

**SO-CALLED “ANTI-KICKBACK ACT” AND REGULATIONS PROMULGAED PURSUANT**

**THERE TO BY THE SECRETARY OF LABOR, US DEPARTMENT OF LABOR**

[Replaces Section 1 of the Act of June 13, 1934, (48 Stat. 948, 40 U.S.C., Section 276b) pursuant to the Act of June 25, 1948, 62 Stat. 862]

**KICKBACKS FROM PUBLIC WORKS EMPLOYEES;**

Whoever, by force, intimidation or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than FIVE THOUSAND (\$5,000.00) DOLLARS or imprisoned not more than five (5) years.

SECTION 2 OF THE ACT OF JUNE 13, 1934, AS AMENDED (48 Stat. 948, 62 Stat. 862, 63 Stat. 108, 72 Stat. 967, 40 U.S.C., Sec. 176c):

The Secretary of labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or work financed in whole or in part b loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding work week. Section 1001 of Title 19 (United States Code) shall apply to such statements.

Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A, Code of Federal Regulations, Part 3. The term “this part”, as used in mentioned. Said regulations are as follows:

“CONTRACTORS & SUBCONTRACTORS ON PUBLIC BUILDING & PUBLIC WORK AND ON BUILDINGS & WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES”

Section 3.1: PURPOSE AND SCOPE

This part prescribes “anti-kickback” regulations under Section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal Wage standards and which is for the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. This part is intended to aid in the enforcement of the minimum wage provisions of the

Davis-Bacon Act and the various statutes dealing with Federally assisted construction that contain similar minimum wage provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours and Safety Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

### Section 3.2: DEFINITIONS

As used in the regulations in this part:

(a) The terms “building” or “work” generally include construction activity as distinguished from manufacturing, furnishing of materials or servicing and maintenance work. The terms include, without limitation, buildings, structures and improvements of all types such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing and landscaping. Unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, the manufacturer or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquire title to such materials, articles, supplies or equipment during the course of the manufactured for furnished) is not a “building” or “work” within the meaning of the regulations in this part.

(b) The terms “construction”, “prosecution”, “completion”, or “repair” mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decoration, the transporting of materials or supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms “public housing” or “public work” include buildings or work for whose construction, prosecution, completion or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereto is in a Federal agency.

(d) The term “building or work financed in whole or in part by loans or grants from the United States” includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is

made directly or indirectly from funds provided by loans or grants by a Federal agency. The terms do not include building or work for which Federal assistance is limited solely to land guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is “employed” and receiving “wages” regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term “any affiliated person” includes a spouse, child, parent or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term “Federal Agency” means the United States, the District of Columbia and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishment, agencies and instrumentalities.

### Section 3.3: WEEKLY STATEMENT OF COMPLIANCE

(a) As used in this section, the term “employee” shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by these regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages and shall be in the following form:

WEEKLY STATEMENT OF COMPLIANCE

Date \_\_\_\_\_

I, \_\_\_\_\_,

(Name of Signatory)

hereby state:

( Title)

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_

(Contractor or Subcontractor)

on the \_\_\_\_\_; that

(Building or Work)

during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_

\_\_\_\_\_ from the full weekly wages earned by any

(Contractor or Subcontractor)

person, other than permissible deductions as defined in regulations, Part 3, CFR Part 3), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 537; 40 U.S.C. 276c), an described below:

(Paragraph describing deductions, if any)

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State Apprenticeship and Training Agency recognized by the Bureau of Apprenticeship and Training; United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

\_\_\_\_\_  
Signature and Title

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure) shall apply to such statement as provided at 72 Stat. 967 (18 U.S.C. 1001), among other things, provides that whoever knowingly and willfully makes or uses a document or fraudulent statement of entry, in any manner within the jurisdiction of any

department or agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal Agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

Section 3.4: SUBMISSION OF WEEKLY STATEMENTS AND THE PRESERVATION AND INSPECTION OF WEEKLY PAYROLL RECORDS

(a) Each weekly statement required under Section 3.3 shall be delivered by the contractor or subcontractor within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative and by authorized representatives of the Department of Labor.

Section 3.5: PAYROLL DEDUCTIONS PERMISSIBLE WITHOUT APPLICATION TO OR APPROVAL OF THE SECRETARY OF LABOR

Deductions made under the circumstances of in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor.

(a) Any deduction made in compliance with the requirements of Federal, State or local law, such as Federal or State withholding income taxes and Federal Social Security Taxes.

(b) Any deduction of sums previously paid to the employees as a bona fide

prepayment of wages when such pre-payment is made without discount or interest.

(c) Any deduction of amounts required by court process to be paid to another, unless, the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exist.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representative of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities or retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability or for insurance to provide any of the foregoing or unemployment benefit, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents. Provided, however, that the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) It is either: (i) Voluntarily consented to by the employee in writing in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments; provided, however, that collective bargaining agreement between the contractor or subcontractor and representatives of its employees for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the “reasonable cost” of board, lodging or other facilities meeting the requirements of Section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made the additional records required under Sec. 516.25(a) of this title shall be kept.

**Section 3.6: PAYROLL DEDUCTIONS PERMISSIBLE WITH THE SECRETARY OF LABOR**

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Section 3.5. The Secretary may grant permission whenever he finds that:

- (a) The contractor, subcontractor or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend or otherwise;
- (b) The deduction is not otherwise prohibited by law;
- (c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuation, or (2) provided for a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and
- (d) The deduction serves the convenience and interest of the employee.

**Section 3.7: APPLICATIONS FOR APPROVAL OF THE SECRETARY OF LABOR**

Any application for the making of payroll deduction under Section 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

- (a) The application shall be in writing and shall be addressed to the Secretary of Labor.
- (b) The application shall identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions only on specific, identified contracts, except upon a showing of exceptional circumstances.
- (c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of Section 3.6. The affirmation shall be accompanied by full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

Section 3.8: ACTION BY THE SECRETARY OF LABOR UPON APPLICATIONS

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of Section 3.6; and shall notify the applicant in writing of his decision.

Section 3.9: PROHIBITED PAYROLL DEDUCTION

Deductions not elsewhere provided for by this part and which are not found to be permissible under Section 3.6 are prohibited.

Section 3.10: METHODS OF PAYMENT OF WAGES

The payment of wages shall be by cash, negotiable instruments payable on demand or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Section 3.11: REGULATIONS PART OF CONTRACT

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see Section 5:5(a) of this subtitle.

F. Ray Marshall  
Secretary of Labor