

February 24, 2021

U.S. Senate
Washington, DC 20510

U.S. House of Representatives
Washington, DC 20515

Dear Senator/Representative:

The diverse group of construction and business associations undersigned below writes in strong support of Sen. Todd Young (R-Ind.) and Rep. Ted Budd's (R-N.C.) Fair and Open Competition Act.

The Fair and Open Competition Act would prevent federal agencies and recipients of federal assistance from requiring or encouraging contractors to sign a controversial project labor agreement as a condition of winning a federal or federally assisted taxpayer-funded construction contract.

A PLA is a jobsite-specific collective bargaining agreement unique to the construction industry that typically requires companies to agree to recognize unions as the representatives of their employees on that job, use the union hiring hall to obtain most or all construction labor, exclusively hire apprentices from union programs, follow union work rules and pay into union benefit and multi-employer pension plans that nonunion employees will be unlikely to access. This forces employers to pay "double benefits" into their existing plans and union plans and places firms opposed to these costly provisions at a significant competitive disadvantage. In addition, PLAs typically require construction workers to pay union dues and/or join a union if they want to receive union benefits and work on a PLA project.

When mandated by government agencies and lawmakers, PLAs can interfere with existing union collective bargaining agreements. In addition, PLA mandates unfairly discourage competition from quality nonunion contractors and their employees, who comprise 87.3% of the private U.S. construction industry workforce, according to the most recent U.S. Bureau of Labor Statistics data.¹

President Obama's Feb. 6, 2009, Executive Order 13502 encourages federal agencies, on a case-by-case basis, to require PLAs on federal construction projects exceeding \$25 million in total value and permits states and localities to mandate PLAs on federally assisted projects² in order to "promote the economy and efficiency in federal procurement."

However, multiple studies of hundreds of taxpayer-funded school construction projects found that PLA mandates increase the cost of construction by 12% to 20% compared to similar non-PLA projects.³ In addition, recent government-mandated PLAs on federal and federally assisted projects have resulted in litigation, reduced competition, increased costs, needless delays and poor local hiring outcomes. Simply put, hardworking taxpayers are getting less and paying more when PLAs are encouraged or mandated during the procurement of federal and federally assisted construction projects.

Additionally, the federal government's current pro-PLA mandate policy and related regulations have exposed federal agency procurement officials to intense political pressure from special interest groups and politicians to mandate PLAs on federal and federally assisted projects, even when they are not appropriate.

The Fair and Open Competition Act seeks to counteract potential special-interest favoritism by prohibiting federal agencies and recipients of federal assistance from mandating PLAs and implementing PLA preferences. However,

¹ See bls.gov *Union Members Summary*. Jan. 22, 2021, <https://www.bls.gov/news.release/union2.nr0.htm>.

² Executive Order 13502, *Use of Project Labor Agreements for Federal Construction Projects*, signed Feb. 6, 2009, (<https://www.govinfo.gov/content/pkg/FR-2009-02-11/pdf/E9-3113.pdf>) and related FAR Case 2009-005, effective May 13, 2010 (<https://www.regulations.gov/docket?D=FAR-2009-0024>).

³ See multiple studies measuring the impact of PLAs on school construction in Connecticut, Massachusetts, New York and Ohio by the Beacon Hill Institute (<http://beaconhill.org/labor-economics/>); an October 2010 report by the New Jersey Department of Labor and Workforce Development, *Annual Report to the Governor and Legislature: Use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008* (https://www.nj.gov/labor/forms_pdfs/legal/2010/PLAReportOct2010.pdf); and a 2011 study by the National University System Institute for Policy Research, *Measuring the Cost of Project Labor Agreements on School Construction in California* (<http://www.nusinstitute.org/assets/resources/pageResources/Measuring-the-Cost-of-Project-Labor-Agreements-on-School-Construction-in-California.pdf>).

this legislation would allow federal agencies to award contracts to businesses that voluntarily utilize PLAs before or after a fair and open competitive bidding process, a common industry practice permitted by the National Labor Relations Act.

A total of 25 states have passed measures similar to the Fair and Open Competition Act in order to curb waste and favoritism in the procurement of construction projects and ensure taxpayer dollars are spent responsibly by letting the market determine if a PLA is appropriate.

The undersigned organizations support fair and open competition and oppose government-mandated PLAs on federal and federally assisted projects because hardworking taxpayers deserve more efficient and effective policies that will encourage all qualified contractors and their skilled workforce to compete to build long-lasting, quality projects at the best price.

According to economic models,⁴ every \$1 billion in extra overall construction spending generates an average of at least 6,500 construction jobs, and every \$1 billion in extra construction spending on infrastructure generates an average of at least 3,300 construction jobs. As the construction industry faces a 9.4% unemployment rate⁵ due to the recession caused by the COVID-19 pandemic and America's infrastructure faces an estimated \$2.6 trillion investment gap by 2029,⁶ lawmakers need to do everything possible to maximize taxpayer investments in infrastructure while helping all construction workers find quality jobs to rebuild their communities.

If you would like to promote fairness, efficiency and transparency in government contracting, please contact Nancy Martinez (nancy_martinez@young.senate.gov) in Sen. Todd Young's office and Charlie Hobbs (Charlie.Hobbs2@mail.house.gov) in Rep. Ted Budd's office and ask to cosponsor the Fair and Open Competition Act.

Your opposition to any legislative language promoting controversial government-mandated PLAs on future infrastructure and spending bills, coupled with your support of the Fair and Open Competition Act, will create a level playing field in the procurement of government construction contracts, increase competition, help small businesses grow, curb construction costs and spread the job-creating benefits of federal and federally funded contracts throughout the construction industry.

Sincerely,

American Council of Engineering Companies
American Fire Sprinkler Association
American Pipeline Contractors Association
American Road and Transportation Builders Association
Associated Builders and Contractors
Business Coalition for Fair Competition
Construction Industry Round Table
Electronic Security Association
Independent Electrical Contractors
National Association of Home Builders
National Black Chamber of Commerce
NFIB
National Ready Mixed Concrete Association
National Utility Contractors Association
Power and Communication Contractors Association
Small Business and Entrepreneurship Council
United States Hispanic Chamber of Commerce

⁴ <https://abc.org/News-Media/Newsline/entryid/17036/the-construction-industry-needs-to-hire-an-additional-550-000-workers-in-2020>.

⁵ BLS construction industry unemployment rate for January 2021, <https://www.bls.gov/iag/tgs/iag23.htm>.

⁶ See ASCE's 2021 report, [Failure to Act: Economic Impacts of Status Quo Investment Across Infrastructure Systems](#).