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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-202129
HRI-BILL-01

March 18, 1981

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental
Affairs
United States Senate

Dear Mr. Chairman:

This refers to your request for our [views on S. 3], a bill to reduce the paperwork in the enforcement of Government construction contract provisions relating to wage rates paid to employees. S. 3, if enacted, would amend the Copeland Anti-Kickback Act (40 U.S.C. 276c (1976)) to eliminate the requirement that construction contractors working on Federal or federally assisted projects submit weekly statements to the Federal Government on the wages paid to each employee.

We strongly support the intent of the proposed amendment.

As demonstrated in our report issued to the Congress on April 27, 1979, entitled "The Davis-Bacon Act Should Be Repealed" (HRD-79-18), the requirements for weekly submission of payrolls under Department of Labor regulations are an unnecessary burden on both the contractors and contracting agencies, result in a substantial amount of unnecessary administrative costs for the contractors--and ultimately the Government--and serve very little purpose in enforcement of the act.

The Copeland Act deals with compensation to workers employed on Federal or federally assisted construction projects, including projects subject to the Davis-Bacon Act and 77 related statutes. The Copeland Act prohibits anyone under penalty of a fine or imprisonment, to induce an employee "to give up any part of the compensation to which he is entitled under his contract of employment." The act does not require submission of payrolls. It requires that Labor issue reasonable regulations requiring contractors and subcontractors to submit weekly statements "* * * with respect to the wages paid to each employee during the preceding week * * *."

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However, in implementing that provision of the Copeland Act, Labor has issued regulations (29 C.F.R. Part 3) which require each prime contractor and subcontractor on contracts of more than \$2,000 to submit a copy of the weekly payroll (including employee's name, trade, hours worked, and wages) in addition to the statement certifying compliance with the wage requirements of the Davis-Bacon Act and related acts. Labor has developed a combined payroll and compliance form for the contractors and contract agencies to use for these requirements.

Under Labor's regulations each contractor must (1) maintain detailed payroll records and related data during the course of the project, showing the wages and fringe benefits paid to each worker, (2) preserve the payrolls and related data for three years after completion of work under the contract, and (3) make them available for review by the contracting agency and the Department of Labor.

In addition, each prime contractor is responsible for (1) assuring that all subcontractors used on the construction project adhere to the above requirements, and (2) reviewing the certification and passing on the subcontractors' weekly payrolls to the contracting agency.

COMPLYING WITH WEEKLY REPORTING
REQUIREMENTS IS COSTLY

In our April 1979 report, we stated that the weekly payroll reporting requirements result in unnecessary contractor costs--which are passed on to the Government--estimated at about \$190 million a year.

The costs, to contractors to comply with records maintenance, certification, and other reporting requirements of the Davis-Bacon and Copeland Acts, include the following:

- Purchasing the payroll forms.
- Additional clerical time for typing of separate payrolls. Seldom did contractors use copies of their own payrolls, but instead transferred data to Government forms.
- Increased timekeeping and supervising. If an employee works in more than one classification, the different rates of pay for each must be recorded. Also, if an employee works partly on Federal and partly on private construction, different rates of pay may need to be recorded.
- Copying, because multiple copies of payrolls are required. Subcontractors send copies to the prime

contractor. The prime contractor sends copies to the agencies.

- Additional clerical time for contractors to review the subcontractors' payrolls for compliance.
- Insuring the subcontractor makes the necessary corrections, when errors are found.
- Mailing payrolls to the contracting agency.
- Storing the additional records for at least three years following the completion of work under the contract.

The weekly submission of certified payrolls is not required under other laws containing labor standard provisions such as the Service Contract Act of 1965. Moreover, we do not believe that the payroll requirement is vital to enforcement. Studies by the Commission on Government Procurement and other agencies (such as the Department of Commerce's Economic Development Administration) showed that the weekly payroll requirement contributes little to enforcement of the act.

Also, as part of our work on the Davis-Bacon Act, we reviewed the enforcement of the act by the contracting agencies and found little use of the payroll data in the enforcement efforts.

Other studies have also shown that the weekly payroll reporting requirement burdens the contractor and contributes to increased construction costs to the Government. For example, the high costs to contractors for complying with the act's payroll reporting requirement were discussed in a 1975 comprehensive report on the Davis-Bacon Act made by the Wharton School of the University of Pennsylvania. The report concluded that the payroll reporting requirement is time and money not well spent, and it recommended that the requirement at least be modified so that the payroll form is submitted only once-at the end of the job. Also, a report issued by the Massachusetts Institute of Technology in June 1978 stated "* * * the paperwork involved in the Davis-Bacon reporting requirement seems both onerous and nonsensical * * *."

More recently, in October 1979 the Congressional Research Service issued a report on the "Copeland Anti-Kickback Act: Elimination of Weekly Wage Reporting Requirements; Background and Pro-Con Analysis." In summarizing the arguments in favor of eliminating the weekly wage reporting requirement, the report included some compelling statistics on how the weekly reporting requirements inundate the Federal agencies with paperwork. The report stated that there are about 600,000 prime contractors and subcontractors annually who are each providing payroll forms

to their contracting agencies. This, the report states, potentially results in a total of up to 31,200,000 payroll forms being processed by Federal Government agencies annually.

In conclusion, we believe that the submission of weekly payroll records as required by Labor's regulations is an unnecessary administrative burden on both the contractors and contracting agencies, and that the records serve very little purpose. There is no question that it is costing contractors--and ultimately the Government--a substantial amount. The only question is--how much?

Therefore, in our April 1979 report we recommended that the Congress rescind the weekly reporting requirement of the Copeland Anti-Kickback Act. As of March 1, 1981, the Congress has not eliminated the requirement.

SENATE BILL 3

In place of the Copeland Act's present weekly reporting requirement, S. 3 would require that the contractor submit, "at the beginning and the end of the contract or subcontract period, as the case may be, a notarized statement with respect to the wages paid during the contract or subcontract period * * *."

We strongly support the objective to reduce the paperwork burden associated with Federal construction contracts. We continue to believe, however, that the weekly payroll reporting requirement should be eliminated completely.

If the Congress does not rescind the payroll reporting requirement, enactment of S. 3 to require contractors to submit only statements of wages paid at the beginning and the end of the contract periods, respectively, would be an improvement over the current requirements.

We believe the Committee should consider revising the language of S. 3 to ensure that the intent--to reduce the paperwork of construction contractors by rescinding the weekly payroll reporting requirement--is carried out.

As noted above, the Copeland Act itself requires only the weekly submission of a "statement" with respect to wages paid to employees working on construction projects subject to the Davis-Bacon Act or related acts. However, through its regulations Labor also requires the contractors to submit weekly copies of the detailed payroll records. According to a legal interpretation by Labor's Acting Deputy Solicitor in May 1969, the inclusion in the regulation

of a requirement for submission of weekly payrolls is not required but is authorized by the Copeland Act and Reorganization Plan No. 14 of 1950. This interpretation was reiterated by the Secretary of Labor in a letter dated January 31, 1976, to the Director, Office of Management and Budget, in which he requested approval for continuation of the weekly payroll reporting requirement. The Secretary's letter stated:

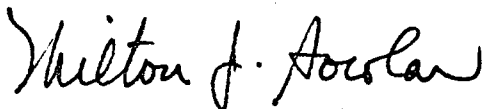
"I take this position for several reasons. In the first place, our recent study has made it obvious to me that the Copeland Act itself, in requiring a weekly statement of compliance, presupposes the existence of a tool for verification of such a statement, especially since we are dealing with an industry where experience has demonstrated that records are easily lost, destroyed, or scattered. Accordingly, even though the law itself does not require the simultaneous submission of the weekly payrolls with the weekly statement of compliance, I believe it was both necessary and proper to institute such a requirement to implement the statutory intent of the Copeland Act that laborers and mechanics working on construction projects subject to the labor standards provisions of the Davis-Bacon and its related Acts be paid properly. I agree with the positions of the Department which has consistently interpreted the Copeland Act requirement to call for an accompanying full wage record on a weekly basis * * *."

S. 3, as presently worded, would only rescind the requirement that contractors submit the weekly statement of wages paid to the employees. The bill does not deal directly with the submission of weekly payroll records required by Labor's regulations. In view of Labor's interpretation that the Copeland Act authorizes the Department to require submission of weekly payroll records along with the weekly statement, Labor could continue to require that weekly payroll records be submitted. Or Labor could require contractors at the end of the contract period to submit copies of payroll records for all weeks covered by the contract.

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To overcome these potential problems and reduce the construction contractors' paperwork, administrative, and financial burdens, the Committee should consider (1) revising the language of S. 3 to prohibit regulations requiring the submission of weekly payroll records or (2) specifically stating in the Committee report its intent to eliminate the requirement for submission of weekly payroll records as well as the weekly compliance statement of wages paid.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Aroslan".

Acting Comptroller General
of the United States