



May 22, 2024

The Honorable Roger Williams  
Chair  
House Committee on Small Business  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Nydia Velázquez  
Ranking Member  
House Committee on Small Business  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Williams, Ranking Member Velázquez and Members of the Committee on Small Business:

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, "[Burdenome Regulations: Examining the Biden Administration's Failure to Consider Small Businesses.](#)" This hearing is particularly relevant to ABC, as 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.

Since January 2021, the Biden administration has advanced numerous regulations that create substantial burdens for America's small businesses. ABC's [Construction Confidence Index](#), based on an ABC member survey conducted between April 22 and May 6, reveals that over 20% of respondents expect a decrease in sales and profit margins. In addition, the National Federation for Independent Business' [Small Business Optimism Index](#) moved to 89.7 in April, which marks the 28th consecutive month below the 50-year average of 98. Yet, despite these statistics, the Biden administration continues to prevent small businesses from competing for federal construction projects through discriminatory policies.

ABC is deeply concerned that the below rulemakings advanced by the Biden administration disregard small businesses, diminish their ability to compete and undermine their integral role in building America's infrastructure.

**Overtime Rule:** On April 23, the U.S. Department of Labor [issued](#) its [final rule on overtime](#), which will change overtime regulations under the Fair Labor Standards Act. The final rule increases the minimum annual salary level threshold for exemption in two phases: from the current level of \$35,568 to \$43,888 on July 1, 2024, and to \$58,656 on Jan. 1, 2025. In addition, salary thresholds will update every three years starting on July 1, 2027. Many employees who qualify for exempt status would be reclassified as nonexempt under phase II of the rule in a move likely to disrupt the entire construction industry. This specifically harms small businesses by restricting employee workplace flexibility in setting schedules and hours, hurting career advancement opportunities. An increase in the salary level every three years will only further harm small businesses.

**Project Labor Agreement Rule:** 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 that does not belong to a union.

Relative to this hearing, the final rule discriminates against the majority of our nation's small, women-, veteran- and minority-owned businesses, which deserve a fair opportunity to help rebuild their communities.

**Independent Contractor Rule:** 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 took effect on March 11, 2024. Independent contractors play an essential 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 [estimates](#) that the construction industry will need to attract 501,000 additional workers on top of the normal pace of hiring in 2024 to meet labor demands and the Biden administration's rulemakings will only further exacerbate the construction industry's skilled workforce shortage.

ABC applauds the committee for evaluating the Biden administration's regulatory agenda, which will directly harm small businesses and the U.S. economy. ABC appreciates the opportunity to comment on the committee's analysis of the administration's agenda, and we look forward to continued efforts to relieve the small business community from a barrage of harmful regulations.

Sincerely,



Kristen Swearingen  
Vice President, Legislative & Political Affairs