



Pennsylvania Foundation for Fair Contracting

MONITOR. INVESTIGATE. INFORM.

Proposed Revisions to the Davis Bacon Certified Payroll Form (WH-347)

OMB Control Number: 1235-008

The Pennsylvania Foundation for Fair Contracting (“PAFFC”) respectfully submits these comments in support of the Department of Labor’s (“DOL”) Notice of Proposed Rule Making (“NPRM”) on proposed revisions for the Davis Bacon Certified Payroll Form published on August 30, 2024. In addition to the support provided, the PAFFC provides critiques that we respectfully hope the DOL will take into consideration in publishing the final version of this form.

The PAFFC is a not-for-profit organization established to support, promote and encourage fair contracting by providing a “level playing field” in the public construction arena for the benefit of taxpayers, contractors and workers. Founded in 2016, the PAFFC strives to ensure compliance with federal, state and local laws pertaining to the construction industry; to work with the Federal and State Departments of Labor on compliance issues involving labor and prevailing wages in the construction industry; to promote bidding equity for all contractors; and to educate and inform contractors and workers about their rights and the bidding laws associated with the construction industry.

The PAFFC applauds DOL’s decision to make long-needed revisions to the Wage and Hour Division Form 347 (WH-347). This form is the guiding document used by contractors to meet the requirement of the Davis-Bacon Act/Davis-Bacon Related Acts (DBA/DBRA) to “*furnish a weekly statement with respect to the wages paid each employee during the preceding week.*” Having last been significantly updated through the All Agency Memorandum #77, issued on July 17, 1968, the form had not kept up with the increasing use of fringe benefits nor the increasing complications of construction accounting.

Wage Determination Information

The modifications proposed by DOL will help bring WH-347 into the modern era. Of note is the requirement that contractors indicate which Federal Wage Determination is being used on the project for which the payroll is being submitted. This addition will allow all interested parties, including the project owner, state and federal agencies, US DOL, and various law enforcement agencies, to begin with an

James T. Kunz III
Administrator (Western PA)

affirmative acknowledgement of a contractor's wage responsibilities. It will also, as the North American Building Trades Unions ("NABTU") note in their comments, add another level of enforcement to sub-contractors from the prime contractor. No longer will prime contractors be able to state that they did not know their subcontractors were using outdated wage information, an all too frequent occurrence.

Fringe Benefits

The DBA/DBRA allows contractors to pay any combination of wages and fringe benefits to their workers to meet their prevailing wage obligations. The PAFFC applauds DOL's proposed addition of detailed fringe benefit information to WH-347. These new details will allow wage and hour analysts the ability to analyze whether a contractor is, in actuality, making the necessary contributions to fringe benefits on behalf of workers. The current form is lacking in detail and specificity about fringe benefit contributions which has allowed contractors to obfuscate their fringe contributions, sometimes leading to massive fraud that has gone unnoticed for years. The added specificity proposed by DOL is the same information that was used by the Pennsylvania Attorney General's Office to prosecute the largest example of Prevailing Wage fraud in United States history.¹ The PAFFC believes that these revisions will allow for similar cases by Wage and Hour, sending a clear message that fraud will not be tolerated.

With that being said, the PAFFC would like to, respectfully, offer a few suggestions and critiques. An important piece of information that is lacking in the proposed changes is the indication of benefit type. While the proposed changes include new information such as Plan Name and Plan Number, the PAFFC does not believe that there is enough information to help investigators identify what type of plan is being used. Without the requirement to identify Plan Type unscrupulous contractors will continue to mislead enforcement bodies and waste time and valuable resources.

The proposed revisions to WH-347 include a requirement for contractors to itemize the hourly amount paid into various fringe benefits. Hourly disclosers have long been a requirement in Pennsylvania and have been used by Pennsylvania Department of Labor & Industry ("PA L&I") to ensure that contractors comply with their prevailing wage obligations. The PAFFC applauds the proposed inclusion of this information on the federal certified payroll form. However, the current proposal lacks sufficient clarity on this point, in part because of the terms used to describe this needed revision.

We agree with the International Union of Operating Engineers ("IUOE") that "the addition of hourly fringe credit by plan type may be the most important new

¹ "Hawbaker Sentenced, Will Pay Workers More than \$20 Million in Stolen Wages," Pennsylvania Office of Attorney General, 2021, <https://www.attorneygeneral.gov/taking-action/hawbaker-sentenced-will-pay-workers-more-than-20-million-in-stolen-wages/>.

information in the revised form...” and that any confusion on this would be unhelpful. The PAFFC supports IUOE’s suggestion that the final iteration of WH-347 should use the term “fringe credit” in every section and dispense with “fringe cost.” We also agree that Column 6 of WH-347 could be more clearly written as “Hourly Wage Rate Paid” and “Total Hourly Fringe Benefit Credit” and “Total Hourly Wage Payment in Lieu of Fringe Benefits.” This would lead to a more uniform and enhanced form for all stakeholders.

Miscellaneous Suggestions

The PAFFC endorses and supports the following critiques touched upon in both NABTU’s and IUOE’s comments. The commonsense requirement to provide basic contact information for Benefit Plans, Apprentice Programs as well as a direct contact for the contractor filing the payroll. This will allow for efficient verification when questions arise by the project owner, state and federal agencies, and enforcement agencies.

We also support the including of disclaimer language concerning the confidentiality of information provided to meet obligations under the DBA/DBRA. The PAFFC encourages to DOL to adopt the language proposed by NABTU as follows:

“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).”

This language will preempt any challenges based improperly on confidentiality and allow the public to hold contractors accountable in an efficient manner.

The PAFFC also endorses IUOE’s proposal to improve the section “Other Deductions” by including the term “must specify/see instruction” in order to prevent unscrupulous contractors having plausible deniability when illegally transferring substantial sums of money into their pockets. The current ambiguous use of “Other – See Instructions” is insufficiently clear.

Conclusion

The PAFFC commends the historic work DOL has performed transforming the Davis-Bacon Act over the last four years. The Act has been returned to its original purpose, protecting workers on federally funded construction projects. The proposed changes to the certified payroll form, WH-347 is just another example of DOL’s commitment to working women and men of America. And while we offer critiques and suggestions above, it is done in the interest of workers who wake up every day and build the infrastructure that America relies on to be a leader in the world today.

Thank you for your commitment to this important cause and please do not hesitate to reach out to the PAFFC with any questions regarding these comments. The PAFFC is happy and willing to assist in any way we can.

James T. Kunz III
Administrator
PA Foundation for Fair Contracting