



# LIUNA!

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General President

October 29, 2024

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VIA ELECTRONIC SUBMISSION

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RE: Agency Information Collection Activities: Comment Request; Information  
Collections: *Davis-Bacon Certified Payroll (Control No. 1235-0008)*

Dear Mr. Navarrete:

The Laborers' International Union of North America (LIUNA) submits the attached comments in response to the Comment Request on *Davis-Bacon Certified Payroll*.

Your time and attention to the attached are appreciated. Should you have any questions, please contact this office.

With kind regards, I am

Sincerely yours,

BRENT BOOKER  
General President

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**RESPONSE OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA  
TO THE COMMENT REQUEST OF THE DEPARTMENT OF LABOR, WAGE AND  
HOUR DIVISION, TO ITS AGENCY INFORMATION COLLECTION REQUEST;  
INFORMATION COLLECTIONS: DAVIS-BACON CERTIFIED PAYROLL**

OMB CONTROL NO. 1235-0008

The Laborers' International Union of North America ("LIUNA") submits this response to the Department of Labor ("DOL" or "Department"), Wage and Hour Division ("WHD"), in response to its "Comment Request; Information Collections: Davis-Bacon Certified Payroll." 89 Fed. Reg. 70670 (Aug. 30, 2024).

LIUNA is a diverse union representing nearly half a million members, most of whom work in the construction industry. LIUNA construction members work on a vast array of private and publicly funded projects, including federal and federally-assisted projects and state and locally funded projects. These include roads, highways, dams, bridges, tunnels, airports, rail and transit systems, energy generation and distribution systems, pipelines, hospitals and other health care facilities, schools, housing, buildings of all types, water and clean air works, demolition, emergency preparedness, environmental remediation, and renovation projects. In short, laborers work on projects in both the vertical and horizontal sectors across the United States in many hundreds of local markets.

Many of these projects are subject to the Davis-Bacon and Related Acts ("DBRA") and are of vital importance to LIUNA construction members because their local labor standards are protected by the DOL prevailing wage determinations every time they are employed on a federal or federally-assisted project subject to DBRA.

## **I. INTRODUCTION**

The Department is soliciting comments concerning a proposed revision of the information collection request (ICR) entitled "Davis-Bacon Certified Payroll Form WH-347."<sup>1</sup> The Davis-Bacon Act ("DBA") requires the payment of minimum prevailing wages determined by the DOL

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<sup>1</sup> The Copeland Act requires that contractors working on Davis-Bacon projects submit weekly certified payrolls for work performed on the contract. *See* 40 U.S.C. 3145. It also prohibits contractors from inducing any worker to give up any portion of the wages due to them on such projects. *See* 18 U.S.C. 874. The regulations implementing the Copeland Act as it pertains to DBRA-covered contracts are set forth in 29 CFR part 3. *See* U.S. Dept. of Labor, Wage & Hour Div., *Updating the Davis-Bacon and Regulated Acts Regulations – Small Entity Compliance Guide*, p. 13., (Aug. 2023), <https://www.dol.gov/sites/dolgov/files/WHD/government-contracts/DBRA-Small-Entity.pdf>.

to laborers and mechanics working on federal contracts in excess of \$2,000 for the construction, alteration, or repair, including painting and decorating, of public buildings and public works. 40 U.S.C. 3141. Congress has also added the Davis-Bacon requirements to many other laws, known as the DBRA, which provide federal assistance to states, localities and other entities for thousands of construction projects throughout the nation through grants, loans, loan guarantees, insurance, and other methods.

The Copeland Act requires the Secretary of Labor to prescribe regulations for contractors and subcontractors engaged in construction work subject to Davis-Bacon labor standards. 40 U.S.C. 3145. The Copeland Act and its regulations require contractors and subcontractors every week to furnish a statement of compliance on the wages paid to each worker during the prior week. 29 CFR 3.3; 29 CFR 3.4; 29 CFR 5.5. Additionally, under these regulations contractors are required to submit a weekly copy of all payrolls to the federal agency contracting for or financing the construction project (or to the applicant, sponsor, or owner for transmission to the contracting agency if it is not party to the contract). Form WH-347 (“Form WH-347” or “CPR”) is provided by DOL for the optional use of contractors to meet this requirement.

The CPR must include the name of each covered worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents of the types described in the Davis-Bacon Act 40 U.S.C. 3141(2)(B)); the daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid. The weekly payroll transmittals also must include an identifying number for each employee (such as the last four digits of the employee's Social Security number).

The regulations also require each contractor to furnish a signed “Statement of Compliance” to be submitted weekly with the payroll stating the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper DBA prevailing wage rate for the work is performed. CFR 3.4(n); 5.5(a)(3)(ii)(G). Contractors also must maintain the certified payrolls for three years after the work on the prime contract is completed.

LIUNA provides the following comments on the proposed revisions to Form WH-347. These proposed revisions will simplify and clarify Form WH-347; obtain more specific information about fringe benefits and provide updates to the form to better aid in compliance, monitoring and

enforcement. As LIUNA's comments state in detail below, we believe the proposed revisions to WH-347 are necessary for "the proper performance of the functions of the agency" and the information will "have practical utility." 89 Fed. Reg. 70671. The proposed revisions will enhance the "quality, utility, and clarity" of the information being collected. 89 Fed. Reg. 70671. LIUNA also recommends additional changes and clarifications to the proposal to further meet these criteria.

## **II. FORM WH-347 IS A CRITICAL ENFORCEMENT TOOL THAT ALLOWS DOL AND OTHER FEDERAL AGENCIES TO MEET THEIR PERFORMANCE FUNCTIONS TO ENFORCE DBRA**

LIUNA supports the proposed revisions along with several additional information fields and clarifications. These revisions and suggestions will enable DOL and other federal agencies to carry out their function to investigate and enforce the DBRA especially in an environment where wage theft, payroll and fringe benefit fraud, and employee misclassification is endemic.

Government investigators use the information on the CPR in a variety of ways to determine if a "red flag" exists on the face of the information contained on the form. Therefore, the precise nature of the information requested is of vital importance to ascertain whether laborers and mechanics have received the lawfully required wages and fringe benefits required under DBRA. The specific utility of the information solicited on the CPR is described by WHD in its *Prevailing Wage Resource Book* as follows:

The contractor's certified payrolls should be examined for accuracy, completeness, and true representation of the facts. The initial examination should cover the current or most recent certified payrolls as well as those for selected periods which reflect the practice of the contractor during the life of the contract.

Check for completeness and accuracy of the certified payrolls as to the names, classifications of work performed, hourly wage rates, daily and weekly hours worked during the payroll period, gross weekly wages earned, deductions made from wages, and net weekly wages paid the worker.

If the CWHSSA is applicable and a worker worked on covered contracts in excess of 40 hours in any workweek, determine whether one and one-half the worker's basic rate of pay was paid.

Certified payrolls should be examined for discrepancies such as a disproportionately high number of laborers or apprentices on the project.

The wage rates should be compared against those listed on the wage determination. If workers perform work in more than one classification, the certified payroll records

should accurately reflect the time spent working in each. Unlisted classifications should be identified, and additional classification procedures initiated, if applicable.

Check certified payrolls for information on contributions to fringe benefit plans and/or cash paid in lieu of fringe benefits.<sup>2</sup>

In the DOL’s *FAQs Enforcement of a DBRA, the Bipartisan Infrastructure Law* (“FAQs”), the DOL states that a CPR “may exhibit other signs on its face of a potential violation,” such as:

- A disproportionately high proportion of apprentices to journeyworkers on site,
- The same split of hours between two labor classifications, week after week, and
- Some workers consistently show significantly fewer hours on the CPR than other workers on the work site.<sup>3</sup>

The CPRs are useful in combination with on-site investigations in revealing contradictory information which can show a violation. *DOL’s FAQs Enforcement of a DBRA, the Bipartisan Infrastructure Law*. For example, the *FAQs* point out that investigators can detect “hours on the CPR do not match up with the daily reports for the work site”. Other violations which CPRs may assist site investigators to detect include:

- Misclassifying laborers and mechanics for the type of work performed;
- Failing to obtain prior approval from the Department of Labor for unfunded fringe benefit plans;
- Failing to annualize (or incorrectly annualizing) the hourly equivalent of fringe benefit amounts, such as by failing to include all hours worked on private and public projects in the annualization computation;
- Improperly taking credit towards fringe benefit obligations for certain expenses, including, for example, administrative expenses incurred by the contractor in providing fringe benefits, as well as expenses incurred by the contractor for travel,

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<sup>2</sup> U.S. Dept. of Labor, Wage & Hour Div., *Prevailing Wage Res. Book, Davis-Bacon and Related Acts, Investigating Procedures and Remedies*, (Apr. 2024), [https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book/dbra-investigative-procedures-remedies#\\_Examination\\_of\\_Certified](https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book/dbra-investigative-procedures-remedies#_Examination_of_Certified).

<sup>3</sup> U.S. Dept. of Labor, Wage & Hour Div., *Frequently Asked Questions: Protections for Workers in Construction under the Bipartisan Infrastructure Law*, <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction/frequently-asked-questions#>.

per diem, lodging, use of a company cell phone or vehicle, or holidays that are already required by the applicable wage determination.”<sup>4</sup>

Investigators also utilize CPRs to detect violations by comparing them to the employer’s other records such as the regular payroll which the DBRA regulations require contractors to keep and retain at their own offices. DOL directs investigators during on-site visits to examine an employer’s current or most recent regular payrolls, as follows:

[t]he examination should include a review of the basic timecards, time sheets, or other time, work or personnel records of a representative number of workers in each classification, records of the method used to calculate the hourly credit the contractor takes for costs incurred for bona fide fringe benefit or reasonably anticipated costs, and written DOL approvals of unfunded plans. These basic records *should be checked against the certified payrolls* in order to identify any possible discrepancies including, but not limited to, potential misclassification, falsification of hours worked or wages paid on certified payrolls, or to give reasonable assurance that no discrepancies exist. (emphasis added).<sup>5</sup>

Additionally, investigators should

[e]xamine documents related to any contributions (or incurred costs) to fringe benefit plans. These documents might include portions of the pension plan, documentation from the Internal Revenue Service that indicates the plan has been approved by the IRS, and records of contributions made or costs incurred.<sup>6</sup>

LIUNA believes that the proposed revisions to the current information required in the CPR as well as its other recommended additions and clarifications to the revised form and instructions will bolster the ability of DOL and other federal agencies to detect and remedy violations of DBRA that most often result in the employer not paying the applicable prevailing wage and fringe benefits.

### **III. WAGE THEFT, MISCLASSIFICATION, PAYROLL AND FRINGE BENEFIT FRAUD ARE PERVASIVE IN THE CONSTRUCTION INDUSTRY; THEREFORE, STRENGTHENING THE INFORMATION REQUIRED ON**

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<sup>4</sup> *Id.*

<sup>5</sup> U.S. Dept. of Labor, Wage & Hour Div., *Prevailing Wage Resource Book – Investigative Procedures and Remedies on Davis-Bacon*, [https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book/dbra-investigative-procedures-remedies#\\_Examination\\_of\\_Certified](https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book/dbra-investigative-procedures-remedies#_Examination_of_Certified).

<sup>6</sup> *Id.*

## THE WH-347 IS NECESSARY AND WILL ACHIEVE PRACTICAL UTILITY AND GREATER ENFORCEMENT OF DBRA

Wage theft, payroll and fringe benefit fraud, and misclassification of employees as independent contractors is endemic in the construction industry on both private and publicly funded projects.<sup>7</sup> Many studies of the construction industry support the conclusion that wage theft in all of its varieties is widespread in the construction industry. It is estimated that 20 percent of construction workers who should be treated as employees, but are not, lose close to \$1 billion in wages annually. A study of the construction industries in the Midwest found that illegally employed construction workers in those states earned 31 percent, 36 percent, and 29 percent less in combined wages and fringe benefits, respectively.<sup>8 9 10 11 12</sup> Strengthening the information required on the WH-347 will allow DOL and other federal agencies to achieve greater enforcement of DBRA to address these industry-wide problems on DBRA-covered projects.

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<sup>7</sup> District of Columbia, Office of the Attorney General, *Illegal Worker Misclassification Payroll Fraud in the District's Construction Industry*, (Sept. 2019), <https://oag.dc.gov/sites/default/files/2019-09/OAG-Illegal-Worker-Misclassification-Report.pdf>; Ormiston, Russell; Dale Belman; and Mark Erlich, *Payroll Fraud in New York's Construction Industry: Estimating its Prevalence, Severity and Economic Costs*, (July 2021), <https://www.ccmetro.com/wp-content/uploads/2021/07/Payroll-Fraud-in-New-Yorks-Construction-Industry-JULY-2021.pdf>; Juravich, Tom; Russell Ormiston; and Dale Belman, *The Social and Economic Costs of Illegal Misclassification, Wage Theft and Tax Fraud in Residential Construction in Massachusetts*, (June 28, 2021), <https://www.umass.edu/labor/research/working-paper-series/social-and-economic-costs-illegal-misclassification-wage-theft-and-tax-fraud-residential>; Juravich, Tom and Ormiston, Russell, *Worker Misclassification and Wage Theft in Rhode Island*, (Feb. 2022), <https://www.umass.edu/labor/research/working-paper-series/worker-misclassification-and-wage-theft-rhode-island>; Laura Valle-Gutierrez, Russ Ormiston, Dale L. Belman and Jody Calemine, *Up to 2.1 Million U.S. Construction Workers Are Illegally Misclassified or Paid Off the Books*, (Nov. 12, 2023), <https://tcf.org/content/report/up-to-2-1-million-u-s-construction-workers-are-illegally-misclassified-or-paid-off-the-books/>.

<sup>8</sup> Nathaniel Goodell & Frank Manzo IV, Midwest Economic Policy Institute, *The Cost of Wage Theft and Payroll Fraud in the Construction Industries of Wisconsin, Minnesota, and Illinois*, (Jan. 14, 2021). <https://dwd.wisconsin.gov/misclassification/pdf/meetings/210114/costs-of-payroll-fraud.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Lalith de Silva, Adrian Millett, Dominic Rotondi, & William F. Sullivan, *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*, pg. 57, Planmatics, Inc., Prepared for the U.S. Dept. of Labor, Employment and Training Admin., (2000).

<sup>11</sup> Francoise Carré, Economic Policy Institute, *(In)dependent Contractor Misclassification*, pg. 9-10, 11, (2015), cited at 87 Fed. Reg. at 62267.

<sup>12</sup> 87 Fed. Reg. at 62267.

The percentage of construction workers misclassified by low-road employers is far higher in the construction industry than among workers elsewhere in the economy.<sup>13</sup> It is estimated that unscrupulous construction employers can reduce their labor costs 17 to 30 percent by unlawfully misclassifying employees or using other methods of wage theft, including evading overtime payments mandated by the FLSA, among other costs. Moreover, misclassified workers are denied increased wages equal to the costs the employer would otherwise incur in providing the sort of fringe benefits ordinarily offered to employees.<sup>14</sup> The DOL’s Independent Contractor Notice of Proposed Rulemaking (NPRM) further recognizes that independent contractors are more likely to work more overtime hours for which they are not paid the overtime premium. 87 Fed. Reg. 62268. The rulemaking indicates that as many as thirty percent of employers misclassify their employees as independent contractors based on data received from state tax and unemployment insurance auditors.<sup>15</sup> Workers classified as independent contractors often do not receive employer health insurance or retirement benefits.<sup>16</sup>

A landmark national study released in 2020 estimated that between 12 percent and 21 percent of all construction workers are misclassified as independent contractors or paid “off-the-books” in cash.<sup>17</sup> In Missouri, 21 percent of construction workers are misclassified or are working “off-the-books” in cash-only arrangements.<sup>18</sup> In New York, 18 percent of all independent contractors who were identified as “low-paid” were working in construction.<sup>19</sup> In Massachusetts, 17 percent of

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<sup>13</sup> Francoise Carré & Randall Wilson, *The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry*, Center for Social Policy Publications Paper 42, pg. 9, (Apr. 25, 2005), [https://scholarworks.umb.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1041&context=csp\\_pubs](https://scholarworks.umb.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1041&context=csp_pubs).

<sup>14</sup> Karl A. Racine, *Illegal Worker Misclassification: Payroll Fraud in the District's Construction Industry*, Issue Brief and Economic Report, pg. 5, (Sept. 2019), <https://oag.dc.gov/sites/default/files/2019-09/OAG-Illegal-Worker-Misclassification-Report.pdf>.

<sup>15</sup> 87 Fed. Reg. 62218.

<sup>16</sup> 87 Fed. Reg. 62267.

<sup>17</sup> Ormiston, Russell; Dale Belman; and Mark Erlich. *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry*. (2020), <https://faircontracting.org/wp-content/uploads/2020/03/National-Carpenters-Study-Methodology-for-Wage-and-Tax-Fraud-Report-FINAL.pdf>.

<sup>18</sup> Kelsay, Michael, *Worker Misclassification and Wage Theft in the Construction Industry in Missouri*, (2023), <https://stoptaxfraud.net/wp-content/uploads/2023/05/Missouri-Final-Report-May-19.pdf>.

<sup>19</sup> Moe, Lina; James Parrott; and Jason Rochford, *The Magnitude of Low-Paid Gig and Independent Contract Work in New York State*, (2020),

audited construction companies were actively misclassifying employees.<sup>20</sup> In Rhode Island, 12 percent of construction employers misclassify workers.<sup>21</sup> In Kentucky, 26 percent of audited construction companies were actively misclassifying employees; an identical percentage was found in Michigan.<sup>22</sup> <sup>23</sup> In Indiana, more than 47 percent of audited construction companies were actively misclassifying employees.<sup>24</sup>

Additionally, wage theft and misclassification undercuts employers that comply with the law and causes a “race to the bottom” in labor standards. *See* 89 Fed. Reg. 1657. When construction companies misclassify their workers, they avoid costs such as overtime, workers’ compensation, unemployment insurance, employment taxes, and compliance with health and safety requirements. Employers who comply with labor standards laws are then unable to compete with contractors who are misclassifying their workers or engaging in other types of wage theft.<sup>25</sup> *See* 89 Fed. Reg. 1735.

Fringe benefit fraud and violations are now recognized by state and local government officials as a particular problem which is difficult to uncover and to enforce when they occur under both DBRA and state prevailing wage laws. In March 2024, Pennsylvania Attorney General Michelle

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[https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e424affd767af4f34c0d9a9/1581402883035/Febl12020\\_GigReport.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e424affd767af4f34c0d9a9/1581402883035/Febl12020_GigReport.pdf).

<sup>20</sup> Juravich, Tom; Russell Ormiston; and Dale Belman, Institute for Construction Employment Research (ICERES), *The Social and Economic Costs of Illegal Misclassification, Wage Theft, and Tax Fraud in Residential Construction in Massachusetts*. (2021), <https://faircontracting.org/wp-content/uploads/2022/11/Juravich-Wage-Theft-6-28-21.pdf>.

<sup>21</sup> Ormiston, Russell and Tom Juravich, Institute for Construction Employment Research (ICERES), *Worker Misclassification and Wage Theft in Rhode Island*, (2022), <https://faircontracting.org/wp-content/uploads/2022/11/ICERES-RI-Worker-Misclassification-Report-003-Final.pdf>; Mark Erlich, *Misclassification in Construction: The Original Gig Economy*, ILR Review, at 9 (Nov. 26, 2020), [https://lwp.law.harvard.edu/files/lwp/files/erlich\\_ilrr\\_final\\_article\\_11.28.20.pdf](https://lwp.law.harvard.edu/files/lwp/files/erlich_ilrr_final_article_11.28.20.pdf).

<sup>22</sup> Kelsay, Michael and James Sturgeon, *The Economic Costs of Employee Misclassification in the Construction Sector in the Commonwealth of Kentucky*, (2011), <https://faircontracting.org/wp-content/uploads/2019/11/Kentucky-Final-Report-Sept-2011.pdf>.

<sup>23</sup> Belman, Dale and Richard Block, *The Social and Economic Costs of Employee Misclassification in Michigan*, (2009), <https://ippsr.msu.edu/publications/armisclass.pdf>.

<sup>24</sup> Kelsay, Michael and James Sturgeon, *The Economic Costs of Employee Misclassification in the State of Indiana*, (2010), <https://faircontracting.org/wp-content/uploads/2019/11/Indiana-Misclassification-Report.pdf>.

<sup>25</sup> Russel Ormiston, Dale Belman, & Mark Erlich, *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry*, (Jan. 2020), <https://stoptaxfraud.net/wp-content/uploads/2020/03/National-Carpenters-Study-Methodology-forWage-and-Tax-Fraud-Report-FINAL.pdf>.

Henry along with thirteen other Attorneys General called on the DOL to update the currently required certified payroll information contractors submit when performing work on projects covered by the DBRA.<sup>26</sup> The AGs letter discusses the commonly found schemes and violations they encounter in their states and how updates to the current CPR requirements would greatly aid in cracking down on wage theft.

Specifically, the Attorneys General cite the need for more detailed disclosures from contractors on the utilization of fringe benefits and other deductions taken from workers' pay by the way of disclosure of hourly rate equivalents for each type of benefit the employer provides, information about the benefit plans, if they are self-funded or unfunded, and an itemization of deductions.<sup>27</sup> As enforcers of state laws that protect workers, the AGs have a unique expertise in this topic and underscore the need for better tools to protect those most vulnerable to prevailing wage law violations involving fringe benefits.

The concerns of the Attorneys General regarding fringe benefit and other types of payroll fraud are demonstrated with great particularity by recent cases in Pennsylvania<sup>28</sup> and the District of Columbia<sup>29</sup>. The *Hawbaker* case<sup>30</sup> in Pennsylvania was historic as the state was able to recover the largest sum of restitution in a prevailing wage case in U.S. history. The *Power Design* case in the District of Columbia against a general contractor, and multiple labor brokers, made history as the largest workers' rights enforcement action for District residents. In both cases the AGs offices found multiple prevailing wage violations and CPRs were crucial in the investigations.

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<sup>26</sup> See, March 29, 2024 letter to U.S. Dept. of Labor, Wage & Hour Div. Admin. Jessica Looman, from Attorneys General of Pennsylvania, Colorado, Connecticut, Delaware, Hawaii, Massachusetts, Maryland, Michigan, Minnesota, New Jersey, Nevada, New York, Rhode Island, and Washington DC. <https://www.attorneygeneral.gov/wp-content/uploads/2024/04/2024-04-02-PA-Letter-to-DOL-re-DBRA-forms.pdf>.

<sup>27</sup> *Id.*

<sup>28</sup> State of Pennsylvania, Office of the Attorney General, Press Release, *Hawbaker Sentenced, Will Pay Workers More Than \$20 Million In Stolen Wages*, (Aug. 3, 2021), <https://www.attorneygeneral.gov/taking-action/hawbaker-sentenced-will-pay-workers-more-than-20-million-in-stolen-wages/>.

<sup>29</sup> District of Columbia, Office of the Attorney General, Press Release, *Attorney General Schwalb Secures \$3.75 Million in District's Largest-Ever Workers' Rights Enforcement Action*, (July 29, 2024), <https://oag.dc.gov/release/power-design-worker-misclassification-settlement>.

<sup>30</sup> Commonwealth v. Glenn O. Hawbaker, Inc., No. CP-14-CT-461-2021 (Centre County Court of Common Pleas).

State legislatures and Departments of Labor have also specifically taken steps to address the problem of widespread wage theft and fringe benefit fraud in the construction industry. Discussed below are state CPRs which require greater information than the federal CPR to assist the state in enforcing its laws. In addition, states have enacted laws that aim to stop low-road employers from engaging in various forms of wage theft by attaching fines and other penalties as consequences for such violations. Several states have attached criminal penalties while others have added that once a certain threshold of wage theft is met, the violation becomes a felony.

There are also a number of states which have passed legislation specific to wage theft in the construction industry. In January 2024, Rhode Island enacted a law which criminally penalizes employers in the construction industry who knowingly and willfully misclassify employees as independent contractors.<sup>31</sup> Delaware has a similar law which is applicable only to the construction industry. The Workplace Fraud Act penalizes any employer who improperly misclassifies a construction worker as an independent contractor.<sup>32</sup> A recently enacted law in Connecticut expands the liability for wage theft specifically to a construction contractor for unpaid wages owed by the contractor or one of its subcontractors, at any tier of the subcontracting chain.<sup>33</sup>

Another indication of the importance of certified payrolls to achieving monitoring, compliance, and enforcement on prevailing wage projects is that several states have created online databases available to the public. The New Jersey Department of Labor and Workforce Development has developed such a tool aimed at holding businesses accountable for violations of state wage laws in the “Workforce Accountability in Labor List” (“WALL”). It is updated monthly and lists all businesses who fail to pay the full wage and benefits required, unemployment insurance, or workers’ compensation to employees.<sup>34</sup> Additionally, the New Jersey Wage Hub is

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<sup>31</sup> Hinks, Benjamin and Ripple, Raymond, Bowditch, *Rhode Island Employers Take Note – Penalties for Wage & Hour Violations Begin January 1, 2024*, (Oct. 3, 2023), <https://www.bowditch.com/campuscounselnewengland/2023/10/03/client-alert-rhode-island-employers-take-note-new-penalties-for-wage-hour-violations-begin-january-1-2024/>.

<sup>32</sup> Del. Code Ann. tit. 19, § 3503 (2020).

<sup>33</sup> Conn. Acts. Sub. House Bill 6792 (Jan. Session 2023).

<sup>34</sup> State of New Jersey, Dept. of Labor and Workforce Dev., Office of Strategic Enforcement and Compliance, <https://www.nj.gov/labor/ea/osec/wall.shtml>.

an official online database where employers and the public can view certified payrolls.<sup>35</sup> California also has moved its CPR database online. Contractors and subcontractors on most California public works projects are required to submit their records to be displayed in the database maintained by the Department of Industrial Relations.<sup>36</sup> This database is publicly accessible and is updated weekly.

#### **IV. DOL HAS IDENTIFIED THE BELOW PROPOSED CHANGES TO FORM WH-347 TO REQUIRE MORE CLARITY AND GREATER INFORMATION TO AID IT AND OTHER FEDERAL AGENCIES TO MEET THEIR FUNCTION TO ENFORCE DBRA**

The DOL has specifically highlighted in the Federal Register Notice that with the proposed revisions it seeks to obtain more specific information, particularly with respect to fringe benefits (“FB” or “FBs”), to assist it and other federal agencies to more effectively perform their function to enforce the DBRA. 89 Fed. Reg. 70671. LIUNA will, therefore, first discuss the important need to make the CPR a stronger enforcement tool to monitor and enforce violations involving fringe benefits. Second, we will discuss the proposed changes which will lead to greater information regarding apprentices employed on DBRA projects and the apprenticeship programs in which they are enrolled. Third, we will discuss the proposed revisions needed to clarify information regarding deductions from workers’ paychecks. Fourth, we will address the proposed additions to other categories of information on the CPR and how several may be clarified and amplified to make the CPR a stronger tool for DOL and federal agencies to enforce DBRA.

#### **A. REVISIONS RELEVANT TO FRINGE BENEFITS**

##### **1. Fringe Benefit Information Fields**

- *The proposed form replaces statement (4) with a check box and fillable fields for Hourly Cost of Fringe Benefits - Name of Worker, Fringe Benefit Plan Name, Plan No., Funded or Unfunded, Hourly Cost, and Total Hourly Credit.*
- *Exceptions information*

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<sup>35</sup> State of New Jersey, Dept. of Labor and Workforce Dev., New Jersey Wage Hub, <https://njwages.nj.gov/>.

<sup>36</sup> State of California, Dept. of Industrial Relations, eCPR public search database, [https://services.dir.ca.gov/gsp?id=ecpr\\_public\\_search](https://services.dir.ca.gov/gsp?id=ecpr_public_search).

- *Column 6: Rate of Pay: The proposed form divides Column 6 into three (3) sub-columns:*
  - *6A: Hourly Wage Rate Paid*
  - *6B: Total Fringe Benefit Cost*
  - *6C: Payment in Lieu of Fringe Benefits<sup>37</sup>*

LIUNA supports the revisions to the CPR regarding fringe benefits and would suggest several additional fields of information to strengthen them. LIUNA strongly urges DOL to add a field which requires contractors/subcontractors to identify each fringe benefit fund, plan or program and to list the type of fringe benefit fund, plan or program. LIUNA also suggests the form include a field entitled “total hourly fringe benefit credit” where the credit claimed for each individual plan can be recorded.

Specifically, in supporting the DOL’s proposal to require more “specific disclosure” of information pertaining to fringe benefit contributions, LIUNA suggests DOL require; separate identification of each type of FB for which the contractor/ subcontractor claims credit (i.e. apprenticeship & training, pension, health & welfare, disability, supplemental unemployment, vacation and sick leave, safety & health, and other types of benefits recognized by the DOL), list the hourly fringe benefit credit claimed for each plan, a statement of the name(s) of each FB plan(s) or program(s), and the contact information for the plan’s point of contact (i.e. administrator and third-party trustee) including telephone numbers and e-mail addresses for the point-of-contact for the plan.

A revised WD-347 form should require this far more specific information to allow DOL to more effectively investigate potential fringe benefit violations. Particularly, the type of benefit within the allowable fringe benefits listed in the DBA for which contractors can claim credit toward meeting their obligation under DBA to pay their employees "prevailing wages". 29 CFR § 3.5(d). The current WH-347 does not provide sufficient information to identify, detect and investigate fringe benefit violations and fringe benefit fraud. More specific disclosure regarding the fringe benefit contributions for which contractors claim credit against their prevailing wage

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<sup>37</sup> Language in italics is taken directly from the U.S. DOL Supporting Statement for Davis-Bacon Certified Payroll, OMB Control No. 1235-0008 cited at 89 Fed. Reg. 70670 (Aug. 30, 2024). Referred to herein as “Supporting Statement”.

obligations will enable the DOL and federal contracting agencies to better target sham funds, programs and plans, and nonpayment of contributions supposedly made. As described below, in several states and municipalities with prevailing wage laws,<sup>38</sup> contractors and subcontractors are required to submit greater information regarding fringe benefit contributions than does the current federal CPR.

These additions relating to compliance and combatting fringe benefit fraud under DBRA<sup>39</sup> will substantially bolster investigations of several of the main areas where FB violations occur<sup>40</sup>, including:

- Did the contractor or subcontractor in fact make the claimed payments to the fringe benefit funds, plans or programs;
- Were the contributions annualized<sup>41</sup> as required.
- Were the contributions irrevocably made<sup>42</sup> to a trustee or to a third person under “bona fide” fund, plan, or program;<sup>43</sup>
- Were the rate of costs to the contractor/subcontractor reasonably anticipated in providing benefits pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the covered workers.<sup>44</sup>

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<sup>38</sup> U.S. Dept. of Labor, Wage & Hour Div., State Labor Laws, *Dollar Threshold Amount for Contract Coverage*, (Jan 2023), <https://www.dol.gov/agencies/whd/state/prevailing-wages>. This webpage has not been updated to reflect state law changes in Michigan.

<sup>39</sup> 29 CFR § 5.26 contribution irrevocably made to a trustee or to a third person.

<sup>40</sup> The Davis-Bacon Act lists the following fringe benefits: “medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits...”. 41 USC § 3141(2)(B).

<sup>41</sup> 29 CFR § 5.25(c)(1), *Method of computation*.

<sup>42</sup> 29 CFR § 5.26.

<sup>43</sup> *Id.*

<sup>44</sup> 29 CFR § 5.26 contribution irrevocably made to a trustee or to a third person.

LIUNA believes that these additions to the proposed revisions to fringe benefit information, including several additions requiring more detailed disclosure of specific information about FB funds, plans, or programs will deter contractors from violating DBRA45 and will assist DOL and federal agencies in their function to detect fringe benefit violations. Without disclosure of the types of fringe benefits for which a contractor or subcontractor is taking credit for, the DOL cannot effectively monitor compliance. The utility of this detailed information is demonstrated by the experience of several states in strengthening their CPRs under their state prevailing wage laws.

LIUNA urges DOL to review and consider various State CPRs<sup>46</sup> which have adopted more detailed reporting of fringe benefit information.<sup>47</sup> In several states<sup>48</sup>, contractors and subcontractors must disclose the “type” of benefit provided.<sup>49</sup> In addition to requiring the submitter to list “dollars contributed per hour” to health/welfare, vacation/holiday, apprenticeship/training, pension, and “other,” the Minnesota CPR requires submitters to record the program title, classification title of individual employee, the amount contributed to each type of plan. Additionally, the name and address of the fringe benefit fund, plan or program administrator, benefit account number, third party trustee and/or contact person, and a telephone number must be provided.<sup>50</sup>

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<sup>45</sup> 40 U.S.C. § 3141 (2)(B)(i).

<sup>46</sup> E.g. several states and municipalities include information fields on their rules for the annualization of FBs. *See* 29 CFR 5.23(c)(1). NYC includes in its Instructions to its CPR an explanation of the rule requiring contractors to annualize fringe benefit costs: “The hourly cost of all fringe benefits must be annualized, unless the employer provides an hourly contribution for each hour of work on the project, contract or building indicated to an individual account for the worker. To calculate the annualized hourly cost, divide the employer’s total projected annual cost for all fringe benefits provided to that worker by the total projected annual hours of all work—public and private—performed by that worker for the employer.” City of New York, Office of the Comptroller, Bureau of Labor Law, *Instructions for the Preparation of a Certified Payroll Report*, (2019), [https://comptroller.nyc.gov/wp-content/uploads/documents/Certified\\_Payroll\\_Report\\_Instructions\\_2019.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/Certified_Payroll_Report_Instructions_2019.pdf).

<sup>47</sup> State of Rhode Island, Dept. of Labor & Training, Div. of Workforce Reg. & Safety, *Certified Prevailing Wage Daily Log*, <https://dlt.ri.gov/sites/g/files/xkgbur571/files/documents/pdf/wrs/DailyPWLog.pdf>; State of Colorado, Office of the State Architect, State Buildings Program, *Daily Log Sheet*, (Sept. 2022), <https://osa.colorado.gov/sites/osa/files/documents/SBP-2.7%20Daily%20Log%20Sheet.pdf>.

<sup>48</sup> U.S. Dept. of Labor, Wage & Hour Div., State Labor Laws, *Dollar Threshold Amount for Contract Coverage*, (Jan 2023), <https://www.dol.gov/agencies/whd/state/prevailing-wages>. This webpage has not been updated to reflect state law changes in Michigan.

<sup>49</sup> State of Minnesota, Dept. of Labor and Industry, *Certified Payroll Form*, [http://www.dli.mn.gov/sites/default/files/pdf/pw\\_certified\\_payroll\\_form.pdf](http://www.dli.mn.gov/sites/default/files/pdf/pw_certified_payroll_form.pdf).

The Illinois certified payroll form requires information on hourly pension/retirement, hourly health insurance/welfare, hourly vacation, hourly training, and a column that asks if the training fund is jointly managed. As a part of the additional information required, contractors must submit the name, address, plan sponsor, and administrator for the funds receiving contributions.<sup>51</sup>

The Massachusetts certified payroll form has a section entitled “Employer Hourly Fringe Benefit Contributions.” Under this heading are the following fields relating to deductions/contributions, health & welfare insurance, ERISA pension plan, and supplemental unemployment.<sup>52</sup> The Massachusetts Attorney General has pointed to its CPR as a critical tool in detecting that contractors have claimed an unpermitted type of fringe benefit under the Massachusetts prevailing wage law.<sup>53</sup>

On the Pennsylvania certified payroll form there are two separate columns – one for total fringe benefits and one for total deductions. The fringe benefit column asks contractors to specify whether contributions were made to a fund or if they were paid in cash to a worker. The form requires the type of benefit to be provided as well as the contribution per hour. In the accompanying second page, there is a field for contractors to provide more information about the deductions. This form also has a field for the number on the paycheck given by the contractor to the worker.<sup>54</sup>

The Connecticut form has two places where fringe benefits can be recorded. One for total fringe benefit plan paid in cash and another to break out the amount of each fringe benefit contribution. Additionally, on the second page of the form there is a field for additional fringe benefit explanations, where contractors are required to further specify the type of contribution. The

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<sup>51</sup> IL. Dept. of Labor, Certified Transcript of Payroll, (2022), <https://labor.illinois.gov/laws-rules/conmed/certifiedtranscriptofpayroll.html>.

<sup>52</sup> Mass. Dep’t of Lab. Standards, *Weekly Certified Payroll Report and Workforce Participation Form*, <https://www.mass.gov/doc/weekly-certified-payroll-report/download>.

<sup>53</sup> See March 29, 2024 letter to WHD Administrator Jessica Looman from Attorneys General of Pennsylvania, Colorado, Connecticut, Delaware, Hawaii, Massachusetts, Maryland, Michigan, Minnesota, New Jersey, Nevada, New York, Rhode Island, and Washington DC, (“2024 Attorneys General Letter”). <https://www.attorneygeneral.gov/wp-content/uploads/2024/04/2024-04-02-PA-Letter-to-DOL-re-DBRA-forms.pdf>.

<sup>54</sup> PA. Dep’t. of Labor & Industry, Bureau of Labor Law Compliance, *Weekly Payroll Certification for Public Works Projects*, <https://www.pa.gov/content/dam/copapwp-pagov/en/dli/documents/documents/mandatory-postings/lc-25.pdf>.

form has a line for the type of the plan such as medical or hospital care, pension or retirement, life insurance, disability, vacation/holiday, and other.<sup>55</sup>

The New Jersey CPR requires disclosure of the name and address of the fringe benefit fund, plan, or program administrator, the US DOL Benefit Plan Filing Number/EIN, and the third-party trustee.<sup>56</sup> The New Jersey form requires contractors to supply the program title, classification title of individual workers, the amount contributed per hour (to a health/welfare, vacation/holiday, apprenticeship/training, or pension fund), space to include other types of benefits, contact information for the plan or program administrator, and third party trustee or contact person for the fund.<sup>57</sup>

## **2. Clarification of the Terminology Relating to Fringe Benefit “Cost” and “Credit”**

We recommend that language be added to provide clarification of the terms “Cost” and “Credit” when used in reference to fringe benefit information so that they are used consistently and in a uniform manner on the CPR. We recommend that the phrase “hourly fringe benefit credit” be used when the information sought is the fringe benefit credit taken per plan per worker and that “total hourly fringe benefit credit” be used when the information sought is the fringe benefit credits taken for all combined plans per worker.

## **B. REVISIONS RELEVANT TO APPRENTICES AND APPRENTICESHIP PROGRAMS**

- *Wage Payment Information - Column 2: The proposed form replaces “No. of Withholdings Exemptions” with “(J) Journeyworker (A) Apprentice” to indicate whether the worker is a journeyworker or apprentice.*

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<sup>55</sup> Conn. Dep’t of Lab., Wage and Workplace Standards Div., *Payroll Certification for Public Works Projects*, (Dec., 2013), <https://portal.ct.gov/dol/-/media/dol/2022-new-design-system/divisions/wage-and-workplace-standards/payrollcert1.pdf>.

<sup>56</sup> State of New Jersey, Dept. of Labor & Workforce Development, [https://www.nj.gov/labor/wageandhour/assets/PDFs/wagehub/MW-562%20\(6-23\)%20PayrollCert-PublicWorks.pdf](https://www.nj.gov/labor/wageandhour/assets/PDFs/wagehub/MW-562%20(6-23)%20PayrollCert-PublicWorks.pdf).

<sup>57</sup> *Id.*

- *The proposed form replaces statement (3) with a check box and fillable fields for Apprenticeship Program – Apprenticeship Program Name, Registered with OA or SAA...*

LIUNA supports the above additional information regarding apprentices and apprenticeship programs. Additionally, LIUNA recommends replacing “(A) Apprentice” with “(RA) Registered Apprentice”. Adding “Registered” will assist the DOL and federal agencies to better carry out its function to ensure both apprentices and journeyworkers are paid the correct rate; are, in fact, duly registered apprentices, and the correct DBRA apprenticeship ratios are being maintained. This additional information will assist DOL to better carry out its functions listed below to enforce DBRA with respect to apprenticeship requirements:

1. Apprenticeship program information should be obtained and examined to verify that the program has been approved by the appropriate authority.
2. Obtain copies of the individual workers’ apprentice/registration forms, as well as copies of the approved apprenticeship program itself.
3. The apprenticeship program requirements should be compared with the certified payrolls and other records to verify that the ratio of apprentices to journeyworkers has been met on a daily basis, not merely weekly, and that apprentice wage rates were calculated correctly.<sup>58</sup>

Several states have strengthened the information fields on their CPRs to require additional information regarding apprentices. The Massachusetts certified payroll form contains check boxes to record apprenticeship documentation and utilization<sup>59</sup> while the Rhode Island requires declaration of the apprenticeship percentage used.<sup>60</sup>

### **C. REVISIONS RELEVANT TO DEDUCTIONS**

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<sup>58</sup> U.S. Dept. of Labor, Wage & Hour Div., *Prevailing Wage Resource Manual*, [https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book/dbra-investigative-procedures-remedies#\\_Examination\\_of\\_Certified](https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book/dbra-investigative-procedures-remedies#_Examination_of_Certified).

<sup>59</sup> Mass. Dep’t of Lab. Standards, *Weekly Certified Payroll Report and Workforce Participation Form*, <https://www.mass.gov/doc/weekly-certified-payroll-report/download>.

<sup>60</sup> State of Rhode Island, Dept. of Labor and Training, *Certified Weekly Payroll*, <https://dlt.ri.gov/sites/g/files/xkgbur571/files/documents/pdf/wrs/APS-RI-PW-Certified-Payroll-Form-1.20-Revision.pdf>.

- *Column 8: Deductions: The proposed form changes the title of column 8 from “Deductions” to “Deductions for All Work”, removes two (2) blank columns, rearranges and renames the existing columns from “FICA” to “Tax-Withholdings”, “Withholding Tax” to “FICA”, and “Other (See Instructions)”, “Total Deductions” remains the same.*

LIUNA recommends requirements that more detailed information regarding deductions be required on the revised CPR. Specifically, LIUNA recommends that submitters must identify and provide the amount of the deduction for each deduction listed in the “Other Deductions” column. The form and instructions need to include clear instructions that “Other Deductions “must be specified. For example, some states use language such as “Other (specify) or “Other (explain)”. LIUNA supports greater itemization of each deduction in sufficient detail to enable the DOL or a contracting agency to verify that each deduction is allowable and not taken incorrectly in violation of DBRA.

Many states require this level of specificity when recording deductions. In California, the certified payroll form groups deductions, contributions, and payments into one large column. (column 8), with lines for federal tax, FICA, state tax, SDI, vacation/holiday funds, health & welfare funds, pension contributions, training funds, fund administration, union dues, savings, other, and then a final area for total deductions. A note on the form states “any other deductions, contributions and/or payments whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheets if necessary.”<sup>61</sup>

The Connecticut certified payroll form has four columns for deductions, FICA, federal withholding, state withholding, and “ other” column and requires the deductions to be “listed”.<sup>62</sup> The enumerated deductions on the Minnesota certified payroll form are FICA, federal tax, and state tax. The Minnesota CPR adds two additional columns for other deductions and requires that

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<sup>61</sup> Cal. Dep’t of Indus. Rels., *Public Works Payroll Reporting Form A-1-13*, <https://www.dir.ca.gov/dlse/forms/pw/dlseforma-1-131.pdf>.

<sup>62</sup> Conn. Dep’t of Lab., Wage and Workplace Standards Div., *Payroll Certification for Public Works Projects*, (Dec.9,2013), <https://portal.ct.gov/dol/-/media/dol/2022-new-design-system/divisions/wage-and-workplace-standards/payrollcert1.pdf>.

the deductions be specified.<sup>63</sup> The deduction fields on the New Jersey certified payroll form are FICA, federal tax, state tax, and two columns to specify any other deductions.<sup>64</sup>

**D. REVISIONS RELEVANT TO OTHER FIELDS IN THE WH-347 FORM INCLUDING CERTIFYING OFFICIAL’S INFORMATION; CONTRACTOR/SUBCONTRACTOR INFORMATION; WAGE DETERMINATION INFORMATION; AND FINAL PAYROLL NUMBER**

- *The proposed form provides the following fields at the top of page 2 of the WH-347: “Project Name”, “Project No.”, “Payroll No.”, “Prime Contractor’s/Subcontractor’s Business Name”, “Project Location”, “Week Ending Date” ...*
- 1. **Information Regarding Certifying Official’s Contact Information**
  - *The proposed form now requests the Certifying Official’s telephone number.*

LIUNA believes point- of -contact information of the Certifying Official is critical if the DOL and federal agencies can on a practical level follow-up on the information supplied in the form. We support requiring the Certifying Official’s telephone number to be included on the form and strongly encourage the form asks for an active email address to be included as well.

**2. Contractor/Subcontractor Information**

- *The proposed form provides check boxes for “Prime Contractor” or “Subcontractor” instead of “Contractor” or “Subcontractor”*

LIUNA supports the addition of clarifying information to indicate in the Form and the Instructions that all contractors, including Prime, General and Subcontractors at all tiers must submit the required CPR information. We further recommend a field which allows contractors at lower tiers to indicate the higher tier contractor/subcontractor with which they have contracted and that subcontractors at every tier must include their name, addresses, and telephone and email address and indicate the subcontractors with which they have subcontracted work to.

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<sup>63</sup> State of Minn., *MN/DOT Payroll Form Instructions*, <file:///I:/BCTD/DOL%20CPR%20Updates%202024/state%20CPR%20forms/Minnesota%20payroll%20form%20instructions.pdf>.

<sup>64</sup> State of New Jersey, Dept. of Labor and Workforce Dev., Office of Strategic Enforcement and Compliance, <https://www.nj.gov/labor/ea/osec/wall.shtml>.

It is critical that the long subcontracting chain on many projects be documented so that investigators have the full picture of all workers used on the project. This is especially important for on-site inspections to verify CPRs with actual employer records. The use of numerous subcontractors to perform a project makes wage theft and misclassification easy to conceal and employer responsibility hard to document. The subcontracting chain in construction is now a widely used business model.<sup>65</sup> Oftentimes when wage theft, payroll fraud and misclassification occur, it is at the lower tiers of the construction project.<sup>66</sup>

Several states make clear in their CPR forms that information must be provided for both the “prime” and “general” contractor regardless of terminology. For example, in Ohio, the certified payroll requires under “Employer name and address” that the submitter “Check and list the name of the General Contractor or Prime.”<sup>67</sup> Massachusetts requires the Prime and General be identified (“General / Prime Contractor's Name”). Because terminology may vary by regions and states as to the use of these terms, the instructions should be made clear that information is required from all contractors and subcontractors in the chain of contracting and subcontracting regardless of terminology.

### **3. Wage Determination Number**

- *The proposed form adds “Wage Determination No.”*

LIUNA supports adding the wage determination number to the revised form. It will have practical utility and allow government enforcers a more efficient means to quickly determine the correct wages and fringe benefits applicable to the project. The *DOL FAQs* explain that “some wage discrepancies may be evident from a comparison of the certified payrolls with the applicable wage determination(s), such as, for example, where a contractor used an incorrect wage rate for a classification, or paid FBs in cash but not for all hours worked; contractor used an incorrect wage

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<sup>65</sup> See, e. g., David Weil, *The Contemporary Industrial Relations System in Construction: Analysis, Observations and Speculations*, 46 Labor History 447, 450-52 (Nov. 2005).

<sup>66</sup> See, The DOL’s Independent Contractor proposed rule which explains that, “[w]hen employers misclassify employees as independent contractors, they illegally cut labor costs, undermining law-abiding competitors.” 87 Fed. Reg. at 62267.

<sup>67</sup> State of Ohio, Dept. of Commerce, Div. of Industrial Compliance, Bureau of Wage & Hour Admin., *Instructions for Preparing Certified Payroll Reports*, [https://com.ohio.gov/wps/wcm/connect/gov/f0ed96e1-f13a-432c-a8bf-51e1c37fd820/CPR+Example+and+Instruction.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTW-ORKSPACE.Z18\\_79GCH8013HMOA06A2E16IV2082-f0ed96e1-f13a-432c-a8bf-51e1c37fd820-oX8pO4c](https://com.ohio.gov/wps/wcm/connect/gov/f0ed96e1-f13a-432c-a8bf-51e1c37fd820/CPR+Example+and+Instruction.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTW-ORKSPACE.Z18_79GCH8013HMOA06A2E16IV2082-f0ed96e1-f13a-432c-a8bf-51e1c37fd820-oX8pO4c).

rate for a classification, or paid FBs in cash but not for all hours worked.”<sup>68</sup> There are several states that include the wage determination on their CPR forms.<sup>69</sup>

#### **4. Payroll Number and Dates of Weeks Worked Information**

- *The proposed form changes “For Week Ending” to “Week Ending Date.”*
- *The proposed form provides the ... fields for “Project Name”, “Project No.”, “Payroll No.” ...*

LIUNA recommends adding a check box to the form indicating whether the payroll is the Final Payroll of the project. LIUNA also recommends providing space where a contractor can specify whether certified payrolls have not been filed for weeks when no work was performed during those weeks.

Both of these additional pieces of information will have practical utility to investigators who need the full scope of all weeks in which work has occurred easily available to them. If they can readily determine how many payrolls should have been filed in total or information was not provided because no work was performed, it enables the investigator to more efficiently find information showing the entire period of work on the contract.

#### **5. Work Classification**

- *Column 3: The proposed form replaces “Work Classification” with “Name of Labor Classification”*

For consistency with current practice, LIUNA supports retaining the present “Work Classification” title of Column 3.

### **V. LIUNA RECOMENDS THE FOLLOWING ADDITIONS TO THE REVISED FORM**

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<sup>68</sup> U.S. Dept. of Labor, Wage & Hour Div., *Frequently Asked Questions: Protections for Workers in Construction under the Bipartisan Infrastructure Law*, <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction/frequently-asked-questions#>.

<sup>69</sup> State of Iowa, Dept. of Trans., *Certified Transcript of Labor Payroll* <https://www.iowadot.gov/erl/current/CM/content/Appendix%202-14.pdf>; State of Minn., *MN/DOT Payroll Form Instructions*, <file:///I:/BCTD/DOL%20CPR%20Updates%202024/state%20CPR%20forms/Minnesota%20payroll%20form%20instructions.pdf>; State of Rhode Island, Dept. of Labor and Training, *Certified Weekly Payroll*, <https://dlt.ri.gov/sites/g/files/xkgbur571/files/documents/pdf/wrs/APS-RI-PW-Certified-Payroll-Form-1.20-Revision.pdf>.

**A. DOL Should Include a Statement in the CPR That Information Is Not Confidential Under FOIA**

LIUNA recommends that the DOL include a notice to submitters that “DOL and federal contracting agencies make no assurances of confidentiality with respect to information submitted by contractors and subcontractors pursuant to 29 C.F.R. § 5.5(a)(3)(ii)”.

As discussed above, the importance of public availability of the CPR is demonstrated by several states which make the CPRs available in a public database, including the New Jersey WALL database which is publicly accessible.<sup>70</sup> and California’s public database.<sup>71</sup>

**B. LIUNA Recommends That DOL Add a Field For The Paycheck Number of The Check Paid To The Worker By The Employer**

LIUNA recommends that DOL consider adding an information field for the paycheck number on the check given to the worker by the employer. For example, California has this requirement in their CPR.<sup>72</sup> Massachusetts’ CPR also requires the contractor to enter the paycheck number.<sup>73</sup>

Having this information available to government investigators engaging in site visits will have practical utility to them and make site visits and records review much more efficient in determining if workers have, in fact, actually received the pay indicated on the CPR. Any discrepancies between the two are clear red flags for investigators.

Auditing involves hundreds of records for government officials to review and the actual check number received by the worker can provide a much quicker review of numerous pages of bank and payroll information which the contractor is required to maintain.

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<sup>70</sup> State of New Jersey, Dept. of Labor and Workforce Dev., Office of Strategic Enforcement and Compliance, <https://www.nj.gov/labor/ea/osec/wall.shtml>.

<sup>71</sup> State of California, Dept. of Industrial Relations, *eCPR public search database*, [https://services.dir.ca.gov/gsp?id=ecpr\\_public\\_search](https://services.dir.ca.gov/gsp?id=ecpr_public_search).

<sup>72</sup> Cal. Dep’t of Indus. Rels., *Public Works Payroll Reporting Form A-1-13*, <https://www.dir.ca.gov/dlse/forms/pw/dlseforma-1-131.pdf>.

<sup>73</sup> Mass. Dep’t of Lab. Standards, *Weekly Certified Payroll Report and Workforce Participation Form*, <https://www.mass.gov/doc/weekly-certified-payroll-report/download>; IL. Dept. of Labor, *Certified Transcript of Payroll*, (2022), <https://labor.illinois.gov/laws-rules/conmed/certifiedtranscriptofpayroll.html>.

Also, as we have described above the proliferation of wage theft, payroll fraud, and off-the-books payments in the construction industry will allow investigators to verify that checks have been cashed and at the required amount at such places as check cashing facilities where workers can be easily exploited.

LIUNA suggests that DOL review the various state certified payrolls for information fields which may be used or adapted to strengthen the federal form WH-347. In addition to the state and municipal payroll<sup>74</sup> certified payrolls discussed above, many states<sup>75</sup> have added either additional information fields or clarifying instructions that might be included in the federal CPR to make it of greater practical utility and further augment the ability of government investigators to carry out their obligation to enforce the DBRA.

In summary, LIUNA supports the Department's proposed revisions to the WH-347 form, and believes that those revisions, along with LIUNA's suggestions and clarifications, will better enable DOL and other federal agencies to carry out the performance of their function to investigate and enforce the DBRA and ensure that laborers and mechanics receive the legally required prevailing wages and fringe benefits on DBRA covered projects. LIUNA appreciates this opportunity to submit comments on the proposed revisions to the WH-347 form.

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<sup>74</sup> i.e., City of New York, Office of the Comptroller, Bureau of Labor Law, *Instructions for the Preparation of a Certified Payroll Report*, (2019), [https://comptroller.nyc.gov/wp-content/uploads/documents/Certified Payroll Report Instructions 2019.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/Certified_Payroll_Report_Instructions_2019.pdf); Certified payroll form: [https://comptroller.nyc.gov/wp-content/uploads/documents/Certified Payroll Report formfillable 2019.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/Certified_Payroll_Report_formfillable_2019.pdf).

<sup>75</sup> State of Massachusetts, Statement of Compliance, *Weekly Certified Payroll Report and Workforce Participation Form*, <https://www.mass.gov/doc/weekly-certified-payroll-report/download>; State of Ohio, Dept. of Commerce, Div. of Industrial Compliance, Bureau of Wage & Hour Admin., *Instructions for Preparing Certified Payroll Reports*, [https://com.ohio.gov/wps/wcm/connect/gov/f0ed96e1-f13a-432c-a8bf-51e1c37fd820/CPR+Example+and+Instruction.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTW-ORKSPACE.Z18\\_79GCH8013HMOA06A2E161V2082-f0ed96e1-f13a-432c-a8bf-51e1c37fd820-oX8pO4c](https://com.ohio.gov/wps/wcm/connect/gov/f0ed96e1-f13a-432c-a8bf-51e1c37fd820/CPR+Example+and+Instruction.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTW-ORKSPACE.Z18_79GCH8013HMOA06A2E161V2082-f0ed96e1-f13a-432c-a8bf-51e1c37fd820-oX8pO4c); IL. Dept. of Labor, Certified Transcript of Payroll, (2022), <https://labor.illinois.gov/laws-rules/conmed/certifiedtranscriptofpayroll.html>; State of California, Dept. of Industrial Relations, *Public Works Payroll Reporting Form*, <https://www.dir.ca.gov/dlse/forms/pw/dlseforma-1-131.pdf>.; State of Rhode Island, Dept. of Labor and Training, *Certified Weekly Payroll*, <https://dlt.ri.gov/sites/g/files/xkgbur571/files/documents/pdf/wrs/APS-RI-PW-Certified-Payroll-Form-1.20-Revision.pdf>.