



February 15, 2024

The Honorable Nick LaLota
Chair
House Committee on Small Business
Subcommittee on Contracting and
Infrastructure
U.S. House of Representatives
Washington, DC 20515

The Honorable Hillary Scholten
Ranking Member
House Committee on Small Business
Subcommittee on Contracting and
Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman LaLota, Ranking Member Scholten and Members of the Committee on Small Business Subcommittee on Contracting and Infrastructure:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 23,000 members, I appreciate the opportunity to comment on today's hearing, "Leveling the Playing Field: Challenges Facing Small Business Contracting." The majority of ABC's general contractor and subcontractor members qualify as small businesses as defined by the Small Business Administration. The industry consistently has one of the highest concentrations of small business participation and its members play an integral role in building America's infrastructure.

The National Federation of Independent Business' recent study showed that owners who expect higher real sales volumes fell 12% last month, the most since mid-2022. In addition, a larger share of small business owners reported lower earnings over the last three months. ABC's Construction Backlog Indicator, the only economic indicator that reflects the amount of work that will be performed by commercial and industrial construction contractors in the months ahead, [declined to 8.4 months in January](#), according to an ABC member survey conducted from Jan. 22 to Feb. 4. Despite these statistics, the Biden administration continues to prevent small businesses from competing for federal construction projects through discriminatory policies.

The Federal Acquisition Regulatory Council's final rule, [Use of Project Labor Agreements for Federal Construction Projects](#), took effect on Jan. 22, implementing President Joe Biden's [Executive Order 14063](#), which requires federal construction contracts of \$35 million or more to be subjected to controversial [PLAs](#). The final rule will needlessly increase construction costs and reduce opportunities for local contractors and skilled tradespeople. Government-mandated PLAs increase the cost of construction by 12% to 20% and reduce competition from 89.3% of the construction industry workforce. Of interest to the subcommittee, the final rule will discriminate against the majority of our nation's small, women-, veteran- and minority-owned businesses, which deserve a fair opportunity to help rebuild their communities.

In addition, the U.S. Department of Labor's Wage and Hour Division [announced](#) the [final rule on Employee or Independent Contractor Classification Under the Fair Labor Standards Act](#), which rescinds the [ABC-supported 2021 final rule](#) and replaces it with a confusing multifactor analysis to determine whether a worker is an employee or an independent contractor. The final rule takes effect on March 11, 2024. Independent contractors play an important role for large and small contractors, delivering construction projects safely, on time and on budget for their government and private customers. This move will jeopardize the ability of construction firms to continue the industry's longstanding practice of utilizing legitimate independent contractors, many of which are small businesses.

ABC recently estimated that the construction industry will need to attract 501,000 additional workers on top of the normal pace of hiring in 2024 to meet the demand for labor. Discouraging America's small

businesses from competing will only further exacerbate the construction industry's skilled workforce shortage.

ABC appreciates the opportunity to comment on the subcommittee's work to level the playing field for small business contracting.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Swearingen". The signature is written in a cursive, flowing style.

Kristen Swearingen
Vice President, Legislative & Political Affairs