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September 5, 2017

VIA EMAIL: WHDPRAComments@dol.gov

Melissa Smith
Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: Information Collection: Davis-Bacon Certified Payroll [Control Number 1235-0008]

Dear Ms. Smith:

On behalf of the Associated General Contractors of America (hereinafter "AGC"), let me thank you for the opportunity to submit the following comments on the U.S. Department of Labor Wage and Hour Division's (hereinafter "WHD" or "the agency") information collection and comment request (hereinafter "request"). The request intends to extend the information collection titled "Davis-Bacon Certified Payroll" and was published in the *Federal Register* on July 7, 2017.

AGC is the leading association for the non-residential construction industry, representing more than 26,000 firms, including over 6,500 of America's leading general contractors and over 8,800 specialty contracting firms. More than 11,000 service providers and suppliers are also associated with AGC, all through a nationwide network of more than 90 chapters. These firms, both union and open-shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property. Many of these firms regularly perform construction services for government agencies.

AGC recognizes that provisions of the Copeland Act statutorily require contractors and subcontractors performing work on federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." We also understand the necessity for regulations promulgating payroll requirements so that WHD and federal contracting agencies can review the information to determine that employees have received legally required wages and fringe benefits under the Davis-Bacon and related Acts (DBRA).

While AGC appreciates the agency's continuing effort to reduce paperwork and respondent burden, we believe that requirements of weekly pay and submission of payroll data on a weekly basis are burdensome and out of touch with modern business practices. These requirements of the Copeland

Act, dating back to the 1930's, represent the needs of a different era and are no longer appropriate for the current labor market. To truly reduce this unnecessary and antiquated burden on contractors and state agencies, the WHD should consider regulatory modifications to current requirements as applicable and work with Congress to modernize the law.

Weekly Payroll Processing Requirements are Overly Burdensome and Outdated

Payroll processing can be time-consuming and especially burdensome to small businesses. Additionally, many employers use outside payroll service providers to process their payroll who typically charge fees for processing and extras for each direct deposit transactions and live checks issued. The administrative costs and service fees can easily add up. Thus, utilization of a weekly period of pay is becoming a less attractive and prevalent practice for private businesses. Per a 2013 U.S. Bureau of Labor Statistics (BLS) Current Employment Statistics (CES) survey, over sixty-seven percent of private businesses have a length of pay longer than a week.¹ Additionally, only the state of New Hampshire has a payday requirement of a week, without any exceptions, and an overwhelming majority of states allow semi-monthly or longer periods.²

Paying employees for periods no less than bi-weekly would allow employers to process payroll less frequently and cut down on administrative costs and outside fees. The freed-up productivity and capital could be reinvested in the business, its operations, and employees. Less frequent payrolls can also provide more accurate recordkeeping and retention due to fewer opportunities for error and reduction in paperwork, especially with the requirement to submit on such a frequent basis (within seven days). Accurate record submission, retention, and processing by contracting agencies could solve unnecessary audits quickly and efficiently, or even before they occur.

Several state transportation agencies and state agency representatives also recently recognized and contributed to the previously detailed concerns in formal comments to a U.S. Department of Transportation's (DOT) review of policy guidance and regulation of transportation infrastructure.³ The American Association of State Highway and Transportation Officials (AASHTO) testified that the current weekly payroll requirements were outdated and recognized the unnecessary burdens they placed on contractors and state DOT's since the agencies themselves are required to then verify the payrolls at the same frequency as being reported.⁴ The Illinois Department of Transportation (IDOT) echoed AASHTO's concerns and recommendations in their comments.⁵ The Michigan Department of Transportation (MDOT) also shared AASHTO and IDOT's critiques of the current requirements and recommended agencies allow contractors to report monthly pay instead of weekly.⁶

¹ Matt Burgess, "How frequently do private businesses pay workers?" *Beyond the Numbers: Pay & Benefits*, vol. 3, no. 11 (U.S. Bureau of Labor Statistics, May 2014), <https://www.bls.gov/opub/btn/volume-3/how-frequently-do-private-businesses-pay-workers.htm>.

² Wage & Hour Division State Payday Requirements (U.S. Department of Labor, January 1, 2017), <https://www.dol.gov/whd/state/payday.htm>.

³ Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 109 (June 8, 2017), <https://www.regulations.gov/document?D=DOT-OST-2017-0057-0001>.

⁴ AASHTO Comment Letter on Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 109 (July 17, 2017), <https://www.regulations.gov/document?D=DOT-OST-2017-0057-0062>.

⁵ IDOT Comment Letter on Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 109 (July 24, 2017), <https://www.regulations.gov/document?D=DOT-OST-2017-0057-0129>.

⁶ MDOT Comment Letter on Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, 82 Fed. Reg. 109 (July 21, 2017), <https://www.regulations.gov/document?D=DOT-OST-2017-0057-0084>.

Agencies Continue to Resist Acceptance of Electronic Certified Payroll Reporting

AGC greatly appreciates the WHD's tireless efforts and advocacy for the modernization of payroll reporting requirements, especially through the acceptance of electronic submission. WHD's affirmation that the use of electronic signatures is sufficient for compliance purposes under the Copeland Act and encouragement of all agencies to consider acceptance of electronic information were logical steps to improve efficiency and cost savings while satisfying requirements, but challenges remain. AGC continues to hear from its members that not all agencies share in the WHD's philosophies and continue to resist modernization. We hope that the federal government can continue its path of modernization and more effective use of technology by further expanding the acceptance of electronic submission by all agencies. Electronic submission is a simple compliance solution that has proven to ease burden and costs to both agencies and contractors.

Considerations for Improving the Davis-Bacon Certified Payroll Requirements

With regard to considerations for improvement and to respond to the agency's request for information on the utility, quality, and clarity of the information to be collected, AGC makes the following additional recommendations to be considered through regulatory change or legislative action:

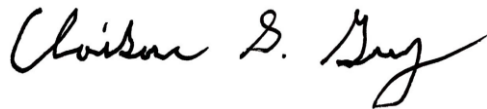
- 1. Change weekly pay requirement to no less than bi-weekly.** As already discussed, weekly pay is an outdated, burdensome, and costly business practice, especially for small businesses. Bringing the pay requirements into alignment with common and modern industry practices would help ease the estimated burden by allowing businesses to process and report certified payrolls less frequently. AGC recommends that the agency work with the U.S. Congress to update this provision of the Copeland Act.
- 2. Change the requirement to submit payroll reports to before the next regular payment date of the payroll period.** The current requirement to submit payroll reports to the responsible agency within seven days after the regular payment date of the payroll period is an onerous task for contractors and agencies. If the pay requirements are logically updated to no less than bi-weekly, an update to the schedule of submitting payroll should be concurrently streamlined. Allowing contractors to submit on a regular schedule that matches a commonly used pay requirement of no less than bi-weekly, could significantly ease the burdens of reporting on contractors and verification requirements on agencies. AGC again recommends that the agency work with the U.S. Congress to update this provision of the Copeland Act.
- 3. Require agency acceptance of electronic certified payrolls.** WHD's affirmation that the use of electronic signatures is sufficient for compliance purposes under the Copeland Act and encouragement of all agencies to consider acceptance of electronic information were good steps in the direction of modernization of compliance. But, to truly satisfy the intent of this request and "minimize the burden of the collection of information on 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," WHD should proceed further than just the encouragement of acceptance. AGC recommends that the WHD require all agencies to accept electronic certified payrolls and assist those resisting agencies align themselves with

the modern workplace and its practices. If WHD lacks authority to so require, then AGC recommends that WHD work with the Federal Acquisition Regulatory (FAR) Council to do so.

Conclusion

AGC appreciates the WHD's efforts to reduce the respondent burden of the requirement to submit certified payrolls. We also understand and respect the necessity of regulations for the WHD and other agencies to satisfy their statutory duties as mandated by the Copeland Act and the DBRA. However, AGC believes that the Copeland Act represents the needs of a different era and these provisions are no longer appropriate as written for the current labor market and business practices. As a result, AGC highly recommends regulatory and legislative reform of both the Copeland Act and the DBRA. Should the WHD be interested, AGC will gladly meet with administrators and staff to consult on ways to improve the requirements of the laws in a manner that is beneficial to both construction contractors and the agency. If we can aid in any way, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Claiborne S. Guy". The signature is written in a cursive, flowing style.

Claiborne S. Guy
Director, Employment Policy & Practices