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NAFC CONFERENCE INFORMATION • FAIR CONTRACTING GROUPS • LEGAL NOTES

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Prevailing Times

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The National Alliance for Fair Contracting (NAFC) has moved its operation from Springfield, Illinois to downtown Washington, DC.

Our new address is 905 16th Street, NW – 4th Floor, Washington, DC 20006. The toll free phone number is still the same at (866) 523-6232. Items may be faxed to 202-942-2228.

Since 1990, the National Alliance for Fair Contracting (NAFC) has been providing a forum in the construction industry for those interested in fair, competitive contracting.

NAFC is a labor-management organization that promotes a "level playing field" through compliance with all applicable laws in public construction.

When responsible contractors bid and perform public construction projects, the taxpayer gets a high quality project performed by contractors who comply with the laws of the land.

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Meeting the Challenge

Edward M. Smith, Chairman

President Franklin D. Roosevelt once said that "the test of our progress is not whether we add more to the abundance of those who have much. It is whether we provide enough for those who have little."

The wisdom of this great man and past President of the United States has been lost on the current administration in Washington.

However, shortly, a better educated electorate will have its voice heard, and I am confident that this nation will return to a nation that truly cares about providing enough for those who have little.

The Davis-Bacon Act was passed during an era when people in this country were deeply concerned about one another and how the local labor market fared in their own personal geographic area. Citizens of the time fully realized the impact of a foreign labor force being brought into their neighborhoods undercutting local wages, and, thereby removing food from their tables. We were a nation that cared about those that had little and the communities they lived in.

The Act was passed in 1931 after being proposed and pushed through Congress by two Republican Congressmen. Yes, I said Republican, for like today there are caring and concerned Republican politicians that understand how important the Davis-Bacon Act is to their respective communities and the labor forces that serve them.

It is not a prevailing wage law but a "community wage law" and needs to be understood in that context. It has been a law focused on the well-being of American communities since the day it was signed and it remains so today.

What does this "Community Wage Law" accomplish?

- It levels the playing field for all that are involved in publicly funded construction
- It creates an environment of "fairness" where all contractors are playing by the same rules
- It provides for a living community wage for people who work hard in a very dangerous occupation
- It stimulates a healthy local economy
- It gives the taxpayers a quality product

Competition is then based on efficiency and how well trained the contractor's workforce is at the time.

The National Alliance for Fair Contracting is all about creating a fair and competitive professional work environment in the public construction industry for responsible contractors and their employees, and we will continue to do so in the future.

Elsewhere in this issue you will see that there has been a change in the operation of the Alliance with the Board of Directors deciding to move all operations to Washington, DC. Mike McNelly has resigned from the Board and will now be the Director of Governmental Affairs/Administrator. Matt Patterson has moved to Dallas, Texas, to work with LIUNA's pension funds.

I and the Board wish them both much success in their new positions, and are very thankful for the past work of Matt Patterson as our Administrator.

As we go continue to go forward we will challenge the government on both a State and Federal level to do the right thing for the communities they serve, and as an organization we will be in the forefront of that challenge.

Will Rogers, this nation's most respected humorist once said: "Even if you are on the right track, you will get run over if you just sit there."

I can assure you that the National Alliance for Fair Contracting will never allow itself to be run over, nor will we sit still while irresponsible contractors violate our laws.

We Want to Build America

Ed. Note: Following are excerpts from the testimony of Don Kaniewski, LIUNA Legislative and Political Director, before the National Surface Transportation Policy and Revenue Study Commission.

Our Unions want to build America because we believe in an America that leads the world in freedom, justice and economic opportunity.

To continue leading the global economy, the U.S. will need to move its economy better, faster and less expensively than it does today. Robust federal infrastructure investment, among an entire range of modalities such as highways, transit, ports, aviation, freight rail, high speed rail, and water navigation, is essential to create the necessary economic platform upon which the private sector can more efficiently and effectively compete in a global economy. Without this critical investment, businesses and corporations will be severely hamstrung in competing domestically and internationally on the world stage.

To that end we recognize that this commission bears an enormous responsibility. In recent years the country has suffered from the lack of a consistent national transportation infrastructure investment policy. Developing an effective policy will require a diagnosis of the system's problems, an evaluation of funding sources and mechanisms, and a prescription for the proper course of action.

The commission's report owes it to the nation to come forth with a vision and a program that will unite the public and the policy makers. We need practical solutions for the short and long term. The current authorization of SAFETEA-LU, the nation's basic transportation statute, expires in 2009. In legislative terms, on a matter of such complexity, it's just around the corner and your report can be the cornerstone for the next bill.

Over 50 years ago, the federal government committed to building our national highway system. Together we succeeded, and our country became a superpower. To maintain that status and meet future needs, we must, over the next 50 years, solve the nation's transportation problems, from traffic congestion to crumbling roads, from inadequate ports to out-of-date transit systems.

Our Unions believe that success in this endeavor rests upon achieving certain goals:

- The character of the nation's transportation policy is and should remain Federal and unified.
- Federal funding for transportation infrastructure projects must be robust and long-term.
- The policy must promote and enhance the recruitment and retention of a well-trained, highly skilled construction work force.
- Policy must be transparent and detailed in order to secure broad public support for its goals and financing.

Improving transportation infrastructure is not just about relieving congestion on a particular road or at a certain port. Meeting national goals requires a national policy that can meet the challenges of integrating the various modes of surface transportation, address land use and importantly, fairly distribute costs so that what we achieve is truly in the national interest. Today's federal program must be transformed into a Federal policy that provides a vision for the long term. Anything less fails the country.

To increase investment in this nation's infrastructure, we support maximizing existing revenue sources. What fee modifications and or additions that are made should all be tied to a trust fund that is dedicated to the purposes of funding

and improving surface transportation systems, highways in particular. We are not averse to innovative financing, particularly for large projects of national significance. Bonding and other tools of financial leverage should be part of the mix. And while we are not experts on all methods of innovative financing we believe everything that enhances investment must be considered.

We do not believe that PPPs are a panacea and we should exercise care that PPPs doesn't come to stand for "picking the people's pocket". By themselves they cannot solve the need. The role they will play in a national program should be openly debated and well defined if they are to gain public acceptance. PPPs are not a substitute for political will or national policy.

It is time to evaluate the budgetary framework of infrastructure. User fees, innovative financing and public private partnerships might all be more productive if part of a capital budget. We believe infrastructure is investment not expenditure and we urge the commission to consider a new budgetary framework.

Any national policy to address the nation's transportation problems must ensure well–trained construction workers are available to do the work. A federal program of construction and public works should assure the payment of wages and benefits that prevail in the areas in which they are built. Since its enactment in 1931, the Davis-Bacon Act has done just that by helping the Laborers, Carpenters and Operating Engineers along with their brothers and sisters in the construction trades, union and non–union, build America safely and effectively while building better lives for their families.

The original policy premise underlining the Davis-Bacon Prevailing Wage Act of 1931 was to prevent federal construction dollars from disrupting the stability of local construction markets. These federal construction dollars were meant to neither inflate nor depress local community wages but to reflect those community standards. That policy is as viable in 2007 and moving forward as it has been over the past seventy-six years. Both Democratic and Republican Congresses have sought to consistently apply that policy to every major federally assisted construction program.

Constructions jobs are not easy, glamorous, nor sadly, always safe. Our members are engaged in one of the few industries where we continually put ourselves out of work upon the successful completion of a job. When it comes to crucial public infrastructure projects, contractors owe it to taxpayers to compete based on quality and not by driving down wages and undercutting local community economic standards. That's what the family-supporting Davis-Bacon Act and prevailing wages are about: making sure that public projects don't disrupt local economies, either by driving wages down or artificially inflating wages.

For these reasons we strongly believe that the historic application of the Davis-Bacon Act must remain consistent across all methods of financing.

Illinois Legislature Creates an "Employee Classification Act"

In response to the huge problem of Independent Contractor abuse in Illinois, both Houses of the State Legislature of Illinois have recently passed House Bill HB1795 and sent it forward for the Governor's signature.

It provides that an individual performing services for a contractor is deemed to be an employee of the employer. It provides that an individual performing services for a contractor is deemed to be an employee of the contractor unless it is shown that:

1. the individual has been and will continue to be free from control or direction over the performance of the service for the contractor, both under the individual's contract of service and in fact;
2. the service performed by the individual is outside the usual course of services performed by the contractor, and
3. the individual is engaged in an independently established trade, occupation, profession, or business; or
4. the individual is deemed a legitimate sole proprietor or partnership.

It provides that subcontractors or lower tiered contractors are all subject to all provisions of the Act. It provides that the Illinois Department of Labor shall post a summary of the requirements of the Act in English, Spanish, and Polish on its official web site and on bulletin boards in each of its offices. It provides that it is a violation of the Act for an employer or entity not to designate an individual as an employee under the Act unless the employer or entity satisfies the provisions of the Act. It provides for civil remedies and civil penalties. It amends various other Acts to make conforming changes. It changes the definitions of "construction" and "performing services" to include moving construction related materials on the job site or to or from the job site. Effective January 1, 2008.

The Negative Impact of Misclassification

Ed. Note: Reprinted here are portions of the testimony of Kelly D. Pinkham, Department of Economics, University of Missouri at Kansas City. He testified May 8, 2007, before the U.S. House Committee on Ways and Means concerning the "Effects of the Misclassification of Workers as Independent Contractors."

Thank you for allowing me the opportunity to make a few remarks about the growing national problem of the improper classification of employees as independent contractors, a practice known as "misclassification." I have been asked to share with you the results of a research study completed by Dr. Michael Kelsay, Dr. James Sturgeon and myself in the department of economics at the University of Missouri at Kansas City.

Our study is titled "The Economic Costs of Employee Misclassification in the State of Illinois" and covers the period of 2001 through 2005. Support for our research was provided by the National Alliance for Fair Contracting, a labor-management organization.

Other studies in addition to ours have shown that misclassification by employers is increasing across the United States. The prevalence of misclassification varies across different industries and is particularly acute in the construction sector.

In 2001, state unemployment insurance audits found that more than 14% of the Illinois employers audited had misclassified workers as independent contractors. By 2005, this percentage was nearly 20%. This translates into approximately 64,000 total employers statewide.

When an employer practices misclassification in Illinois, the results show that this behavior is pervasive. The percentage of employees that are misclassified at a given company indicates that it is a common occurrence, not a random one, in those companies that do misclassify. The rate of misclassification by violating employers increased 21% from 2001 to 2005.

We estimate that an average of almost 8% of employees in Illinois was misclassified annually for the period 2001-2005. This grew from a level of 5.5% in 2001 to 8.5% in 2005. This represents a 55% increase in the rate of misclassified employees.

The number of employees statewide that were affected by the improper practice of misclassification averaged nearly 370,000 annually from 2001-2005. For 2005, this estimate increased to almost 420,000.

Estimates of Revenue Losses to the State of Illinois

1. Unemployment insurance system: We estimate that the unemployment insurance system lost an average of over $39 million every year from 2001-2005 in unemployment insurance taxes that were not levied on the payroll of misclassified workers as they should have been. During 2005, we estimate that the unemployment insurance system in Illinois lost almost $54 million.
2. State income tax revenue: According to published data, workers classified as independent contractors are known to under report their personal income; as a result Illinois suffers a loss of income tax revenue when employees are misclassified. According to the IRS reports, wage earners report 99% of their wages whereas non-wage earners (such as independent contractors) report approximately only 68% of their income. This represents a gap of 31%. Based upon IRS estimates that 30% of the income of misclassified workers is not reported, we estimate that an average of $125 million of income tax was lost annually in Illinois for 2001 through 2005. In just 2005, we estimate that $149 million of income tax was not collected in Illinois.
3. Worker's compensation insurance: Misclassification also impacts worker's compensation insurance. Among other effects, costs are higher for employers that follow the rules placing them at a distinct competitive disadvantage. A national study reported that the cost of worker's compensation premiums is the single most dominant reason why employers misclassify. Employers who misclassify can underbid the legitimate employers who provide coverage for their employees.

Based upon the statewide average worker's compensation insurance premium rates published by the State of Illinois, we estimate that, on average, $96 million annually of worker's compensation premiums were not properly paid for misclassified workers.

Worker's compensation premiums are much higher in the construction industry. In Illinois the statewide rate for

all industries is less than $3.00 (per $100 of payroll). However, within construction, rates can range from $8.01 for electrical wiring to $27.94 for concrete construction. Using an average premium rate of $10 per $100 of payroll, we estimate an annual average of $23 million of worker's compensation premiums were not properly paid by construction employers in Illinois.

In conclusion, misclassification of employees has a negative financial impact on individual workers, the Illinois state government, and the private sector in Illinois. The workers are directly impacted by being denied the protection of various employment laws and by being forced to pay costs normally borne by employers. State income tax revenues and the unemployment insurance system in Illinois are adversely affected. Misclassification also imposes additional costs on honest employers who play by the rules, on taxpayers, and the public at large. Furthermore, the operation of fair, competitive markets is profoundly compromised when the bidding process is undermined by the practice of misclassification.

As a beginning, we recommend the following steps for consideration by policy makers and public officials in Illinois: (1) the Legislature empower the IDES to perform "targeted" audits on problem employers like those done in other states, (2) develop meaningful penalties to deter those employers who intentionally and/or repeatedly violate state laws on misclassification, (3) seek to align the three different definitions for what constitutes an "independent contractor" currently applied by the IDES, the Department of Revenue and the Worker's Compensation Commission, and (4) review current authorities and procedures for the sharing of information among state agencies so that violations of state statutes will receive a comprehensive and coordinated response with the intent of recovering all payroll-related funds that are due and of deterring future willful violations.

Misclassification Hurts Everyone

Ed. Note: Here are portions of the statement to the House of Representatives Subcommittee on Workforce Protections by Cliff Horn on "Providing Fairness to Workers Who Have Been Misclassified as Independent Contractors."

I am here today to discuss the deliberate misclassification of workers as independent contractors, and the effects on our nation. My name is Cliff Horn, President of A. Horn Inc., a commercial mason contractor, working in the Chicago-land area. I am testifying today on behalf of the Mason Contractors Association of America, a national trade association representing Mason Contractors across the country and whose membership accounts for $2 billion in masonry sales annually.

Obviously, growing businesses need profitable contracts. However, for contracting bidding to be fair, the playing field has to be even. When a contractor misclassifies his employees as independent contractors, he gets a competitive disadvantage over the contractors who are playing by the rules and classifying their employees properly.

The misclassification of workers has impacted my business and it is impacted the construction industry at the local, state and federal level. By misclassifying employees as independent contractors, unscrupulous employers are able to avoid paying taxes and insurance. Businesses that misclassify employees as independent contractors can expect to reduce their labor costs by between 15 and 30 percent. This places contractors like me at a competitive disadvantage in an industry with 20% gross margins.

The American construction industry is being threatened by the misuse and abuse of independent contractors. Independent Contractors typically have no formalized training, no quality control, and no access to continuing education. There are legitimate independent contractors in the construction industry and it is not my intention to undermine those sole proprietorships and small businesses. The problem which we are here to address today is the intentional misclassification of individuals who are in fact employees but are classified as "independent contractors" by unscrupulous employers. Furthermore, there is the serious question of operations liability coverage in case of a claim, or public health scare. If business owners are taking shortcuts with payroll taxes and liability insurance, would shortcuts in construction methods and design specifications be out of the question? If some contractors are skirting around worker's compensation, then the firms who properly classify employees are forced to carry the burden. If workers compensation is unavailable to a worker, then our health care system absorbs the cost.

I strongly urge Congress to take action to clearly define who is and who is not an independent contractor. Thank you for your time.

US House Conducts Hearing:

Witnesses before the House Education and Labor Subcommittee on Workforce Protections testified at a hearing on March 27, 2007, that employers who misclassify workers as "independent contractors" cost the states and the federal government billions in revenue annually, deprive workers of protections under federal and state labor laws, and undermine the competitive bidding process.

NAFC's recently sponsored study on the Economic Costs of Employee Misclassification in the State of Illinois was cited as documenting the scope and nature of the worker misclassification crisis. Bricklayers' Union President John Flynn specifically cited NAFC's role in this important study and its documentation of a "crisis of national, universal urgency" because it depresses wage markets, threatens the finances of our government, and—most importantly—it undermines the fundamental dignity of workers and degrades the fabric of our society."

Other witnesses documented that employer misclassification of workers is a "crisis" that costs the federal government "well over $3.3 billion" per year, which does not include billions lost to the Social Security system and state workers' compensation systems. Catherine Ruckelshaus from the National Employment Law Project (NELP) urged more coordinated enforcement by the DOL Wage and Hour Division and the IRS to crack down on employers that misclassify workers in order to evade federal wage and overtime laws as well as payroll taxes, Social Security and workers' compensation premiums. Like other witnesses, she urged the Labor Department to adopt a targeted approach to enforcement and called for "more information sharing" between DOL and IRS.

Witnesses also testified that responsible contractors are placed at a disadvantage by cheating contractors who misclassify workers to avoid paying taxes, Social Security, health benefits, and other costs. Representatives of the Mason Contractors Association of

Moving On

Matt Patterson has moved back to Dallas, Texas, where he will be working with LIUNA's pension funds. The Board of Directors thanks him for a job well done and wishes him well in any of his future endeavors. Through his hard work and professional dedication to our cause of fair and competitive contracting, NAFC is currently in a great position to have a positive effect on issues such as the misclassification of employees and the abuse of "Independent Contractor" status.

Mike McNelly has resigned from the Board of Directors and is now Director of Governmental Affairs and Administrator. He brings with him a multitude of labor-management talents and many years of experience in labor law compliance, as well as numerous professional working relationships with government officials in Washington, DC.

We look forward to working with Mike as NAFC continues to press forward for fair and competitive contracting for all responsible contractors and their employees.

"Independent Contractors"

America said contractors who misclassify their workers cut labor costs by 15 to 20 percent and place complying employers "at a competitive disadvantage." The Mason Contractors Association further testified that such illegal practices impact on safety and health issues by not paying workers' compensation premiums: "If some contractors are skirting around workers' compensation, then the firms who properly classify employees are forced to carry the load . . . If workers' compensation is unavailable to a worker, then our health care system has to absorb the cost."

Witnesses pointed out states where increased efforts are underway to address misclassification. A "network of accountants and insurance brokers" whose "primary business" is to help employers in misclassifying workers is under investigation by the Illinois state attorney general.

Rep. Lynn Woolsey (D-Calif.), the subcommittee chairwoman, cited state efforts to address misclassification in California, which has a joint agency enforcement task force and presumes a worker who lacks a license to perform particular work to be an employee rather than independent contractor and Florida, which have "tightened up" its filing requirements for contractors. Rep. Tim Bishop (D-N.Y.) noted that state laws in Massachusetts and New Mexico presume an employer-employee relationship.

Rep. Woolsey said the panel will be sending a letter to the Labor Department to request information on its current enforcement and the DOL's response may lead to more hearings.

The Economic Costs of Employee Misclassification in Illinois is available at *www.faircontracting.org.*

Bipartisan Victory for Davis-Bacon

The Water Quality Financing Act, HR 720, recently passed in the US House by a vote of 303-108. There was an attempt by the Associated Builders and Contractors (ABC) and their supporters to strip the Davis-Bacon Prevailing Wage protections from the bill on the floor of the House. Even though President Bush issued a veto threat, specifically saying that this was an expansion of the Davis-Bacon Act, the House of Representatives rejected the ABC's efforts.

Rep. Richard Baker from Louisiana offered an amendment to strip out language in the bill providing comprehensive coverage to all rounds of funding from state revolving loan funds. The amendment was defeated by a vote of 280 – 140. In this vote, 50 Republicans joined 230 Democrats to support Davis-Bacon.

This vote to protect Davis-Bacon prevailing wages on federally assisted infrastructure investment was the first vote on Davis-Bacon in the US House of Representatives in 10 years. It was a significant victory putting the Congress on record as strongly supporting Davis-Bacon.

The Water Quality Financing Act will provide $14 billion to states in the form of grants. This money will help states fund clean water projects and meet EPA water quality guidelines. The Laborers worked in coalition with the Water Infrastructure Network and our partners in the National Construction Alliance to get this bill passed in the US House and to build support to keep Davis-Bacon wages intact. The next step will be for the Senate to take up a companion bill in the Senate Environment and Public Works Committee.

House passes Employee Free Choice Act (EFCA)

In early March, the House or Representatives passed EFCA, HR 800, with a bipartisan vote of 241-185. This bill would ensure a worker's right to join a union by requiring employers to recognize a union if a majority of employees has designated the union as their bargaining representative. Also known as "card check," this system offers a free and fair way for American workers to decide whether to join a union. The bill would also strengthen penalties against employers who violate the rights of their workers while they are trying to organize a union and negotiate their first contract.

Senator Ted Kennedy, Chair of the Senate Health, Education, Labor and Pensions Committee, will be holding hearings on EFCA and introducing the EFCA bill in the Senate. The White House has already threatened to veto this bill.

The Victims of Misclassification

Ed. Note: The following are portions of the Opening Statement of The Honorable Jim McDermott and The Honorable Richard Neal before the House Committee on Ways and Means on May 08, 2007.

I am pleased to join Chairman Neal in convening this joint hearing of the Subcommittee on Income Security and Family Support and the Subcommittee on Select Revenue Measures. We are here today to examine the effects of workers being misclassified as independent contractors.

For workers in America, one word can make all the difference in their well-being. That word is "employee." Without such a designation, a worker is excluded from most of the basic benefits and protections provided in the workplace. Millions of workers now find themselves in that precarious position.

When a worker is classified as an independent contractor, instead of an employee, he or she might be subject to huge back taxes because their employer did not withhold income taxes. They may be denied Social Security and Medicare when they retire because taxes were not paid on their behalf. If they are injured on the job, they may not have access to workers compensation.

And of great concern to my subcommittee, they may be denied unemployment insurance if they are laid-off. In fact, a study commissioned by the Department of Labor in 2000 estimated that 80,000 workers are improperly denied unemployment benefits every year because they are misclassified as independent contractors.

There are certainly times when the term independent contractor is justifiably applied, such as when an individual is in business for himself. But there are other occasions when a worker is under the control of an employer and should be designated an employee. Misclassification may occur because of definitional uncertainties, but it likely happens at least as frequently because some employers are looking for an easy way to cut costs. Misclassifying a worker as an independent contractor lets a business off the hook for various payroll taxes and employee benefits.

For workers in America, one word can make all the difference in their well-being. That word is "employee".

When unscrupulous employers commit this type of fraud, it hurts more than workers. Responsible businesses who play by the rules are placed at an unfair competitive disadvantage. Just envision two construction companies bidding on the same contract, and then consider what would happen if one of them paid taxes and provided benefits for its workers, while the other did not.

As a tax avoidance scheme, misclassification also robs both the States and the federal government of revenue. Prior estimates from the Internal Revenue Service (IRS) indicate billions of dollars of taxes go unpaid every year because of misclassification.

The misclassification of workers is not a new problem. However, the pressures of globalization and the rising cost of health and other benefits as a portion of total payroll costs suggest it will become a growing concern. Indeed, some of the recent State-level studies find an increasing amount of misclassification over the last few years.

Congressman Richard Neal:

Author and publisher Elbert Hubbard wrote that, "We work to become, not to acquire." For many of us that is true -- our work is much more than a paycheck. From it, we derive satisfaction and a sense of responsibility.

But as we will hear today, some workers fall victim to misclassification. Some are so eager to work, they simply do not hear that they are not employees. Some are disadvantaged or may have language barriers, and do not understand the implications. Many do not understand the law in this area.

Even Treasury and the GAO have acknowledged that the law is confusing and conflicting. It also seems clear, though, that we must do something to reverse the trend. The GAO estimated that misclassification results in federal income tax losses of $4.7 billion in one year. Other experts have found that my home state of Massachusetts loses hundreds of millions in tax revenue each year from this problem.

Legitimate businesses that play by the rules are also hurt here. It is my hope that the testimony today will help us find some reasonable solutions to deal with this problem.

The Hidden Dangers of the Misclassification Crisis

Ed. Note: Following is some of the testimony of John J. Flynn, President, International Union of Bricklayers & Allied Craftworkers before the House of Representatives Committee on Education & Labor March 27, 2007.

The misclassification of employees as independent contractors has become such a rampant problem, so great in its scope that it can no longer be thought of as just a "labor issue". To the contrary, Madam Chair, it is a crisis. It is a crisis of national, universal urgency, because it depresses wage markets, threatens the finances of our government and – most importantly – it undermines the fundamental dignity of workers and degrades the fabric of our society.

But the most insidious element of the misclassification crisis is this: the vast majority of Americans have no idea that it exists. Ask the average American the difference between an employee and an independent contractor, and you'll probably get a blank look. Ask the average American – for that matter, ask the average Member of Congress – how much tax revenue is stolen from the federal government by deliberate misclassification of employees as independent contractors, and I doubt that they'll know that it's well over 3.3 billion dollars per year.

Over 3 billion dollars – and that's an estimate that's nearly a decade old. But even that dated estimate – 3.3 billion dollars – is roughly 20 times the annual budget of the agency that's supposed to prevent misclassification, the Department of Labor's Wage & Hour Division. That's a significant loss to our government. And that doesn't even begin to account for the untold billions of dollars that have been lost to our Social Security system due to employee misclassification. How much of the alleged Social Security crisis is really due to the misclassification crisis? We just don't know, because the government hasn't been asking the question. Madam Chair, the first step in solving this crisis is making sure that the American people and their representatives know just how grave it is.

Now at this point, I think it might be helpful to outline just what employee misclassification is, and what it costs all of us. When an employer takes a worker, and treats that worker as an independent contractor rather than an employee – despite the fact that the employer controls and directs how the worker performs his or her work, and exercises financial control over the economic aspects of the worker's job – then the employer is misclassifying the worker. In so doing, the employer is evading tax obligations and worker compensation insurance obligations. As I remarked earlier, the federal government is denied well over 3 billion dollars every year in tax revenue because employees are misclassified as subcontractors. Social Security loses out on a similarly large amount. State and local governments shoulder a huge financial burden as a result of misclassification. And the nation's workers' compensation and unemployment insurance systems are starved of vital funds when employers misclassify workers as independent contractors.

Furthermore, by misclassifying employees as independent contractors, unscrupulous employers avoid labor and employment laws, prevailing wage laws, and other legislation intended to ensure that workers are dealt with in a fair and equitable manner. These employers deny their workers the opportunity to obtain the benefits regularly available to employees, such as unemployment insurance. Employers who misclassify their employees as independent contractors don't pay for their employees' health insurance – and that contributes to the public health crisis and the Medicaid crunch. And finally, when misclassified employees seek to organize to fight for their rights, they're told that they can't do so – because they supposedly aren't "employees" under the National Labor Relations Act. In short, Madam Chair, employee misclassification is the perfect tool for permanently disenfranchising working Americans. It creates an inescapable circle of low-wage work, and a bottomless pool of desperate workers.

ANNUAL NAFC CONFERENCE - MARK YOUR CALENDARS

The annual conference for NAFC will be held this year in Chicago, Illinois from October 1st through October 3rd 2007. Contractual negotiations for a hotel are currently on-going and as soon as they are concluded a notice and applications to attend will be posted on NAFC's web site at www.faircontracting.org as well as included in a mailing to our members. (The Board voted at its meeting in the spring to alternate the location of the annual conference between Washington, D.C. and another location every other year starting with this October.) Hope to see you all there.

Getting Basic Workplace Pro

Ed. Note: Here are portions of the testimony of Catherine K. Ruckelshaus of the National Employment Law Project (NELP) before the Committee on Education and Labor Subcommittee on Workforce Protections.

I and my colleagues at NELP have worked to ensure that all workers receive the basic workplace protections guaranteed in our nation's labor and employment laws; this work has given us the opportunity to learn up close about job conditions in garment, agricultural, construction and day labor, janitorial, retail, hospitality, home health care, poultry and meat-packing, high-tech, delivery, and other services. We have seen low, often sub-minimum wage pay, lack of health and safety protections and work benefits, and rampant discrimination and mistreatment of workers in these jobs.

NELP focuses on simply enforcing workplace laws on the books. In addition to bringing job standards actions against employers, NELP has partnered with labor and immigrant community groups in the states to promote good models for closing independent contractor loopholes.

With increasing frequency, employers misclassify employees as "independent contractors," either by giving their employees an IRS Form 1099 instead of a Form W-2, or by paying them off-the-books. Businesses also insert subcontractors, including temporary help firms and labor brokers, between them and their workers, creating another layer of potentially responsible entities and creating confusion among workers.

Genuine independent contractors constitute a small proportion of the American workforce, because by definition, an "independent contractor" operates a business. True independent contractors have specialized skill, invest capital in their business, and perform a service that is not part of the receiving firm's overall business. Most workers in labor-intensive and low-paying jobs are not operating a business of their own.

The problem is so pervasive that states have begun mandating studies of the problem and lead the way in reforms; in the last five years, at least nine states have collected data on the problem.

Just because an employer calls a worker an "independent contractor" does not make it legally true. But, these labels carry some punch and deter workers from claiming rights under workplace laws. Because misclassified independent contractors face substantial barriers to protection under labor and employment rules, workers and their families suffer. The same occupations with high rates of independent contractor misclassification

Providing Fairness to Workers

Ed. Note: Here are the prepared remarks of U.S. Rep. Lynn Woolsey (D-CA), chairwoman of the House Subcommittee on Workforce Protections, for a subcommittee hearing on "Providing Fairness to Workers Who Have Been Misclassified as Independent Contractors."

Today we will be examining the misclassification of workers as independent contractors. We know of course that there are true independent contractors out there but the thrust of the hearing is on workers who are misclassified and are really employees.

Our witnesses are principally from the building trades to tell us what is happening in that industry. But it is clear that this problem reaches workers in all employment sectors. And of course this practice affects the most vulnerable workers among us, many of whom are part of the "underground economy," where there is no documentation of the worker's relationship with the employer and workers are paid in cash.

The practice hurts everyone: workers who are not afforded the protection of labor laws; honest contractors who can't compete with contractors who misclassify their workers in order to lower their costs; and all of society as state and federal governments lose millions of dollars in revenue each year.

As our economy changes and employers are increasingly seeking ways to lower their costs, misclassification is becoming more prevalent. I am especially concerned that workers misclassified as independent contractors are not entitled to essential employee benefits. One of these benefits is workers compensation if workers are injured. The U.S. Department of Labor has stated that the number one factor for employers in misclassifying workers is the desire to avoid paying workers comp premiums and to otherwise avoid workplace injury and disability disputes.

A low wage worker who is injured or disabled and is not covered by workers' compensation – or health insurance for that matter – is devastated. There is no income when he or she cannot work and no help with medical treatment, prescriptions or bills.

In my own state of California, the problem is widespread as well. The

tection

are among the jobs with the highest numbers of workplace violations. This is because of the labor standards loopholes created by improper use of 1099 forms. The result is our "growth-sector" jobs are not bringing people out of poverty and workers across the socio-economic spectrum are impacted.

Workers could lose out on: (1) minimum wage and overtime rules; (2) the right to a safe and healthy workplace and workers' compensation coverage if injured on the job; (3) protections against sex harassment and discrimination; (4) unemployment insurance if they are separated from work and other "safety net" benefits; (5) any health benefits or pensions provided to "employees;" (6) the right to organize a union and to bargain collectively for better working conditions, and (7) Social Security and Medicaid payments credited to employee's accounts.

California State Department of Insurance has reported that of 800,000 employers in the state, 30 percent do not carry workers' compensation insurance. The state is currently in a lawsuit with Fed Ex over the misclassification of its couriers as independent contractors.

There is some good news coming out of California. Legislation in the State Assembly, S.B. 622, which if passed, will include penalties for misclassification violations, and the Attorney General has started a program to protect vulnerable workers from unscrupulous employers.

But it is clear that this is a national problem with implications for federal laws and our federal coffers; a problem we must solve.

Attorney Charged With Scheme To Defraud Government Agencies

Steven Coren, an attorney admitted to the New York Bar, was indicted on charges of scheming to defraud government agencies in connection with his clients' construction contracts with those agencies, conspiring to launder the funds wrongfully obtained from those agencies, and obstructing the federal grand jury investigation by directing one of his clients to destroy documents related to the scheme.

According to the indictment, from 2000 through 2005, Coren and several of his client-contractors defrauded government agencies by falsely representing that the contractors' workers were being paid the prevailing wage as required by the federal Davis-Bacon Act and New York State Labor Law.

Coren allegedly executed the scheme by creating the Contractors Benefit Trust (CBT) – a multi-employer entity for which he acts as the trustee. Coren instructed the contractors to deposit the fringe benefit portion of the prevailing wage into the CBT, making it appear that they had complied with Davis-Bacon and New York State law. Thereafter, Coren advised the contractors that they could use the funds for purposes other than providing benefits to the employees on whose behalf the contributions were made.

The government's investigation spanned more than five years and included the use of several cooperating witnesses who were contractor participants in the CBT. Following Coren's advice, the contractors defrauded several New York government agencies by falsely certifying payment of the entire prevailing wage to their employees when, in reality, they deposited the fringe benefit portion of the prevailing wage into the CBT and used most of the funds for unrelated purposes. Construction projects impacted by Coren's scheme include the Metro North Larchmont Railroad Station, 18 New York City public schools, and 20 public housing projects. Over the course of the scheme, just two of the involved contractors diverted more than $1,000,000 in funds that were rightfully due their employees, with a portion of those funds going to Coren himself.

US Department of Labor Inspector General Gordon S. Heddell stated, "It is reprehensible to prevent American workers from receiving their wage and compensation rights under the Davis-Bacon Act. The charges announced today confirms my office's dedication in investigating those who would defraud federal and state governments by both violating this important protection and denying workers the health and retirement benefits this law ensures. We will continue to work with other law enforcement agencies to fight those who engage in this activity."

If convicted, Coren faces a maximum sentence of 20 years imprisonment for mail and wire fraud, 20 year' imprisonment for money laundering, 20 years imprisonment for obstructing justice, and a $250,000 fine on each count of conviction.

Pro-Active Labor-Compliance Organization Outlines Goals

Established in 1986 as a Labor-Management Compliance Committee, The Center for Contract Compliance (CCC) is revered as one of the nations most pro-active Labor Compliance Organizations.

The Tippett vs. Anthony J. Terich, etc., et al. Court of Appeal decision (right to private action) was the result of a CCC enforcement case. The decision allowed an aggrieved employee to bring a direct action against a contractor for violation of the prevailing wage laws and that the remedial procedures expressed in the Labor Code §1775 are not exclusive.

Today, the Center is as active as ever supporting labor compliance programs, project labor agreements and the continuing education of workers, contractors and awarding agencies on labor code compliance for public works construction. The CCC works hand in hand with the various state and federal agencies in the undaunted efforts to minimize the underground economy, which has a devastating impact on the economy of California and the United States. Billions of dollars are lost annually from the construction industry by the illegal underpayment of wages, corporate tax evasion, under reporting of worker compensation hours, and un-taxed cash pay.

The Center for Contract Compliance fully supports mandatory and non-mandatory LCP's administered either by the agency or a third party provider, as long as the program complies with all the applicable labor codes and Code of Regulations written specifically for the purpose of effective compliance. An effective compliance program puts those contractors who are inclined to cheat on notice that the labor standards will be closely monitored and enforced, eliminating their opportunities to cheat. In our bold opinion, more compliance is better than less compliance, which is better than no compliance at all; and that mandatory compliance is better than optional compliance, which is better than no compliance at all.

James Reed, Executive Director

We believe that the more people that get behind our efforts and understand our goals, who view labor compliance as a positive element in construction, the greater opportunities exist to leveling the playing field for all legitimate, compliant contractors. The CCC is currently in the process of entering into a contractual agreement to expand the awareness of its activities and create a greater professional and positive perception in the business community. As well as teaching about the positive end results of labor compliance, project labor agreements and bonafide apprenticeship programs.

The project will last approximately one year with ongoing residual efforts to bolster fair contracting throughout the nation. With the passing of the infrastructure and education bonds in California it will be necessary to insure that a qualified, responsible work force is developed to complete all of the planned construction in an expeditious and safe manner with a quality end product. There can be no place in the future of the construction industry for the unethical, unscrupulous, greedy or cheating contractor. It is about competition and profit but not at the expense of the work force, end user or tax payer. These are our goals and we will make every effort to achieve them.

It is our sincere belief that as labor compliance ramps up throughout the nation and as the word gets out, fewer instances of intentional and flagrant violations will be noted. That ramp is a long uphill battle but one worthy of the efforts it takes. The National Alliance for Fair Contracting is a great conduit for the unification and joint cooperative efforts of local and regional compliance organizations. The unification will send a strong message across the nation to the workers, contractors, public agencies and the public in general, that things are changing. Tax payers, workers and the recipients of the end products will all benefit from our efforts. The term "our" refers to all national, regional and local labor compliance programs.

"Equality in Contracting" is our motto and goal.

Goverment Affairs

Long-time NAFC Supporter Marks Occasion in House of Representatives

Editor's Note: Majority Leader of the United States House of Representatives Congressman Steny Hoyer has been a long-time supporter of labor issues and especially the efforts of the National Alliance for Fair Contracting. NAFC wishes him much success in the future and is sincerely appreciative of his support in the past. Congratulations Mr. Majority Leader on this milestone in your career and "May the Wind Be at Your Back" as you continue the fight for all the working men and women in our country.

Press Release – June 4, 2007

Washington, DC – Congressman Steny Hoyer (D-MD) today became the longest serving Member of the U.S. House of Representatives in Maryland's history. Rep. Hoyer was elected in a special election in 1981 to fill the vacancy created by former Congresswoman Gladys Noon Spellman; he was sworn in on June 3, 1981.

"It is hard to believe that twenty-six years have passed since I was elected to the U.S. House, but in reaching this milestone I consider myself incredibly thankful for the opportunity given to me by the great people of Maryland's 5th District to serve as their representative in Congress," commented Rep. Hoyer. "It has been both a remarkable honor and a personal privilege, and I hope I have helped to make a positive difference in the lives of the people I have so proudly served all these years."

As Majority Leader, Rep. Hoyer is also the highest ranking Member of Congress in Maryland history - a distinction he also held while serving as the House Democratic Whip (2003-2006) and the House Democratic Caucus Chair (1989-1995).

Rep. Hoyer surpasses the previous record-holder, Democrat George Hyde Fallon, who represented Maryland's 4th District from 1945-1971.

Congressman Steny Hoyer

National Alliance for Fair Contracting

Membership Application

Organization ______________________________

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PLEASE MAKE CHECKS PAYABLE TO:

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905 16th Street, NW – 4th Floor
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The National Alliance for Fair Contracting (NAFC) is a well known professional nationwide labor-management trust founded in 1998 to encourage fair contracting in the field of publicly funded construction. An annual membership fee of only $600 entitles your organization to unrestricted access to the NAFC website at www.faircontracting.org, a subscription to the NAFC Fax Alert and the Prevailing Times Magazine, national legislative updates, consultation on the Davis-Bacon Act & Freedom of Information Act, as well as educational/training opportunities.

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Signature of Authorized Representative Name of Authorized Representative

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