country and it is the middle class that has been most severely battered by flat wages and high unemployment since the recession of 2008. We urge the Department to continue its collection of all information required on the WH-347 Certified Payroll Forms and adopt additional policies that encourage federal agencies to welcome the monitoring efforts of Unions and LMCCs.

Sincerely,



Barry E. Hinkle  
Patricia M. Gates  
Roberta D. Perkins

BEH:rdp

Attachment

136450/775518

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input checked="" type="checkbox"/>		CONTRACTOR'S LICENSE NO: SPECIALTY LICENSE NO:		ADDRESS 6515 S. Rural Road Ste 107, TEMPE, AZ 85283																
PAYROLL NO. 64		FOR WEEK ENDING 12/02/2012		PROJECT OR CONTRACT NO: FSL-CLP @ SYS-00120 PROJECT AND LOCATION: Desert Sunlight Project / Riverside, CA																
(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO OF WITH- HOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE				(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED (THIS / ALL)	(8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS						(9) NET WAGES PAID FOR WEEK	(10) Check No. /Date			
		ST / OT / DT	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Sun.											
			26	27	28	29	30	01	02	HOURS WORKED EACH DAY										
M/3		Journeyman Riverside Power Equipment Operator (All Other Work) (DB) GROUP 4								60.46		FICA	FED TAX	STATE TAX	SDI	VAC HOLIDAY	HEALTH & WELF	PENSION		9896337 11/30/2012
										80.31		TRAINING	OTHER REIMB.	DUES	TRAV SUBS	OTHER FRINGE	OTHER DEDS	TOTAL DEDUCTS		
																		223.04		
S/0		Journeyman Riverside LABORER (DB) GROUP 1								42.33		FICA	FED TAX	STATE TAX	SDI	VAC HOLIDAY	HEALTH & WELF	PENSION		9896451 11/30/2012
										55.50		TRAINING	OTHER REIMB.	DUES	TRAV SUBS	OTHER FRINGE	OTHER DEDS	TOTAL DEDUCTS		
																		831.38		
M/1		Journeyman Riverside LABORER (DB) GROUP 1								42.33		FICA	FED TAX	STATE TAX	SDI	VAC HOLIDAY	HEALTH & WELF	PENSION		9896460 11/30/2012
										55.50		TRAINING	OTHER REIMB.	DUES	TRAV SUBS	OTHER FRINGE	OTHER DEDS	TOTAL DEDUCTS		
										68.66								439.88		
										58.68		FICA	FED TAX	STATE TAX	SDI	VAC HOLIDAY	HEALTH & WELF	PENSION		
S/0		Journeyman Riverside Power Equipment Operator (All Other Work) (DB) GROUP 2								77.84		TRAINING	OTHER REIMB.	DUES	TRAV SUBS	OTHER FRINGE	OTHER DEDS	TOTAL DEDUCTS		9896285 11/30/2012
										96.59								786.86		

OTHER-Any other deductions and/or payments whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet(s) if necessary. CERTIFICATION MUST be completed (See Statement of Compliance)

S = STRAIGHT TIME  
O = OVERTIME  
D = DOUBLETIME  
SDI = STATE DISABILITY INSURANCE