



VIA MESSENGER DELIVERY

December 3, 2007

Amy A. Hobby  
BLS Clearance Officer  
Division of Management Systems  
Bureau of Labor Statistics  
2 Massachusetts Ave. NE, Room 4080  
Washington, DC 20212

Re: Submission for BLS Review: Comment Request- Census of Fatal Occupational Injuries (BLS CFOI-1), OMB Number 1220-0133

Dear Ms Hobby:

Associated Builders and Contractors, Inc. (ABC) respectfully submit the enclosed comments in response to the above-referenced notice published in the October 4, 2007 *Federal Register*, 72 Fed. Reg. 56796. Pursuant to the Notice, the Department of Labor's (DOL) Bureau of Labor Statistics (BLS) has solicited comments regarding the proposed extension of the "Census of Fatal Occupational Injuries Report."

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Hirsch", is written over the word "Sincerely,".

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Before the  
Department of Labor  
Bureau of Labor Statistics

Proposed Collection; Comment Request:  
Census of Fatal Occupational Injuries (BLS CFOI-1)  
OMB Number 1220-0133

Comments of  
Associated Builders and Contractors, Inc.,

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Associated Builders and Contractors, Inc. (ABC) submits the following comments in response to the above-referenced notice of proposed collection (Notice) published on page 56796 of the *Federal Register* of October 4, 2007. Pursuant to the Notice, the Department of Labor's (DOL) Bureau of Labor Statistics (BLS) has solicited comments regarding the proposed extension of the "Census of Fatal Occupational Injuries Report."

In soliciting comments from interested parties, the Notice has asked commentators to focus on four areas in particular:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility.
2. Whether the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate.
3. What, if any, enhancements can be made to the quality, utility and clarity of the information being collected.

4. How the burden of the collection of the information can be minimized for those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The following are ABC's comments and recommendations in response to the issues BLS posed in the Notice. Our comments and recommendations are intended to be constructive. Our goal is to provide BLS with practical ways in which the current reporting form and resulting data that BLS reports can be enhanced and the functionality of the resulting data increased. Toward that end, ABC offers the following comments and recommendations with respect to two of the four areas of focus for which the public's input has been solicited: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility; and (2) What, if any, enhancements can be made to the quality, utility and clarity of the information being collected.

## COMMENTS

A. **About ABC**: Associated Builders and Contractors, Inc. (ABC) is a national construction industry trade association representing more than 24,000 individual employers in the commercial and industrial construction industry. ABC represents both general contractors and subcontractors throughout the United States. The majority of ABC's member companies are "merit shop" companies and our diverse membership is bound by a shared commitment to the construction industry's merit-shop philosophy. The merit-shop philosophy is grounded on the principal of full and open competition, without regard to labor affiliation, where construction contracts are awarded to the lowest



responsible bidder through open and competitive bidding. The merit-shop philosophy helps ensure that taxpayers and consumers alike receive the most for their tax and construction dollar.

Conservatively, ABC's members employ more than 5.4 million skilled construction workers, whose training, and skills and experience span all of the twenty-plus skilled trades that comprise the construction industry. The workforce of merit-shop companies comprises more than 80 percent of the private construction industry as a whole. ABC also has 78 chapters throughout the United States. ABC represents a significant and representative cross-section of the Nation's commercial and industrial construction contractors who are directly and/or indirectly impacted by the Census of Fatal Occupational Injuries (CFOI) report survey and the resulting data that is published therefrom.

B. **Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility.** ABC is a strong advocate of BLS and fully supports the continuation of the CFOI by BLS, as well as the other informational collection activities that BLS performs for and on behalf of DOL.<sup>1</sup> The CFOI in particular is an extremely beneficial collection activity. ABC therefore agrees with the fundamental purpose and goal of the CFOI, *i.e.*, "compil[ing] comprehensive, accurate, and timely information on work-injury fatalities need to develop effective prevention strategies." 72 Fed. Reg. at 56797. At the same time, however, ABC believes that BLS

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<sup>1</sup> In fact, ABC has been a leading and vocal proponent of the transfer of DOL's current prevailing wage survey responsibilities under the Davis-Bacon Act from the Wage and Hour Division to BLS.

can significantly increase the utility of the CFOI and its resulting data by adopting the changes we recommend below.

C. **What, if any, enhancements can be made to the quality, utility and clarity of the information being collected.** ABC believes there are a number of modifications that can, and should, be made to the CFOI report that would enhance its utility that would improve the quality and clarity of the information being collected. Some of the modifications we recommend are directly related to the construction industry, while others that would improve the overall quality and efficiency of the CFOI in general.

The first area where ABC recommends modification relates to Section II of the CFOI, covering Employment Information.<sup>2</sup> After reviewing the specific categories and the breakdown of information that is provided on the CFOI's charts, the relevance of the information requested is unclear to ABC. As a result, ABC feels it is necessary to question why some of the specific information being requested by the CFOI report is being requested. For example, Table A-3, seeks to provide an industry-specific breakdowns of fatal occupational injuries on the basis of "private sector wage and salary workers," "government workers," and "self-employed workers." However, footnote 2 to the breakdown for "private sector wage and salary workers" states that the information provided: "May include volunteers and workers receiving other types of compensation" (emphasis supplied). Similarly, footnote 4 to the breakdown for "self-employed workers" states that the information provided: "Includes self-employed workers, owners of unincorporated businesses and farms, paid and unpaid family workers, and may

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<sup>2</sup> The order in which ABC discusses the enhancements being recommended to the CFOI is not intended, nor should it be construed, to convey a prioritization of ABC's concerns and recommendations. Rather, for BLS' convenience, the discussion merely parallels the order in which the CFOI reporting questionnaire solicits feedback from responders who are asked to voluntarily complete the report.

include some owners of incorporated businesses or members of partnerships” (emphasis supplied). Accordingly, because Table A-3 ultimately lumps together some of the information being solicited on the CFOI report, ABC questions the need for the more detailed, but somewhat confusing, information being requested by Question 1 of Section II, especially when the CFOI report provides no explanation of why the more specific information is needed. To the extent the detail of information currently being solicited is truly beneficial, the current report form should, at a minimum, be amended to provide an explanation as to why, especially because completion of the CFOI in the first place is voluntary. However, in the event that the capture of such discrete information is not critical, the current report should be revised, by lumping those workers currently being lumped together per the footnotes and providing clear descriptions and/or definitions of which workers are intended to be included under each general check-off category. The following are examples of how this might be rewritten:

- [ ] Self-employed, partner, owner of the business, or professional practice: This category includes incorporated and unincorporated businesses and farms, paid and unpaid family members of a family business, independent contractors, and such individuals if working as a volunteer without pay or other compensation.
- [ ] Private sector wage and salary workers: Includes individuals who are not self-employed, or a partner or owner of an incorporated business, farm or a professional practice. Also includes volunteers of such businesses and workers receiving stock options and/or other compensation other than wages.

To further enhance the CFOI’s demographic information, ABC also recommends that Question 1 be augmented to include a check-block regarding the deceased worker’s labor status, *i.e.*, whether the deceased was a member of a labor organization and, if so, which one. The collection and publication of such additional information would be extremely beneficial in terms of furthering the CFOI’s goal of providing “comprehensive,



accurate, and timely information on work-related fatalities,” 72 Fed. Reg. at 56797. For the same reason, BLS’s tables reporting the annual results of the CFOI should also include information on the number of employees employed that reporting year in each of the various industries covered and analyzed by the CFOI. Moreover, not only can the latter be done without need to modify the existing CFOI report, the reporting of this information would be extremely helpful when it comes to evaluating and comparing the number of specific fatal incidents being reported by BLS per year both within the various sectors of a specific industry (*e.g.*, residential versus non-residential construction; non-residential electrical versus non-residential plumbing heating and air-conditioning; etc.) as well as when comparing between the various industries (*e.g.*, construction versus food manufacturing). While some of this type of comparative breakdown is currently being done by BLS, the inclusion of this additional information in BLS’ tables would be of great assistance in identifying more precisely and accurately where problems do exist and need to be addressed.

ABC also recommends changes to Section II’s Question 2, which solicits information regarding the deceased’s occupation at the time of the incident. In its current format (especially given the phrasing of the example provided in brackets), Question 2 purports to solicit a generalized description of the deceased’s occupation, *e.g.*, “cashier,” “drywall installer,” “farm foreman.” However, when the results of the collection are finally reported to the public, occupations are specifically broken down by reference to their corresponding NAICS code. ABCs supports the use of the NAICS code. Accordingly, we recommend that the CFOI report be amended or supplemented by the inclusion of a chart of the NAICS codes that responders can use when answering

Question 2 as well as Question 7 of Section II. Doing so will help ensure that the information being collected directly correlates to the data ultimately being reported by BLS.

Regarding questions 9 and 10 of Section II, ABC questions the relevance of the information being requested, especially after reviewing the specific categories and breakdown of information that the CFOI charts eventually provide to the public. ABC therefore questions the need for either question and recommends their elimination.

ABC also has some concerns and recommendations regarding Section III of the CFOI reporting form. To begin, ABC has concerns about Question 5 of Section III, which seeks to determine whether an incident “occur[red] on the employer’s premises.” Our concern is that the term “employer’s premises” is not clearly defined and therefore not susceptible to a single interpretation, which can easily result in inconsistent reporting and misleading data. For example, many businesses operate in multi-employer building with hallways, stairs, restroom, parking lots and other common areas over-which the employer has no control. However, Question 5 clearly, but in error, presumes that all such areas are always under the employer’s control. To the extent that the information the CFOI seeks to generate is to be used for “compil[ing] comprehensive, accurate, and timely information on work-injury fatalities need to develop effective prevention strategies” the current wording of Question 5 of Section III can easily be misconstrued and lead to misleading and inaccurate data.

Question 6 of Section III is also poorly worded and formatted and should be revised. Even though the question asks responders to “Mark ALL that apply,” there is no guarantee that that will always happen. Moreover, there does not appear to be any clear



rationale as to why some of the specific check-block questions are being asked. What the question appears to be trying to do is identify and distinguish between: (1) *work-related activities, i.e.,* activities the deceased was engaged in either for or on-behalf of an employer when the deceased died; (2) *activities that occurred over which the employer should or could have had control, i.e.,* activities the deceased was performing that occurred at the employer's work site or other location over which the employer had or should have had control at the time the incident occurred even though the activities were not being performed for or on-behalf of the employer; and (3) *purely non-work related activities; i.e.,* activities the deceased was performing that were neither for nor on-behalf of the employer and which did not occur on the employer's premises or on premises over which the employer had or should have had control at the time of the incident. Whether or not our assumption is correct, Question 6 is extremely ambiguous and should be reworded to make clear what information it is ultimately trying to obtain. As it now stands, the question can easily lead to inaccurate or misleading information contrary to the CFOI's purpose and goals. For example, Table A-6 provides annualized data on fatal occupational injuries resulting from transportation incidents and homicides by occupation. Question 6 currently asks the responder to indicate whether the deceased was "commuting to or from usual work location" at the time of death. It is not clear from Question 6, however, whether by checking this block the resulting information would be included on Table A-6. As a general rule, travel from home to work and from work to home should be excluded from the CFOI. However, it is not clear that the question as currently written will be construed to mean commuting to and from home. Further, the next check-block "job-related errand or travel other than commuting to or from work" is

also of questionable relevance or value. As written, the block should be checked if an employee dies while flying on a commercial airline on business. However, what value or purpose would such information have in terms of the CFOI's purpose and goals?

Likewise, why is the next question about "attending training provided or required by the employer" being asked and how the information would be used if the block is checked?

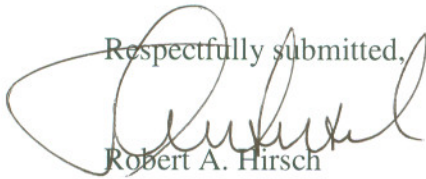
Assuming that our original premise was correct, Question 6 should be reworded to identify and distinguish between: (1) *work-related activities*; (2) *activities that occurred over which the employer should or could have exercised control*; and (3) *purely non-work related activities*. Further, only information provided in response to #1, and possibly #2 (depending on the extent to which the employer could have prevented the death from occurring) should be included in Table A-6, while information provided in response to #3 should be absolutely excluded.

Finally, ABC has concerns about Question 9 of Section III. Here again it is not clear what the question is aiming to achieve, especially as a result of the manner in which the various causes listed are being grouped. What, if any, correlation is there between a fall, an explosion and a shooting and what, if anything, does checking the block have to say (even if factually correct) about the employer's responsibility or control over the fall, explosion, or shooting? ABC would submit that the answer to both questions is "nothing" insofar as achieving the purpose and goals of the CFOI. ABC recommends that Question 9 either be eliminated, or reworded to ensure that the responses received can and will provide meaningful and precise information consistent with the CFOI's purpose and goals.

## SUMMARY

In summary, ABC supports BLS' continued collection of fatal occupational injury information. ABC also supports the continued use of the CFOI report to collect such information. However, for the reasons discussed above, ABC believes that the purpose and goal of the CFOI collection can be better achieved and the content and quality of the information collected enhanced, were the current CFOI report form revised in the manner we have recommended.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert A. Hirsch', is written over the typed name.

Robert A. Hirsch  
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