



May 24, 2021

The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

Dear Secretary Yellen:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 69 chapters representing more than 21,000 members, I write today to express our concerns regarding recent guidance from the Treasury Department for federally funded state and local water, sewer and broadband projects.

On May 17, Treasury released [an interim final rule](#) providing guidance on [\\$350 billion worth of federal funding for state and local fiscal recovery](#) allocated in the [American Rescue Plan Act of 2021](#), which was signed into law by President Biden on March 11.

The interim final rule and [Treasury fact sheet](#) detail how this money can be used to offset state and local budget shortfalls, support COVID-19 response efforts and address economic stabilization for households and businesses. Included in the guidance is language promoting certain controversial labor provisions on eligible construction projects, including anti-competitive project labor agreements, which have a history of needlessly increasing taxpayer-funded construction costs by 12% to 20% and discouraging competition from many of our nation's small and large nonunion construction businesses:

“Treasury’s Interim Final Rule also encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.”

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 existing plans and union plans and places contractors whose workers choose not to join a union at a significant competitive disadvantage.

In short, PLA requirements have the practical impact of excluding many small and large construction firms from the opportunity to compete to build federally financed state and local construction projects at a time when we need to create opportunities for all employers and

employees who have been severely affected by the COVID-19 pandemic. While we appreciate that the language provided in the guidance is not a mandate, ABC is concerned that this encouragement of PLAs and related reporting requirements could lead to confusion and discourage state and local governments from contracting with these otherwise qualified contractors and local workers that could provide the best quality and cost for taxpayers.

In addition, we disagree with the Treasury interim final rule's assertion that PLAs "may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries." ABC plans to participate in the rulemaking process and will submit comments demonstrating that PLA mandates exacerbate the construction industry's skilled workforce shortage and undermine the economy and efficiency of government-financed and -procured construction projects.

To create opportunities for all small businesses, skilled construction workers and qualified companies, the Treasury and the Biden administration must ensure fair and open competition for construction contracts financed by any federal taxpayer investment in infrastructure.

ABC believes all contracts should be awarded through a fair and open competitive bidding process that allows qualified union and nonunion contractors to compete on a level playing field based on merit, experience, quality and safety. ABC has worked with members of Congress to introduce the Fair and Open Competition Act (H.R. 1284/S. 403), which would prohibit federal agencies and recipients of federal assistance from mandating or encouraging PLAs. However, this legislation would allow federal agencies to award contracts to businesses that voluntarily enter into PLAs before or after a fair and open competitive bidding process, a common industry practice permitted by the National Labor Relations Act.

Additionally, when mandated or encouraged by government agencies, PLAs can interfere with existing union collective bargaining agreements and 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. PLAs also discourage the vast majority of small, women, minority and veteran-owned businesses from competing for taxpayer-funded public works projects. ABC and the construction industry are fueled by small businesses. According to the most recent census data, businesses employing fewer than 100 employees account for 98% of all construction firms and 82% of all construction firms employ fewer than 10 employees.

In an industry of 7.5 million construction professionals, 89% of ABC member companies earn annual revenues of \$20 million or less. At the same time, ABC's diverse membership includes small and large general contractors, which won 57% of the \$118 billion in direct federal construction contracts exceeding \$25 million awarded from FY 2009 to FY 2020. These ABC general contractors subcontract with small and large nonunion and union subcontractors to meet federal agency small business and diversity contracting goals to deliver projects safely, on time and on budget without problematic government-mandated PLAs.

ABC encourages Treasury to further provide guidance that clarifies that state and local governments are in no way required to mandate PLAs on eligible construction projects and that the federal government's encouragement of PLAs will not become a mandate or requirement at a later date. ABC appreciates your consideration of our request and look forward to your response. We would welcome the opportunity to discuss our concerns in greater detail.

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 of Legislative & Political Affairs