

May 5, 2021

The Honorable Joseph R. Biden Jr.
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Biden:

The diverse coalition of the undersigned construction and business associations share concerns about the Biden administration's promotion of policies¹ and legislation² encouraging the use of controversial, government-mandated project labor agreements for the construction of federal and federally assisted infrastructure and clean energy projects.

We applaud the Biden administration addressing the state of America's infrastructure via the American Jobs Plan outline and ongoing bipartisan discussions with Congress. We are in strong agreement that our roads, bridges, schools and water, energy and transportation systems are in urgent need of public and private investment in order to accelerate America's strong economic comeback and keep our country competitive in a global economy.

However, government-mandated PLAs have the potential to needlessly increase costs for taxpayers, unfairly limit competition by some of America's best contractors and ultimately exclude almost nine out of 10 of the construction industry's workforce from middle class jobs and benefits, resulting from government investment in infrastructure, affordable housing and clean energy projects.

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 such firms at a significant competitive disadvantage. In addition, PLAs typically force construction workers to pay union dues and/or join a union if they want to work on a PLA project and receive benefits earned while working on the job.

When mandated by government agencies and lawmakers, PLAs can supersede and interfere with existing collective bargaining agreements contractors have already negotiated with various unions. 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.³

The federal government's existing PLA policy, Executive Order 13502, signed Feb. 6, 2009, 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 projects in order to "promote the economy and efficiency in federal procurement."⁴

However, subsequent government-mandated PLAs on federal and federally assisted projects have resulted in reduced competition, increased costs, delays, poor local hiring outcomes and litigation. In addition, 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 already subjected to state prevailing wage regulations.⁵

¹ The U.S. Department of Transportation Build America Bureau announced Feb. 17, 2021, that the FY 2021 Infrastructure for Rebuilding America (INFRA) grant program, which provides \$889 million to fund state and locally procured transportation projects of national and regional significance, encourages grant applicants to mandate PLAs. See *Notice of Funding Opportunity for the Department of Transportation's Infrastructure For Rebuilding America (INFRA) Program for Fiscal Year 2021*, <https://www.transportation.gov/buildamerica/sites/buildamerica.dot.gov/files/2021-02/FY%202021%20INFRA%20NOFO.pdf> and <https://www.transportation.gov/buildamerica/financing/infra-grants/infrastructure-rebuilding-america>

² White House *Fact Sheet: The American Jobs Plan*, March 31, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>

³ See bls.gov *Union Members Summary*, Jan. 22, 2021, <https://www.bls.gov/news.release/union2.nr0.htm>.

⁴ See *FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects*, published April 13, 2020 and 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>).

⁵ See multiple studies measuring the impact of PLA mandates on public school construction already subject to state prevailing wage laws in Connecticut, Massachusetts, New Jersey, 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

In short, hardworking taxpayers are getting less and paying more when PLAs are encouraged or mandated by the government on federal and federally assisted construction projects.

Government-mandated PLAs are especially problematic considering two key data points; 1) industry reports estimate the U.S. infrastructure spending deficit will total \$2.6 trillion by 2029 and more than \$5.6 trillion by 2039;⁶ and 2), the U.S. construction industry faces an 8.6% unemployment rate⁷ due to the recession caused by the COVID-19 pandemic.

Simply put, the Biden administration cannot meet its infrastructure, affordable housing and clean energy agenda without strong participation from the construction industry directly harmed by anti-competitive and costly government-mandated PLA policies.

For these reasons, our coalition formally requests a meeting with administration officials in charge of infrastructure, affordable housing and green energy policies to discuss inclusive policy solutions that expand the benefits of rebuilding America's infrastructure to the entire construction industry. Ensuring fair and open competition on taxpayer-funded construction projects will ultimately result in savings to taxpayers, more opportunities for all qualified small businesses, minorities and women in the construction industry, and the construction of more quality infrastructure projects so America can Build Back Better and faster.

Sincerely,

American Fire Sprinkler Association
American Pipeline Contractors 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
National Federation of Independent Business
National Ready Mixed Concrete Association
National Roofing Contractors Association
National Utility Contractors Association
Plastics Pipe Institute
Power and Communication Contractors Association
Small Business and Entrepreneurship Council

cc: U.S. Department of Transportation Secretary Pete Buttigieg
U.S. Department of Energy Secretary Jennifer Granholm
U.S. Department of Housing and Urban Development Secretary Marcia Fudge

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>).

⁶See ASCE's 2021 report, *Failure to Act: Economic Impacts of Status Quo Investment Across Infrastructure Systems*.

⁷BLS construction industry unemployment rate for March 2021, <https://www.bls.gov/iag/tgs/iag23.htm>.