

June 27, 2024

The Honorable Nancy Mace  
Chairwoman  
Subcommittee on Cybersecurity,  
Information Technology and Government  
Innovation  
Committee on Oversight and Accountability  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Gerald E. Connolly  
Ranking Member  
Subcommittee on Cybersecurity,  
Information Technology, and Government  
Innovation  
Committee on Oversight and Accountability  
U.S. House of Representatives  
Washington, DC 20515

Dear Madam Chairwoman:

Thank you for holding today's hearing, "Cutting Competition in Contracting: The Administration's Pricey Project Labor Agreement Mandate."

As you know, on Dec. 22, the Biden administration published a final rule, Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects,<sup>1</sup> implementing President Joe Biden's Executive Order 14063,<sup>2</sup> which requires federal construction contracts of \$35 million or more to be subjected to anti-competitive and inflationary project labor agreements.<sup>3</sup>

The undersigned diverse group of construction and business associations—whose membership employs millions of construction industry professionals who successfully build America—write to thank you for your leadership opposing the new rule and other policies pushing controversial PLAs on federal and federally assisted construction projects funded by taxpayers.

As discussed thoroughly in coalition and lawmaker comments<sup>4</sup> filed in opposition to the Federal Acquisition Regulatory Council's proposed rule,<sup>5</sup> PLA mandates artificially exacerbate a shortage of construction industry skilled labor; discourage competition from quality large, small and disadvantaged construction businesses; and needlessly increase construction costs at the expense of significant recent taxpayer investments in infrastructure, clean energy and domestic manufacturing construction.

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, 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. This forces employers to pay "double benefits" into their existing plans and union plans, puts them at a significant competitive disadvantage and exposes them to unfunded multiemployer pension

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<sup>1</sup> See [FAC 2024-02, FAR Case 2022-003](#) published in the Federal Register, Dec. 22, 2023, and related [Dec. 18, 2023, Office of Management and Budget memo M-24-06, Use of Project Labor Agreements on Federal Construction Projects](#).

<sup>2</sup> Executive Order 14063, [Executive Order on Use of Project Labor Agreements For Federal Construction Projects](#), signed Feb. 4, 2022.

<sup>3</sup> Access studies, coalition letters, media coverage, talking points and social media kits on PLAs and the Biden administration's misguided pro-PLA policies at the [BuildAmericaLocal.com](#) coalition website.

<sup>4</sup> In October 2022, [19 governors](#) joined [59 U.S. House members](#), [43 U.S. senators](#), and dozens of [construction industry, small business employer](#) and [taxpayer advocacy groups](#) in opposing the Biden administration's pro-PLA policies. Comment letters available at <https://buildamericainlocal.com/learn-more/#letters>.

<sup>5</sup> See FAR Council proposed rule, [Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects](#), 9000-AO40, Aug. 19, 2022.

plan liabilities.<sup>6</sup> In addition, PLAs typically require construction workers to pay union dues and/or join a union if they want to receive union benefits and work on a PLA project. If they do not satisfy these stipulations, nonunion workers lose an estimated 34% of their wages and benefits to union coffers and benefits plans—making them the victims of wage theft.<sup>7</sup>

When mandated by government agencies and lawmakers, PLAs exacerbate the construction industry’s estimated skilled labor shortage<sup>8</sup> of more than half a million workers<sup>9</sup> by unfairly discouraging competition from quality nonunion contractors and their employees, who comprise 89.3% of the private U.S. construction industry workforce.<sup>10</sup>

In addition, government-mandated PLAs can interfere with existing union collective bargaining agreements negotiated between employers and unions. Likewise, some union organizations and contracting groups oppose government-mandated PLAs<sup>11</sup> because unionized contractors signatory to unions excluded from a specific PLA are prohibited from hiring union members from other unions and cannot bid on PLA projects.

This coalition objects to the Biden administration’s false rationale<sup>12</sup> that businesses unaffiliated with construction trade unions are unable to deliver safe, on-time and on-budget government construction projects while obeying federal labor laws and paying competitive wages to employees.<sup>13</sup> Experienced and quality union-free contractors and their skilled employees who choose not to join a union have delivered exceptional federal and federally assisted projects for decades without government PLA requirements.

For example, President Barack Obama’s Feb. 6, 2009, Executive Order 13502 encourages federal agencies, on a case-by-case basis, to require PLAs on federal construction projects exceeding \$25 million in total value in order to “promote the economy and efficiency in federal procurement.”<sup>14</sup> However, federal government data indicate that, of the 3,222 large-scale federal construction contracts valued at \$238.45 billion procured from FY 2009 to FY 2023 subject to President Obama’s pro-PLA policy, at least 52% of the total value of contracts was awarded to prime contractors not signatory to unions.<sup>15</sup> In addition, when given the option, federal agency contracting officers chose to require PLAs on just 12 large-scale federal construction contracts out of 3,222 opportunities.<sup>16</sup> There were no reports of widespread cost overruns, delays, labor unrest or poor-quality construction on \$237.2 billion worth of non-PLA

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<sup>6</sup> See analysis of *J. Supor & Son Trucking v. Trucking Employees of North Jersey Pension Fund*, No. 20-3286, 2022 U.S. App. LEXIS 9070 (Apr. 5, 2022) at <https://www.jacksonlewis.com/insights/third-circuit-joins-sister-circuits-employer-definition-under-multiemployer-pension-plan-amendments-act>.

<sup>7</sup> McGowan, John R., Ph.D., CPA, [Government-Mandated Project Labor Agreements Result in Lost and Stolen Wages for Employees and Excessive Costs and Liability Exposure for Employers](#), October 2021.

<sup>8</sup> TheTruthAboutPLAs.com, [Biden Policies on Project Labor Agreements and Apprenticeship Exacerbate Construction Industry Skilled Labor Shortage](#), May 14, 2024.

<sup>9</sup> See [www.abc.org/wfshortage](http://www.abc.org/wfshortage).

<sup>10</sup> U.S. Bureau of Labor Statistics [Union Members Summary](#), Jan. 23, 2024, data <https://www.bls.gov/news.release/union2.t03.htm>.

<sup>11</sup> TheTruthAboutPLAs.com, [Union Leaders and Contractors Oppose Government-Mandated Project Labor Agreements Too](#), March 1, 2021.

<sup>12</sup> See [White House Fact Sheet: President Biden Signs Executive Order to Boost Quality of Federal Construction Projects](#), Feb. 3, 2022, and [Remarks by President Biden at Signing of an Executive Order on Project Labor Agreements](#), Feb. 4, 2022.

<sup>13</sup> With or without a PLA, all federal and federally assisted projects are subject to federal labor and employment laws, including federal Davis-Bacon prevailing wage regulations, which typically require union-scale wages and benefits for building, heavy and highway projects where PLAs are normally considered.

<sup>14</sup> See [FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects, published April 13, 2010](#), effective May 13, 2010, 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>).

<sup>15</sup> Federal contract award data downloaded from [usaspending.gov](http://usaspending.gov) compared to list of nonunion prime contractors, [results tabulated December 2023](#). The share of federal contracts won by nonunion federal contractors is likely to be even greater (via total value and number of contracts won) but cannot be confirmed due to data limitations.

<sup>16</sup> See [chart of total usage of PLAs on federal construction projects](#).

federal projects during this time period, indicating that PLA mandates are not needed to ensure economy and efficiency in government contracting.<sup>17</sup>

In contrast, government-mandated PLAs on federal and federally assisted projects during this time period resulted in reduced competition, increased costs, delays, poor local hiring outcomes and litigation.<sup>18</sup> In addition, multiple studies of hundreds of taxpayer-funded affordable housing<sup>19</sup> and school construction<sup>20</sup> projects found that government PLA mandates increase the cost of construction by 12% to 20% compared to similar non-PLA projects already subjected to prevailing wage regulations.

Simply put, hardworking taxpayers are getting less and paying more when PLAs are encouraged or mandated during the procurement of federal and federally assisted construction projects.

All Americans deserve more efficient and effective policies that will encourage all qualified contractors and their skilled workforces to compete to build long-lasting, quality projects at the best price.

Congress can help achieve these objectives by championing and co-sponsoring the Fair and Open Competition Act (H.R. 1209/S. 537)<sup>21</sup>—introduced by House Oversight and Accountability Committee Chairman James Comer, R-Ky., and Sen. Todd Young, R-Ind. FOCA seeks to counteract special-interest favoritism by prohibiting federal agencies and recipients of federal assistance from mandating PLAs and implementing PLA preferences. However, this legislation would allow federal agencies to award contracts to businesses that voluntarily utilize PLAs before or after a fair and open competitive bidding process—a common industry practice permitted by the National Labor Relations Act. This commonsense measure passed out of the full Oversight Committee on July 12, 2023.

Likewise, 25 states have laws similar to FOCA, which curb waste and favoritism during the state and local government procurement of construction contracts and ensure taxpayer dollars are spent responsibly by letting the market determine if a PLA is appropriate.

In addition, the coalition supports a resolution of disapproval (H.J. Res. 132) under the Congressional Review Act, introduced by Rep. Clay Higgins, R-La., nullifying the Biden administration's PLA final rule on federal construction projects.<sup>22</sup>

Supporting FOCA and the CRA is critical considering President Biden's new policy mandating PLAs on an estimated 180 construction projects valued at \$16 billion in direct federal agency construction contracts annually. Effective Jan. 22, 2024, the Biden administration's final rule has

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<sup>17</sup> In addition, from 2001 until their repeal by the Obama policy in 2009, President George W. Bush's Executive Orders [13202](#) and [13208](#) prohibited government-mandated PLAs on [\\$147 billion worth of federal construction projects](#) and [there were also no reports of problems attributable to the lack of government-mandated PLAs](#).

<sup>18</sup> TheTruthAboutPLAs.com, [Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects](#), March 10, 2021.

<sup>19</sup> Ward, Jason M., [The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH](#), Santa Monica, California: RAND Corp., 2021.

<sup>20</sup> See five studies, available at <https://buildamericalocal.com/learn-more/#gmpla-studies>, measuring the impact of PLA mandates on public school construction already subject to state prevailing wage laws in Connecticut (2020), Massachusetts (2006), New Jersey (2019), New York (2006) and Ohio (2017) by the [Beacon Hill Institute](#); an October 2010 report by the New Jersey Department of Labor and Workforce Development, [Annual Report to the Governor and Legislature: Use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008](#); 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](#).

<sup>21</sup> In the 118th Congress, FOCA ([H.R. 1209/S. 537](#)) has 118 co-sponsors in the House and 27 in the Senate.

<sup>22</sup> <https://www.congress.gov/bill/118th-congress/house-joint-resolution/132>.

already subjected solicitations for dozens of large-scale federal construction projects to PLA requirements, undermining the economy and efficiency in federal contracting. A federal lawsuit filed in March seeks to end the unlawful and costly Biden policy and restore fair and open competition in federal contracting for construction projects.<sup>23</sup>

Furthermore, FOCA will end other divisive Biden administration executive actions that coerce state and local governments—as well as private entities—to mandate PLAs on infrastructure projects, all to improve the likelihood of receiving hundreds of billions of dollars of federal grants from the Infrastructure Investment and Jobs Act and other federal government funding programs.<sup>24</sup> In addition, the Biden administration is pushing private developers to mandate PLAs on clean energy construction projects supported by more than \$270 billion in Inflation Reduction Act tax incentives<sup>25</sup> and domestic microchip manufacturing facilities receiving as much as \$50 billion in CHIPS and Science Act funding.<sup>26</sup> Such schemes undermine congressional authority as all of these taxpayer investments were authorized and funded through legislation that explicitly do not require or encourage the use of discriminatory PLAs on taxpayer-funded construction projects.

We thank you for taking the time to shed light on this topic of importance for federal agency contracting officers, state and local government infrastructure partners, construction industry stakeholders and taxpayers.

The public and lawmakers can get the facts about the Biden administration’s needless promotion of inflationary and anti-competitive government-mandated PLAs via our coalition website at [BuildAmericaLocal.com](http://BuildAmericaLocal.com).

Sincerely,

American Concrete Pumping Association  
American Fire Sprinkler Association  
American Pipeline Contractors Association  
Associated Builders and Contractors  
Construction Industry Round Table  
Construction Leadership Council  
Electronic Security Association  
HR Policy Association  
Independent Electrical Contractors  
National Black Chamber of Commerce  
National Center for Construction Education & Research  
National Federation of Independent Business  
National Precast Concrete Association  
National Ready Mixed Concrete Association  
National Stone, Sand & Gravel Association

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<sup>23</sup> [ABC Files Lawsuit Against President Biden’s Anti-Competitive Project Labor Agreement Rule for Federal Contractors](#), March 28, 2024. Learn more about the Biden EO and other policies at [www.abc.org/BidenPLAFAQs](http://www.abc.org/BidenPLAFAQs).

<sup>24</sup> Examples of more than \$271 billion in federal dollars available to state and local governments via multiple grant programs administered by the departments of Agriculture, Commerce, Energy, Environmental Protection Agency, Interior, Transportation, Treasury and other federal agencies with pro-PLA language can be found at [www.abc.org/plagrants](http://www.abc.org/plagrants).

<sup>25</sup> See Oct. 30, 2023, [coalition comment letter](#) on IRS Reg-100908-23, Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements.

<sup>26</sup> See [March 9, 2023, coalition letter to Sec. Raimondo](#) opposing the U.S. Commerce Department’s pro-PLA language in its semiconductor manufacturing notice of funding opportunity.

National Utility Contractors Association  
Native American Contractors Association  
Plastics Pipe Institute  
Power and Communication Contractors Association  
Precast/Prestressed Concrete Institute  
Small Business and Entrepreneurship Council