



The Weekly National News Bulletin for ASA Members Only

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ASA's 1099 Repeal Effort Succeeds in Congress — Association Calls on President Obama to 'Close the Deal'

After a year-long campaign of email messages and visits to legislators, construction subcontractors succeeded in convincing Congress to pass legislation repealing a burdensome paperwork requirement. On April 5, the U.S. Senate voted to repeal the expanded IRS Form 1099 reporting requirement contained in the federal health care law (Public Law 111-148). The repeal legislation, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act (H.R. 4), sailed through the Senate by a vote of 87-12 (yeas-nays). The U.S. House of Representatives passed the legislation on March 3, 2011. "Congress heard the concerns of ASA members across the country and made the right decision: to eliminate the new 1099 reporting burdens before they started really hurting subcontractors," said 2010-11 ASA President Timmy McLaughlin, Austin Construction

REPORTING
COSTS OF HEALTH
CARE COVERAGE
ON W-2S

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Company, Summerville, S.C. "Now, President Obama should close the deal and sign H.R. 4." If the president signs the bill, it will repeal the health care law's provisions requiring subcontractors and other businesses to file information returns with the Internal Revenue Service documenting aggregate payments of \$600 or more made to vendors, including corporations, in tax years 2012 and beyond. According to a September 2010 survey conducted by ASA, many construction subcontractors used to filing 25 or fewer 1099 returns per year would file 200 or more 1099 returns per year if repeal fails. Take a moment to [thank your senators](#) for helping to advance 1099 repeal, or share your disappointment with those who voted against it. *For more information, contact ASA at (703) 684-3450, Ext. 1333, or GovernmentRelations@asa-hq.com.*

U.S. District Court: Terms in Miller Act Bonds Limit Claims

Subcontractors and suppliers on federal construction projects can no longer assume that payment protection under a Miller Act payment bond will remain in effect throughout the duration of the project. In a recent case, the U.S. District Court for Nevada held that a surety may expressly limit the duration of a payment bond issued under the Miller Act. In *U.S. ex rel Russel Sigler, Inc. v. Associated Mechanical, et al.*, the court held that that Sigler, a supplier to a mechanical contractor, did not have a legitimate claim on a bond because the bond expired before Sigler performed work on the project. The prime contractor's payment bond expressly stated that the payment bond terminated at the end of the project or 12 months after the effective date of the bond, *whichever occurred first*. Thus, subcontractors and suppliers on federal construction should obtain a copy of the payment bond and review it for any time limitations or similar restrictions. A subcontractor or supplier on a federal construction project can obtain a copy of the bond from the government's contracting officer on the project. *Learn more*

about payment bonds in ASA's [Lien and Bond Claims in the 50 States](#) (Item #3006), \$42 for members and \$50 for nonmembers.

Alert ASA to the Most Problematic Federal Regulations by April 22

Which federal regulations are placing unreasonable burdens on your subcontracting business? ASA wants to know which Department of Labor, General Services Administration or other federal regulations are unreasonably difficult, expensive or outdated. Let ASA know by April 22, so ASA can incorporate your feedback in comments that it is preparing. Federal agencies are seeking comments on their regulations in response to President Obama's [Executive Order 13563: Improving Regulation and Regulatory Review](#), which requires all federal agencies to develop plans for periodically reviewing "existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives." *Submit your comments to GovernmentRelations@asa-hq.com.*

IRS Provides Guidance on Reporting Costs of Health Care Coverage on W-2s

The Internal Revenue Service published new [guidance](#) for employers on how and when to report the cost of employees' health care coverage on W-2 forms. The health care law passed last year requires employers to report the cost of employer-provided health care coverage on

employees' W-2s. An IRS rule made this requirement optional for 2011 W-2 forms. For small businesses (those filing fewer than 250 W-2 forms), the information reporting requirements are optional through 2012. Those employers choosing to report coverage on W-2 forms earlier will find answers in the guidance to questions such as: What counts as "coverage" that should be reported? How should costs of coverage be determined? And how should coverage be reported? Reporting employer-sponsored coverage on W-2 forms does not make the cost of coverage taxable income for employees. *For more information or to comment, visit www.irs.gov.*

What's New with ConsensusDOCS Documents? Find Out in ASA's Webinar

Earlier this year, ConsensusDOCS documents underwent substantial revisions to address the evolving needs of the construction industry. The industry is markedly different from when the ConsensusDOCS documents were first released in 2007. These revised ASA-endorsed contracts and documents accommodate the rapid adoption of today's technologies and green building goals, foster better results and prevent conflicts that often lead to litigation. ASA provided an education workshop on the new and improved ConsensusDOCS documents at the 2011 Business Forum and Convention in March in Naples, Fla., and will provide another education opportunity next Tuesday, April 12. ASA will offer the webinar, "[Benefiting from the New and Improved ConsensusDOCS Documents](#)," from 12:00 to 1:30 p.m. EDT. Julie Neuroth, Esq., Benjamin, Yocum & Heather, LLC, Cincinnati, Ohio, will explain:

- Why these documents were updated.
- What's new and improved in key documents like the *ConsensusDOCS 750 Agreement Between Contractor and Subcontractor*.

- How these changes benefit subcontractors.

The webinar costs \$99 for members or \$179 for non-members. The number of people who can participate at your location is not limited. The price includes one phone and Internet connection to the live event, plus a CD-ROM containing an audio-visual recording of the webinar mailed afterward. [Register online](#) or call (703) 684-3450, Ext. 1304.

Welcome New ASA Bronze Sponsor ZamRay

ZamRay provides a forum for contractors, suppliers and distributors to buy and sell surplus materials, tools, equipment and vehicles. ZamRay also offers a construction-specific employment marketplace where companies can post available job opportunities and candidates can search for jobs and submit free resumes and profiles about themselves. ASA members can get a free listing in ZamRay's Service Directory with over 30 categories and 130 cities. All material and employment ad postings are only \$24.99 for 90 days, and ASA chapters can receive 15 percent off. *For more information, visit www.ZamRay.com.*

Subject: ASAToday 2011

President McLaughlin: 'Our Association Has Renewed the Promise of ASA'

ASA President (2010-11) Timmy McLaughlin, Austin Construction Company Inc., Summerville, S.C., reviewed ASA accomplishments in the areas of federal, state and legal advocacy, education and chapter support in his "State of the Association" address on March 4, 2011, at the ASA Business Forum & Convention 2011 in Naples, Fla.:

- **Federal Advocacy.** ASA has been a strong, and

sometimes the sole, voice for subcontractor rights in Washington. McLaughlin noted ASA's renewed commitment to advocacy. "ASA, its volunteers and staff promise to work diligently on behalf of subcontractors so that you can be powerful advocates for your own companies and for our construction industry," he said. ASA has successfully worked with Congress to enact laws that help subcontractors. He cited as two examples ASA's efforts to require federal agencies to make subcontractor payment an evaluative factor in their award of prime contracts and efforts to require federal prime contractors to explain to their contracting officers why they did not subcontract with those small businesses whose bids they used "in preparing their bid or proposal."

- **State Advocacy.** McLaughlin recognized the excellent team of subcontractor advocates who work hard every day in their states, citing [The ASA Report: The Policy Environment in the States](#). He touted successes in Arizona, California, Kansas, Oklahoma and Tennessee.
- **Legal Advocacy.** ASA intervenes in potentially precedent-setting court cases across the country through the [Subcontractors Legal Defense Fund](#). McLaughlin highlighted SLDF cases in California, Maryland, North Carolina, Ohio, Tennessee and Texas.
- **Education.** McLaughlin added that ASA empowers subcontractors to be their own best advocate for their businesses by providing resources and education. [ASAToday](#), [The Contractor's Compass](#) and resources like the [ASA chart on prompt payment laws in the 50 states](#) are just a few resources ASA offers to keep subcontractors informed. He reminded those in attendance that just a few weeks ago ASA released updated [bidding and negotiating tools](#) to help members get better subcontracts. McLaughlin recognized the [Circle Club](#) members for their contributions and thanked ASA's generous sponsors: Platinum Sponsor, CNA; Gold Sponsor, Project DocControl; Silver Sponsors, Allstate Insurance and Fringe Benefit Group; and Bronze Sponsors, The Blue Book and UPS Freight.
- **Chapter Support.** McLaughlin noted that part of ASA's strategic plan is to support local chapters. ASA supports chapters through programs such as the

[“Workshop in a Box”](#) program and the ASA hot prospect program. He also discussed ASA’s new [Subcontractor Power Points Program](#), which rewards members who help ASA and its chapters recruit new members.

Get a glimpse of the ASA Business Forum and Convention 2011 by visiting the [photo album](#) on the ASA Facebook page.

ASA Members Elect Officers and Directors

ASA members elected Kerrick Whisenant, Cornerstone Detention Products Inc., Tanner, Ala., as ASA’s president for 2011-12 on March 4, 2011, at the ASA Business Forum and Convention 2011 in Naples, Fla. ASA members also elected Walter Bazan, Jr., Bazan Painting Company, St. Louis, Mo., as 2011-12 vice president; Mike Jones, M.L. Jones Acoustics Inc., Tulsa, Okla., as 2011-12 treasurer; and Jack Austhof, Sobie Inc., Dutton, Mich., as 2011-12 secretary. ASA members elected five national directors as well: Robert Abney, F.L. Crane & Sons Inc., Southaven, Miss.; Bob Conshue, RMJ Electrical Contractors Inc., Phoenix, Ariz.; M. Brian Johnson, Soil Consultants Inc., Charleston, S.C.; Thomas McDonnell, George McDonnell & Sons Truckpointing Company Inc., St. Louis, Mo.; and James “Chip” Rohrbach, F.A. Rohrbach Inc., Allentown, Pa. The directors will serve three-year terms beginning July 1, 2011.

ASA Presents John H. Hampshire Award to David Bradbury for Lifetime Service

ASA honored David Bradbury, Precision Concrete Construction Inc., Atlanta, Ga., with the John H. Hampshire Distinguished Lifetime Service Award on March 4, 2011, at the ASA Business Forum & Convention 2011 in Naples, Fla. Presented to an individual who shares the vision of ASA's early leaders, and dedicates his or her lifetime working to achieve that vision, the John H. Hampshire Award is ASA's highest honor. "I have the honor of presenting the Hampshire Award to an individual who has long fostered the mission of ASA and truly exemplifies its values," said ASA Past President (2006-07) Stephen Rohrbach, F.A. Rohrbach, Allentown, Pa. "It is my great privilege to present ASA's most prestigious John H. Hampshire Award to one of ASA's heroes and one of my heroes." An industry veteran and past president (2007-08) of ASA, Bradbury served on numerous ASA committees and task forces, including the Bylaws, Finance and Nominating Committees and Task Force on Legacy, Task Force on Government Advocacy – Federal and Task Force on Model Contract Documents.

ASA Members' Push for House Repeal of Expanded 1099 Reporting Succeeds

On March 4, 2011, the U.S. House of Representatives voted to repeal the IRS Form 1099 expanded reporting requirement when it passed the Small Business Paperwork Mandate Elimination Act of 2011 (H.R. 4) [314-112](#) (yeas-nays). In the days leading up to the vote, ASA members sent hundreds of messages to their members of Congress asking them to support repeal. The bill now moves to the U.S. Senate, where final debate is expected to begin in the coming weeks. The Senate passed repeal as part of a bigger legislative package, but both chambers must pass identical legislation for the bill to go to President Obama's desk for signature. With the finish line in sight, do your part to help 1099 repeal become a reality. Visit the [ASA Web site](#) and click "Ask Your Senators to Support H.R. 4 and Finally Repeal the Expanded 1099 Reporting Requirement" to send your message today.

Virginia Subcontractors Keep Bond Threshold from Increasing to \$1 Million

ASA, the D.C. Metropolitan Subcontractors Association and their allies convinced Virginia legislators to scale back proposed changes to Virginia's Public Procurement Act ([H.B. 1951](#)) that would have raised the minimum contract amount required for bid, performance and payment bonds on non-transportation-related construction projects to \$1 million. After hearing opposition to the bill from construction subcontractors and other stakeholders in the industry, the House Committee on General Laws lowered bill's the bonding threshold to \$500,000. Currently, the minimum contract amounts are \$100,000 for non-transportation-related construction contracts and \$250,000 for transportation-related projects, partially or wholly funded by the commonwealth. The bill now awaits the governor's signature. *For more information, visit the [Virginia General Assembly Web site](#).*

ASA and ASA–Greater Kansas City File to Defend Little Miller Act Bond Protections

On March 8, 2011, ASA and the ASA–Greater Kansas City chapter asked the Missouri Court of Appeals Western District to allow them to file a brief so they can argue that “telescoping” is acceptable under Missouri’s Little Miller Act. In their [request](#) to file a brief in *City of Kansas City, Missouri v. Travelers Casualty and Surety Co. of America*, ASA and ASA–GKC argued that “the trial court erred in failing to apply the well-recognized public policy behind telescoping that would allow LaFarge, the concrete supplier on a public

sewer project, to establish the requisite degree of privity to allow it to pursue its bond claim under Missouri's Little Miller Act." In the underlying case, a payment dispute arose, and LaFarge tried to make a claim under the payment bond. Since Missouri's Little Miller Act is clear that its protections extend only to three tiers of potential claimants, LaFarge was told it was "too far removed" to "make a proper claim" on the bond as a fourth tier contractor. At trial LaFarge argued that two of the tiers above it should be "telescoped" into a single entity for purposes of determining who is entitled to the bond protections. The two tiers above it in question were closely related companies that were so intimately connected – they shared the same office, copier, lawyer, accountant and insurance agent – that federal law would likely have applied "telescoping" to extend the federal Miller Act protections to an additional tier. The trial court ruled against LaFarge, saying that Missouri law is silent on whether telescoping is acceptable. Lee B. Brumitt, Esq. and Patrick J. Kaine, Esq., Dysart Taylor Lay Cotter & McMonigle, P.C., Kansas City, Mo., prepared the request to file a brief on behalf of ASA and ASA–GKC. *To donate or to learn more about this and other Subcontractors Legal Defense Fund cases, visit www.sldf.net.*

President Signs Short-Term Extension of Highway and Transit Programs

On March 4, 2011, President Obama signed the Surface Transportation Extension Act of 2011 (H.R. 662), authorizing FY2010 funding levels for federal highway and transit programs through Sept. 30, 2011. This is the seventh extension of the program since it expired in September 2009. "I applaud Congress for working in a bipartisan manner to pass this extension," said 2010-11 ASA President Timmy McLaughlin, Austin Construction Company Inc., Summerville, S.C. "But until Congress passes and the president signs a new, multi-year surface transportation bill, construction subcontracting firms will remain slow to re-hire and the pace at which the construction industry is emerging from the recession will not quicken." *For more information,*

contact ASA at (703) 684-3450, Ext. 1333, or GovernmentRelations@asa-hq.com.

ASA Honors Chapter, Company and Individual Achievements

On March 4, 2011, at the ASA Business Forum & Convention 2011, ASA awarded its Golden Hammer, Outstanding Service and President's Awards, and presented seven firms with Excellence in Ethics Certificates. For the third year in a row, the Golden Hammer Award went to ASA–Greater Kansas City, this time for spearheading major retainage reform for both public and private projects in Kansas. Vince Migliazzo, Mark One Electric Company, Kansas City, Mo., accepted the award on behalf of ASA–GKC. Chip Rohrbach, F.A. Rohrbach, Inc., Allentown, Pa., received the Outstanding Service Award for his service to ASA. ASA President Timmy McLaughlin, Austin Construction Company Inc., Summerville, S.C., presented Excellence in Ethics Program certificates to: F.A. Rohrbach, Allentown, Pa.; Holes Incorporated, Houston, Texas; Lloyd's Construction Services, Savage, Minn.; Precision Concrete Construction Inc., Atlanta, Ga.; Markham Contracting Company, Phoenix, Ariz.; Viracon Inc., Owatonna, Minn.; and Western Engineering Contractors Inc., Loomis, Calif. McLaughlin presented the President's Award to Walter Bazan, Jr., Bazan Painting Company, St. Louis, Mo.

ASA LinkedIn Group Reaches 500-Member Milestone

Francie Dix, co-executive director of the ASA of the Heart of Texas chapter and president, Dix Services, Austin, Texas, is the 500th member of ASA's LinkedIn group. Dix will receive

a free copy of "[3, 2, 1 Contact: Expanding Your Professional Network — and Your Profits — in the Digital Age](#)" (Item #8041), a multimedia CD-ROM on how your business can use social media tools for networking and marketing. Congratulations, Francie! The ASA LinkedIn group now has 530 members. *To join the group, visit <http://www.linkedin.com/groupInvitation?groupID=936157>.*

Allstate Provides ASA Members With Insurance Options

Subcontractors face numerous risks such as damage to business vehicles, liability exposures resulting from the operation of their businesses, loss of income, theft, robbery and even employee dishonesty. That's why it's important that owners and business managers secure the right insurance coverage and services essential to their business plans. ASAdvantage Participating Provider Allstate can serve as your one-stop resource to assist you in designing an insurance program that helps meet your company's specific needs. Allstate's Contractor Insurance Program can provide you with commercial auto insurance, as well as other lines of insurance provided by carriers not owned by or affiliated with Allstate. Allstate offers free, no-obligation policy quotes on: business automobiles; commercial vehicle roadside assistance; supplemental insurance; general liability; business property; tool and equipment coverage; and workers' compensation. *To take advantage of the Allstate Contractor Insurance Program, call (800) 859-0247 or visit www.allstate.com.*