

## INSIGHT

## ECONOMY

# Labor law snubbers gorged on stimulus

Companies claimed workers as contractors, investigation discovers.

By Mandy Locke and Franco Ordóñez  
McClatchy Newspapers

WASHINGTON — The largest government infusion of cash into the U.S. economy in generations — the 2009 stimulus — was riddled with cheating in a massive labor scheme that harmed workers and American taxpayers.

At the time, government regulators watched as money slipped out the door and into the hands of companies that rob state and federal treasuries of billions of dollars each year on stimulus projects and other construction jobs across the country, a yearlong McClatchy investigation found.

A review of public records in 28 states found that construction companies routinely listed workers as contractors instead of employees in order to beat competitors and cut costs. The federal government, while cracking down on the practice in private industry, let it happen in stimulus projects in the rush to pump money into the economy at a time of crisis.

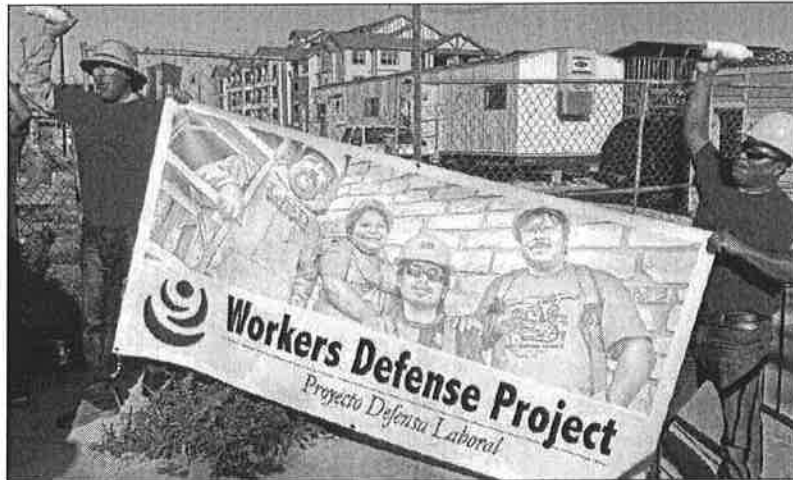
Companies across the country avoided state and federal taxes and undercut law-abiding competitors. They exploited workers desperate for jobs, depriving them of unemployment benefits and often workers' compensation insurance.

In Florida, a McClatchy analysis shows nearly \$400 million a year in squandered tax revenue from construction firms and their workers. In North Carolina, nearly \$500 million a year. And in Texas, \$1.2 billion.

The problem known as misclassification is so well-understood in the U.S. economy that government has vowed to fix it for years. Federal investigators have hammered private companies doing private work, collecting millions in back wages from restaurateurs, nail salon owners and maid services.

But when American tax dollars are at stake, as with President Barack Obama's economic stimulus package, few in government even talked about the problem, let alone prevented it.

McClatchy's analysis of payroll records for government-backed housing projects shows the federal government losing billions in tax revenue



Construction workers and supporters demand payment from general contractor Sitek Group last year for building the Buckeye Trail Commons apartments in Dallas. The Worker's Defense Project, a worker's advocacy group, protested what it said were worker-pay abuses at the Dallas housing project.

RON JENKINS/FORT WORTH STAR-TELEGRAM 2013

each year from the construction industry alone — and at a time when states and the nation could ill afford it.

## The investigation

Reporters from eight McClatchy newspapers and its Washington bureau, along with ProPublica, a nonprofit investigative news organization in New York, also visited work sites, spoke with hundreds of workers and dozens of company owners, and interviewed economists, union leaders, policymakers and some of the highest-placed government overseers in Washington.

The investigation found:

- Companies using stimulus money routinely snubbed labor law and the Internal Revenue Service by treating workers as independent contractors in a clear violation of what's allowed.

- The scofflaws undercut the bids of competitors who refused to push their roofers, painters and electricians off their payrolls and into limbo.

- Laborers lost unemployment insurance and, in many cases, workers' compensation benefits and fair wages. Some didn't even know they were being hurt.

- All of this happened under the noses of government officials. From the White House down to county-level agencies, regulators could have stopped it.

Here's how the scam works for companies doing public business:

The companies declare on a routine form that the hourly wage earners working for them aren't employees, as laws and several federal regulations require them to be, but are independent subcontractors. Those companies then don't withhold income tax or file payroll taxes. They don't pay unemployment tax. And they aren't obliged to provide workers' compensation.

Scofflaws can save 20 percent or more in labor costs by treating employees as independent contractors.

No single factor determines whether a worker must be an employee. McClatchy reporters showed samples of the payroll records to more than a dozen current and former labor investigators, IRS auditors and lawyers who handle labor disputes. They all doubted that company owners would be able to justify treating the workers listed there as independent contractors.

Those working to rid the construction industry of misclassification were astonished this practice passed muster on federal jobs.

"So we the taxpayers are paying the tax cheaters who are exploiting their workers and stealing work from law-abiding employers?" said Matt Capece, a lawyer with the United Brotherhood of Carpenters and Joiners of America, after reviewing payroll records collected by McClatchy.

"No wonder the bad guys

are running roughshod over the industry," he said.

## Didn't know it was wrong

President Obama in 2009 signed into law the American Recovery and Reinvestment Act, known as the stimulus bill, the largest government-spending program in generations. Money began to flow to community projects across the country.

To do business with the government, companies had to file certified payroll records each week to prove they were paying their workers prevailing wages as required by a 1930s-era labor law called the Davis-Bacon Act. The feds establish pay rates for each job in each community.

That paperwork offers a window into the business practices of construction companies: Does the company consider its workers employees? Bosses must list taxes withheld from employees' pay; for contractors, they don't deduct taxes.

For companies that treat workers as contractors, the space to list deductions on the records is blank. Some owners scribble in explanations: "pays own taxes" or "1099," the name of a tax form given to independent contractors.

"I didn't think I was doing anything wrong," said Lazaro Villar, who owns a painting and drywall company in Homestead, Fla.

To win a bid painting a low-income housing project in South Florida in late 2012,

Villar said, he had to keep his costs low.

He shaved some expenses by pushing taxes onto his workers and forgoing unemployment tax. He took the government's silence as permission.

"No one told me I was wrong," Villar said. "The general contractor never told me I was doing anything wrong. The housing authority never told me."

## Follow rules, lose jobs

Brian "Andy" Anderson of Mesquite, south of Dallas, has 12 years in the steel and rebar business. At one time, his company had 80 employees. In the first year of the recession, though, he had to drop to 20. Soon he couldn't even keep 14 busy.

Anderson felt a glimmer of hope in February 2009 when he turned on the news to see Obama announce a lifeline in the form of a stimulus package. Through the summer, though, his company's bids on dozens of stimulus projects yielded nothing.

A review of federally funded housing projects in Texas shows a third of the companies that won federal housing jobs treated their workers as independent contractors — not employees, as Anderson did.

Anderson now suspects that the money he spent on unemployment insurance, workers' compensation insurance and the employer's share of Social Security and Medicare cost him those jobs.

Knowing why he lost — by following the government's laws — frustrates him.

"Here in Texas, it's just anybody can do anything at any time," Anderson said. "It's a free-for-all."

The local officials who could catch the problem don't. In Houston's housing authority, for example, about 25 percent of the workers on two projects McClatchy examined were misclassified.

Brian Gage, a senior policy adviser to the Houston Housing Authority, said his staff didn't pay any attention to tax withholding, which would signal whether a worker is an employee or independent contractor.

He said his staff simply checked hourly rates and trusted that contractors were doing right by their tax obligations.

"I'm not sure we want to get into any IRS business," Gage said.

## NHTSA

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In the late 1990s, it was lambasted by lawmakers and consumer advocates for fail-