



July 31, 2024

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, DC 20510

The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, DC 20510

Dear Chairman Brown, Ranking Member Scott and Members of the U.S. Senate Committee on Banking, Housing and Urban Affairs:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 67 chapters representing more than 23,000 members, I write in regard to the hearing, "[Long-Term Economic Benefits and Impacts from Federal Infrastructure and Public Transportation Investment](#)." This hearing provides the U.S. Senate the opportunity to evaluate the impact of Congress's investments in America's infrastructure and the Biden-Harris administration's executive actions and corresponding regulations to guide the distribution of these funds.

During the 118th Congress, the U.S. House of Representatives and Senate continue to advance bipartisan legislation to improve America's infrastructure and ensure America maintains its leadership in the world. ABC applauds Congress for providing opportunities for contractors nationwide to participate on federal projects authorized by legislation to modernize America's infrastructure. However, ABC is extremely concerned with the Biden-Harris administration's regulatory action to steer congressionally authorized infrastructure funds toward special interests at the expense of the U.S. economy and the American taxpayer. Specifically, ABC is concerned with the below rulemaking, which excludes [89.3%](#) of the private U.S. construction industry workforce, reduces competition and increases costs for the American taxpayer on federal and federally assisted construction projects.

On Dec. 22, 2023, the Biden-Harris administration published the Federal Acquisition Regulatory Council's final rule, [Use of Project Labor Agreements for Federal Construction Projects](#), in the Federal Register, implementing [Executive Order 14063](#). This rulemaking mandates the use of PLAs on federal and federally assisted projects of \$35 million or more. As a result, companies seeking to perform work on large-scale projects are required 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, hire apprentices from union-affiliated apprenticeship programs, follow union work rules and pay into union benefit and multiemployer pension plans that nonunion employees cannot access unless they join a union. These requirements unfairly discourage competition from quality nonunion contractors and their employees, who comprise nearly 9 in 10 private U.S. construction industry workers.

Prior to the PLA mandate taking effect in January 2024, ABC prime contractors played a significant role in enhancing America's infrastructure. Specifically, between fiscal years 2009-2023, ABC prime contractors won more than 46% of the 3,222 federal contracts of \$25 million or more, representing 52% of their value. These contracts were awarded while President Barack Obama's Executive Order 13502 encouraging PLAs on projects of \$25 million or more remained in effect. However, the Obama administration policy significantly differed from the Biden-Harris administration's policy because it allowed federal contracting officers and agencies to determine whether to mandate PLAs, and they did so on only 12 of nearly 3,200 projects.

Now the Biden-Harris administration is intentionally tying the hands of federal agency contracting officers by mandating the use of PLAs through its FAR Council rule. This policy prevents some of the best and most

experienced federal contractors from pursuing federal construction contracts funded by taxpayers for no other reason than because these large and small businesses are not willing and able to sign a union agreement. By mandating PLAs, the Biden administration is steering work toward its special interests, which comprise 10% of the industry at the expense of taxpayers and free enterprise.

The Biden-Harris administration's PLA mandate significantly harms taxpayers by increasing the cost of construction projects by 12% to 20% compared to similar non-PLA projects when all projects are subject to prevailing wage regulations. This increase in costs results in federal tax dollars supporting fewer construction projects and improvements to roads, bridges, utilities, schools, affordable housing and clean energy projects—and the creation of fewer jobs.

ABC vigorously opposes the Biden-Harris administration's discriminatory policies that limit competition on infrastructure projects and increase taxpayer costs. To counter the administration's harmful policies, which circumvent congressional intent, ABC encourages committee members to co-sponsor [H.R.1209](#), the Fair and Open Competition Act. This legislation would ensure federal and federally assisted contract awards occur through a fair and competitive bidding process that allows all qualified contractors to compete on a level playing field based on merit, experience, quality and safety to deliver the highest-quality projects at the best cost.

ABC appreciates the opportunity to comment on today's hearing and urges the committee to evaluate how the Biden-Harris administration is undermining taxpayer investments in U.S. infrastructure.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kristen Swearingen', written in a cursive style.

Kristen Swearingen
Vice President, Legislative & Political Affairs