



August 30, 2021

The Honorable Nydia Velázquez
Chairwoman
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Velázquez, Ranking Member Luetkemeyer and Members of the U.S. House of Representatives Committee on Small Business:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 69 chapters representing more than 21,000 members, I write to provide insight on the state of small construction businesses and the construction industry as a whole. Additionally, as small and family-owned construction businesses would be disproportionately harmed by 2022 budget reconciliation bill that is being formulated by committees in the U.S. House of Representatives, ABC would like to urge the House Committee on Small Business to reject the harmful tax and labor policies that are included in the measure.

The State of Small Businesses in the Construction Industry

According to ABC's analysis of recent data released by the U.S. Bureau of Labor Statistics, the construction industry added [11,000 net new jobs](#) in August 2021. Nonresidential construction gained just 2,900 net jobs for the month, while the residential sector accounted for the remainder of the gains.

Nonresidential specialty trade contractors added 7,500 jobs for the month, while heavy and civil engineering lost 2,100 and nonresidential building shed 2,500 jobs.

Overall, the industry has recovered 886,000 (79.6%) of the jobs lost during earlier stages of the pandemic. The construction unemployment rate fell to 6.1% in July 2021, while unemployment across all industries declined from 5.9% in June to 5.4% last month.

[ABC's Construction Backlog Indicator](#), a forward-looking, national economic indicator that reflects the amount of work already under contract but not yet performed by commercial, industrial and heavy highway/infrastructure contractors, found that in July 2021, backlog remained unchanged from June at [8.5 months](#), up 0.7 months from July 2020.

However, for smaller construction businesses—classified as those with annual revenues of less than \$30 million—backlog fell from 8.0 months in June 2021 to 7.9 months in July. In fact, backlog grew for every category except the smallest construction businesses, indicating that these contractors need additional help to grapple with the lingering effects of the pandemic and, importantly, with the economic recovery underway, should not be exposed to anti-growth policies proposed in the 2021 budget reconciliation bill.

Further, [ABC's Construction Confidence Index](#) readings for sales, profit margins and staffing levels all fell modestly in July, but remain above the threshold of 50, indicating expectations of growth over the next six months. More than 59% of contractors expect their sales to rise over the next six months, while just 14% of contractors expect them to fall. Contractors appear

confident about the future despite relatively high material prices and expanding labor shortages, although rising COVID-19 case counts have rendered them slightly less sanguine as of July.

In 2021, construction companies will need to hire 430,000 more workers than they employed in 2020, according to an analysis of [U.S. Bureau of Labor Statistics data](#). This is evidence that the construction industry is powering America's recovery and economic engine; however, restrictive policies that would limit the pipeline of skilled workers entering the construction industry will not help solve this ongoing problem. On top of this current demand, any significant increase in infrastructure spending would exacerbate the skills gap, as the analysis also revealed that every \$1 billion in extra construction spending generates an average of at least 5,700 construction jobs. If Congress passes the \$1.2 trillion bipartisan [Infrastructure Investment and Jobs Act](#), ABC urges you to not pair it with the costly consequences of the \$3.5 trillion 2022 budget reconciliation bill.

All in all, 2021 has been another challenging year for many in the construction industry so far, especially for the smallest contractors. However, ABC sees this data as further proof that the construction industry remains poised to continue to lead the economic comeback of the United States, as long as Congress avoids imposing harmful tax and labor policies on small businesses.

Budget Reconciliation Tax Provisions

As capital-intensive, low-margin, domestically oriented businesses comprised largely of small, family-owned and closely held merit shop construction firms, ABC members have felt the positive effects of the tax reform enacted by the 2017 Tax Cuts and Jobs Act. As a result of this legislation, ABC contractor members hired more employees, invested in workforce development and increased the paychecks of their employees.

Prior to the passage of the TCJA, according to analysis by the U.S. Department of Treasury, the construction industry paid the highest effective tax rate of any sector of the nation's economy—27%, compared to an average of 22% for other industries—from 2007 to 2011.

As detailed in the Senate's budget resolution, the yet-to-be-written partisan budget reconciliation bill will seek to enact several of the policy priorities laid out in President Biden's American Families Plan, including plans to enact \$1.75 trillion or more in tax hikes on America's workers and business through repealing and altering critical provisions of the 2017 TCJA, which could include increasing the corporate tax rate, [capping the Section 199A deduction for small businesses](#), hiking the individual rate, altering the Section 1031 of the tax code like-kind exchange and eliminating stepped-up basis for family-owned businesses.

Preserving these and other job-growing tax provisions included in the 2017 tax law—which have allowed so many business owners in the construction industry to hire more workers, invest in their businesses and provide generous benefits to their employees—will be critical to the ability of the United States to fully recover from the COVID pandemic. ABC urges Congress to consider the negative consequences that raising taxes would have on small businesses in the construction industry and reject the proposed tax increases in the bill.

Budget Reconciliation Labor Provisions

Congress should steer away from policies such as the so-called Protecting the Right to Organize Act, which would limit the opportunities for small construction businesses to compete

and recover from the COVID-19 pandemic. The PRO Act would enact harmful [policy changes](#) that would upend the business community and devastate the economy at a time when small businesses and the economy as a whole are struggling to recover from the COVID-19 pandemic. ABC members strongly oppose this bill and its devastating policies.

Reports have indicated that lawmakers could seek to insert harmful, politically targeted labor provisions, such as tax deductions for union dues and increased monetary penalties for employers, into the budget reconciliation bill. Instead of targeting union dues for tax deductions, Congress should be focused on assisting all of America's workers, including those who decide not to join a union. Tax deductions that promote job opportunities and workforce development across the board would be more successful in promoting well-paying jobs and promoting the skills workers need to succeed. Increased monetary penalties for employers that "interfere" with worker unionization could also have far-reaching, unintended consequences, leading to unwarranted and frivolous lawsuits that could have a devastating impact on construction employers.

ABC is also concerned with reports that the reconciliation package could enact sections of the ABC-opposed PRO Act and curb opportunities for workers to remain independent contractors, which are an essential part of the modern construction workforce. Despite research demonstrating that many workers find their independent contractor roles to be preferable, as the added flexibility and control is valued in many industries, the provision would impose the "ABC" test, a standard adopted in California's AB 5, to forcibly reclassify many independent contractors as employees, harming many small businesses and entrepreneurs in the process.

Finally, ABC has apprehensions about the regulatory agenda of the Biden administration, which already has the potential to make recovery harder for small businesses that are struggling to maintain operations during the pandemic. While we must support thoughtful and necessary regulations that ensure the safety and health of our communities, we must ensure they do not place an undue burden on these businesses, but instead allow them to continue to grow and provide jobs to Americans.

ABC appreciates the opportunity to comment on these important policies and hopes that Congress can avoid partisan pitfalls and work together to address the ongoing needs of our economy and hardworking Americans.

Sincerely,



Kristen Swearingen
Vice President, Legislative & Political Affairs