



VIA EMAIL

August 6, 2021

The Honorable Martin J. Walsh
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, DC 20210

Re: Comments on the Draft Department of Labor FY 2022-2026 Strategic Plan

Dear Secretary Walsh:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Labor on its draft strategic plan for fiscal years 2022-2026.¹

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 69 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors for private and government customers. Moreover, the vast majority of ABC's contractor members are classified as small businesses. This is consistent with the Census Bureau and U.S. Small Business Administration's Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees²) and industry workforce employment (more than 82% of the construction industry is employed by small businesses).³ In fact, construction companies that employ fewer than 100 construction professionals compose 99% of construction firms in the United States; they build 63% of U.S. construction, by value, and account for 68% of all construction industry employment.⁴

¹ <https://www.dol.gov/agencies/oasam/centers-offices/performance-management-center/reports/FY2022-2026-strategic-plan>.

² U.S. Census Bureau 2019 County Business Patterns: <https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=23&tid=CBP2019.CB1900CBP&hidePreview=true> and <https://www.census.gov/programs-surveys/cbp/data/tables.2019.html>.

³2020 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2020), at Page 3, <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic-Profile-US.pdf>.

⁴ U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, Available at <https://thetruthaboutplas.com/wp->

In addition to small businesses that build public works projects, ABC also has large member companies that contract directly with federal, state and local governments to successfully build large-scale projects subject to government acquisition regulations and subcontract work to qualified small businesses that meet federal, state and local government small business contracting goals. For example, ABC members won 57% of the \$118 billion in direct federal construction contracts exceeding \$25 million awarded during fiscal years 2009-2020.⁵

Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry, which is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

Comments on DOL's FY 2022-2026 Draft Strategic Plan

ABC appreciates the opportunity to comment on DOL's draft strategic plan for fiscal years 2022-2026, and we hope you will consider the below recommendations in your final strategic plan, which will build new career opportunities, ensure fair and open competition and help all Americans prosper. Additionally, we would welcome the opportunity to discuss ways we can collaborate to advance the interests of the construction industry and all of the people it benefits and serves across America.

Goal 1: Build Opportunity and Equity for All

ABC believes that career opportunities in this nation should be created and made available to all people, where employees and suppliers are limited only by their own potential and desire. That is the essence of the merit shop philosophy—a movement for the betterment of the individual, the industry and the nation.

1) DOL Should Promote and Recognize Industry and Market-Driven Apprenticeship Programs.

ABC urges DOL to promote and recognize the benefits of industry and market-driven apprenticeship programs in addition to government-registered apprenticeship programs. While government-registered apprenticeship programs play an important role in training, a small fraction of the construction industry's workforce have completed these programs, there is limited participation from contractors and data demonstrates that the government-registered apprenticeship system is not meeting the industry's demand for skilled labor. America needs policies supporting an all-of-the-above approach to

[content/uploads/2021/07/Construction-firm-size-by-employment-2019-County-Business-Patterns-Updated-071321.xlsx](#).

⁵ USASpending.gov data (Accessed Dec. 22, 2020) cross-referenced with ABC membership list discussed in greater detail atTheTruthAboutPLAs.com:

<https://thetruthaboutplas.com/2021/02/10/february-2021-update-abcs-fight-against-government-mandated-project-labor-agreements/>.

workforce development to meet the construction industry's workforce development needs in order to grow the U.S. economy and close the skills gap.

To be clear, ABC and its 69 chapters support government-registered apprenticeship programs—offering more than 300 DOL and state government-registered apprenticeship programs in 20 different construction occupations across America—as part of its all-of-the-above workforce development strategy⁶ to tackle the industry's skilled workforce shortage—estimated at 430,000 workers in 2021 alone.⁷ In addition, individual ABC member contractors, other construction industry trade associations and community and educational workforce development partners provide federal and state government-registered apprenticeship programs.

However, the majority of industry contractors provide workforce development for employees through vocational and technical schools, community workforce development program partnerships, industry-recognized programs and competency-based training designed by employers that are not federal or state government-registered apprenticeship programs. An all-of-the-above workforce development strategy benefits new career opportunities for a broader market of craft professionals employed by construction businesses throughout the country, including women-, minority-, and veteran-owned small businesses and their diverse workforce.

Data demonstrates the government-registered apprenticeship system is not meeting the industry's demand for skilled labor. According to data from the U.S. DOL,⁸ in FY 2020, the construction industry's federal government-registered apprenticeship system produced less than 20,749 completers of its four-to-five-year apprenticeship programs. In addition, construction industry apprenticeship programs registered with state governments produced an estimated 15,000 to 20,000 completers in FY 2020 and similar numbers pre-pandemic in FY 2019 and FY 2018.⁹ At current rates of completion, it would take more than 10 years for all government-registered construction industry

⁶ [Survey: ABC Members Invested \\$1.3 Billion in Construction Workforce Education in 2020](https://www.abc.org/Portals/1/News%20Releases/ABC%202021%20Workforce%20Development%20Survey.pdf?ver=2021-05-20-160000-127), May 24, 2021, ABC News Release. ABC 2021 Workforce Development Survey available at <https://www.abc.org/Portals/1/News%20Releases/ABC%202021%20Workforce%20Development%20Survey.pdf?ver=2021-05-20-160000-127>.

⁷ [ABC: The Construction Industry Needs to Hire an Additional 430,000 Craft Professionals in 2021](https://www.abc.org/Portals/1/News%20Releases/ABC%202021%20Workforce%20Development%20Survey.pdf?ver=2021-05-20-160000-127), March 23, 2021, ABC News Release.

⁸ According to the U.S. DOL Office of Apprenticeship, in FY 2020 the construction industry's 4,793 federal government-registered apprenticeship programs had 188,452 active apprentices and produced just 20,749 completers. <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>.

⁹ Unfortunately, there is no centralized reporting of government data for all State Apprenticeship Agency government-registered apprenticeship programs, as discussed by the Workforce Data Quality Campaign's *Registered Apprenticeship Data FAQs*, available at https://thetruthaboutplas.com/wp-content/uploads/2019/04/Apprentice_FAQ_2pg_web-RAPIDS-020219.pdf. The [DOL's Registered Apprenticeship Partners Information Data System](https://thetruthaboutplas.com/wp-content/uploads/2021/03/FY17-20-Registered-Apprenticeship-Program-Data-from-RAPIDS-Participating-OA-and-SAA-States-for-Construction-Industry-from-US-DOL-020521-Created-032921.xlsx), which receives data from all 25 OA states and 9 of the remaining SAA states plus Guam, estimated that in 2020, a total of 26,661 apprentices completed construction industry registered apprenticeship programs from RAPIDS participating states. Available at <https://thetruthaboutplas.com/wp-content/uploads/2021/03/FY17-20-Registered-Apprenticeship-Program-Data-from-RAPIDS-Participating-OA-and-SAA-States-for-Construction-Industry-from-US-DOL-020521-Created-032921.xlsx>.

apprenticeship program completers to fill the estimated 430,000 vacant construction jobs needed just in 2021.

In fact, many small businesses are less likely to participate in government-registered apprenticeship programs because of the paperwork and costs associated with setting up and participating in a program when simpler, cost-effective, practical, local and/or competency-based workforce development alternatives are available.

ABC's commitment to creating a safe, skilled and productive workforce is evident from the all-of-the-above strategy contractor members employ to develop the craft workers of the future. In 2020 alone, ABC contractor members invested \$1.3 billion in workforce development initiatives, providing craft, leadership and safety education to 500,000 course attendees to advance their careers in commercial and industrial construction, according to the 2021 ABC Workforce Development Survey.¹⁰

ABC members invested an average of 8.4% of payroll on workforce development in 2020, up from 7.9% in 2019. Safety education accounted for 71% of total annual workforce education spending, averaging \$2,369 per employee, to keep workers safe from the construction industry's greatest safety hazards on jobsites and address new challenges presented by the COVID-19 pandemic. This was roughly double the \$1,147 per-person investment in 2019.

The 2021 ABC Workforce Development Survey also revealed that women in management/supervisory roles ticked up to 17% of the workforce in 2020 from 16% in 2019, and approximately 70% of contractors reported partnerships with high school and college career and technical education internship programs.

America's economic engine is fueled by a workforce equipped with durable and transferable skill sets, and ABC members are dedicated to investing in essential education and professional development for craft and management professionals. Apprenticeship and career technical education provide the right tools to our nation's workforce to not only build the places where Americans live, work, heal, play and learn, but also to cultivate long-lasting and rewarding career opportunities.

Based on the above data, it is imperative that DOL's final strategic plan include an all-of-the-above workforce development strategy that is inclusive of both government-registered and industry and market-driven apprenticeship programs in order to welcome all Americans to participate, help grow the U.S. economy and close the skills gap.

¹⁰ [Survey: ABC Members Invested \\$1.3 Billion in Construction Workforce Education in 2020](https://www.abc.org/Portals/1/News%20Releases/ABC%202021%20Workforce%20Development%20Survey.pdf?ver=2021-05-20-160000-127), May 24, 2021, ABC News Release. ABC 2021 Workforce Development Survey available at <https://www.abc.org/Portals/1/News%20Releases/ABC%202021%20Workforce%20Development%20Survey.pdf?ver=2021-05-20-160000-127>.

2) DOL Should Ensure Fair and Open Competition on Taxpayer-Funded Federal and Federally Assisted Construction Projects.

ABC is concerned about the expansion of policies encouraging the use of government-mandated project labor agreements on federal¹¹ and federally assisted construction projects that unfairly limit opportunities for all small businesses, skilled construction workers and qualified companies.

Real-world examples, experience and a survey of our membership¹² has found that government-mandated PLAs discourage competition from quality contractors and the 87.3% of the U.S. construction workforce who are not affiliated with construction unions,¹³ which are given preferential treatment in typical government-mandated PLAs.

Further, federal policies that encourage the use of government-mandated PLAs on federal and federally assisted construction projects stand to increase construction costs by 12% to 20%,¹⁴ resulting in the funding and construction of fewer projects and reduced jobs and opportunities for small, women-, minority- and veteran-owned businesses.

Problematic, anti-competitive terms in government-mandated PLAs require contractors to use union hiring halls to obtain most or all workers instead of their existing workforce; obtain apprentices exclusively from union or government-registered apprenticeship programs; follow inefficient union work rules; and pay into union benefit and multi-employer pension plans that any limited number of nonunion employees permitted on the project will be unlikely to access unless they join a union and vest in these plans. Research estimates that nonunion employees on PLA projects suffer an estimated 20% reduction in compensation and contractors pay an extra 25% in benefits costs to cover this PLA wage theft to union plans, making firms less competitive against unionized firms.¹⁵

¹¹ On Feb. 6, 2009, President Obama issued Executive Order 13502, which encourages federal agencies to require PLAs on federal construction projects exceeding \$25 million in total cost on a case-by-case basis and permits state and local recipients of federal dollars to mandate PLAs.

¹² [Survey: ABC Members Strongly Oppose Government-Mandated Project Labor Agreements](#), Jan. 30, 2019, ABC Newswire.

¹³ See U.S. Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, Table 3. Union affiliation of employed wage and salary workers by occupation and industry. Accessed Jan. 21, 2021. <https://www.bls.gov/news.release/union2.t03.htm>.

¹⁴ Most recently, a study published in February 2020 found Connecticut school projects subject to government-mandated PLAs were 19.8% more expensive compared to school projects not built with PLA mandates. Multiple studies measuring the impact of government-mandated PLAs on school construction in California, Massachusetts, New Jersey, New York and Ohio (all states with prevailing wage laws) made similar conclusions and are available at TheTruthAboutPLAs.com, [Research on Government-Mandated Project Labor Agreements](#), updated in March 2020.

¹⁵ An October 2009 report by Dr. John R. McGowan, *The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements*, finds that employees of nonunion contractors that are forced to work under government-mandated PLAs suffer a reduction in their take-home pay that is conservatively estimated at 20%. PLAs force employers to pay employee benefits into union-managed funds, but employees will never see the benefits of the employer

The New Hampshire Job Corps Center¹⁶ construction project demonstrates the anti-competitive and costly problems with PLA mandates on large-scale federal contracts. A solicitation for a U.S. DOL Job Corps Center in Manchester, New Hampshire, was originally issued with a PLA mandate. After nearly three years of PLA-related delays and litigation, the project was rebid with a PLA and then again without a PLA following a successful U.S. Government Accountability Office bid protest against the PLA.

Comparing the project's 2013 bid results with and without a PLA suggests that PLA mandates increase costs and reduce competition.¹⁷ Without a PLA, there were more than three times as many bidders (nine vs. three) and the lowest bidder's offer was \$6,247,000 (16.47%) less than the lowest PLA bidder. In addition, firms who participated in both rounds of bidding submitted an offer that was nearly 10% less than when they submitted a bid with a PLA. The low bidder under the PLA mandate was from Florida, but without a PLA, a local firm from New Hampshire won the contract¹⁸ and completed it on time and on budget to the satisfaction of the DOL.¹⁹ Ultimately, fair and open competition benefited the DOL, taxpayers and local businesses and workers.

In addition, we disagree with other agency arguments, such as the Treasury Department's, that government-mandated 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."²⁰ In fact, PLA mandates exacerbate the construction industry's skilled workforce shortage and undermine the economy and efficiency of government-financed and -procured construction projects. As previously stated, the U.S. construction industry needs to hire and upskill an estimated 430,000 construction workers in 2021²¹ to meet current industry demand, which does not include additional short- and long-term investment in infrastructure. Divisive PLA mandate policies will exacerbate the industry's skilled workforce shortage by creating opportunity for just 12.7% of the construction workforce employed by certain unionized firms. It will also choke off merit shop and community apprenticeship and workforce development

contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, often continue to pay for existing programs as well as into union programs under a PLA. The McGowan report found that nonunion contractors are forced to pay in excess of 25% in benefit costs above and beyond existing benefits costs as a result of this "double payment" of benefit costs. See TheTruthAboutPLAs.com, [New Report Finds PLA Pension Requirements Steal From Employee Paychecks, Harm Employers and Taxpayer](#), Oct. 24, 2009.

¹⁶ See evidence of a total of \$428,000 worth of DOL-commissioned pro-PLA reports for a [Job Corps Center in Manchester, NH, \(\\$128,000\)](#) and a [study promoting PLAs across all federal agencies \(\\$300,000\)](#).

¹⁷ See table of bid results via TruthAboutPLAs.com at: <http://thetruthaboutplas.com/wp-content/uploads/2013/04/Bid-Results-of-Manchester-NH-DOL-Job-Corps-Center-bid-with-and-without-a-PLA-042313.pdf>.

¹⁸ See www.TheTruthAboutPLAs.com for full details on the project. [U.S. Department of Labor Job Corps Center Opening Demonstrates Value of Fair and Open Competition](#), Oct. 26, 2015.

¹⁹ <http://www.nhbr.com/September-4-2015/From-the-ground-up-NH-Job-Corps-Center/>, Sept. 4, 2015.

²⁰ 86 Fed. Reg. 26802.

²¹ [ABC: The Construction Industry Needs to Hire an Additional 430,000 Craft Professionals in 2021](#), March 23, 2021, ABC News Release.

pipelines not offered by unions and joint labor/management programs from opportunities created by investment of taxpayer dollars in infrastructure.

To create opportunities for small, minority-, women- and veteran-owned businesses and their diverse workforces, the DOL final strategic plan must ensure policies supporting fair and open competition on taxpayer-funded construction projects. Contracts should be awarded through a fair and open competitive bidding process that allows all qualified union and nonunion contractors to compete on a level playing field based on merit, experience, quality and safety.

1.1 Advance training, employment and return-to-work opportunities that connect workers to higher-wage jobs, especially in ways that address systemic inequities.

It is a priority for ABC to provide career opportunities and education that will help all workers thrive in the construction industry. ABC is currently taking several steps to make this happen, which are discussed further below.

At a national level, we urge the DOL to develop a consistent framework that allows all workers to connect with those that provide them the education they need to be successful in the workplace. This framework should enable and empower employers and employees to make a connection.

ABC's active framework is helping to grow and develop a diverse workforce, which includes:

- 1) Identifying, creating and promoting the diversity of entry points into the construction industry for those who choose construction as a career.
 - a. ABC focuses on seven entry points to bring people into the industry:
 - i. Re-entry and second chance programs
 - ii. Military veterans
 - iii. Second career
 - iv. K-12 GED equivalent
 - v. Community college associate degree
 - vi. Higher education
 - vii. Non-degreed
 - b. The programs and opportunities in each entry point are offered via Diversity Resource Group programs, voluntary associations of people who have common interests, which may center on race/ethnicity, gender, etc. These groups can play a vital role in articulating, promoting and supporting the needs and goals of their various constituencies.
- 2) Creating and providing career advancement educational opportunities that add value to the employer and all employees (innovative technology and leveraging competency-based learning models).

- 3) Creating and promoting a construction career development ecosystem that aligns the employer needs with the employee dreams.

In the final strategic plan, we urge DOL to develop a framework similar to ABC's, which demonstrates our commitment to achieving an inclusive and culturally safe and competent workforce.

Goal 2: Ensure Safe Jobs, Essential Protections and Fair Workplaces

OSHA 2.1: Secure Safe and Healthful Working Conditions for America's Workers.

It is ABC's mission to ensure all of our construction workers get home in the same—or better—condition than when they arrived on the jobsite every day.

ABC's Safety Performance Report is an annual assessment that furthers the construction industry's understanding of how to achieve work-class safety through its STEP Safety Management System.²² STEP dramatically improves safety performance among participants regardless of company size or type of work and proves that world-class safety is achievable with a company-wide commitment to safety as a core value.

ABC's 2021 SPR²³ is based on data gathered from STEP participants that recorded nearly one billion hours of work in construction, heavy construction, civil engineering and specialty trade trades in 2020. It documents the dramatic impact of using proactive safety practices to reduce recordable incidents by up to 85%, making the best-performing companies 655% safer than the U.S. Bureau of Labor Statistics industry average.

The 2021 report²⁴ demonstrates the remarkable impact that leading indicators, such as toolbox talks or substance abuse programs, have on a construction company's safety performance.

DOL's Occupational Safety and Health Administration links to ABC's SPR on its *Using Leading Indicators to Improve Safety and Health Outcomes* webpage as a resource for companies, industry groups and other organizations.²⁵ Leading indicators serve as a proactive measure to prevent workplace hazards and reduce recordable incidents, resulting in improved safety and health performance. While the construction industry has historically evaluated safety performance based on trailing indicators—past incidents or conditions—it is equally important to assess and implement core leading indicators to proactively manage performance. By identifying hazards and eliminating or minimizing the conditions to prevent injury, companies of all sizes can dramatically

²² <http://www.abcstep.org/>.

²³ [ABC's 2021 Safety Performance Report: Construction Companies Can Be 655% Safer With These Best Practices, Says ABC Report](#), April 30, 2021, ABC News Release.

²⁴ <https://abc.org/spr>.

²⁵ <https://www.osha.gov/leading-indicators/resources>.

improve safety performance. We urge the department's final strategic plan to continue to focus on leading indicator tools for safety and health performance.

DOL's final strategic plan should also implement a total human health framework in its safety practices. Such a framework includes: body (physical wellness), mind (mental, intellectual, financial and occupational wellness), heart (emotional and social wellness), and soul (spiritual wellness). It is a priority of ABC to discuss substance abuse and the rise of suicide in the construction industry.

For example, ABC is a founding member of the Construction Coalition for a Drug- and Alcohol-Free Workplace²⁶ as well as an active member of the Construction Industry Alliance for Suicide Prevention.²⁷ We cannot expect employees to simply leave life's issues at the gate when they put their hard hat on—substance abuse and suicide affect everyone around them, beyond coworkers and immediate family members. We need to take the time to make sure all employees are safe physically and mentally and can have honest conversations. It is imperative to educate people about the risks and give them the tools to assist those who need it. Mental health must be addressed now for the sake of our current workforce and the workforce of the future.

Finally, ABC strongly believes that employers committed to safety should be viewed as partners in achieving safer workplaces, and that OSHA's cooperative programs, including the Voluntary Protection Program, should not be defunded or diminished. We hope that the final strategic plan will expand the VPP and bring more employers into the program. We urge the department to focus on its long-successful cooperative efforts with employers.

WHD 2.2 Enforce labor standards and ensure workers in the United States are paid the wages they have earned.

ABC is encouraged that DOL's Wage and Hour Division has publicly indicated an interest in improving the Davis-Bacon Act wage determination process impacting federal and federally assisted construction projects as well as some states and localities that use federal Davis-Bacon wage rates to set their state and local prevailing wage.²⁸ ABC continues to advocate for full repeal of the Davis-Bacon Act. However, in the absence of full repeal, we urge you to consider the below commonsense reforms to the law that would benefit employers, employees and taxpayers.

ABC has long maintained that the 1930s Davis-Bacon Act and related regulations are outdated, needlessly raise construction project costs for hardworking taxpayers, stifle contractor productivity and discourage competition while disproportionately affecting

²⁶ <https://www.drugfreeconstruction.org/>.

²⁷ [ABC's Greg Sizemore Appointed Vice Chair, Construction Industry Alliance for Suicide Prevention](#), Dec. 18, 2019, ABC News Release.

²⁸ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1235-AA40>.

small businesses interested in pursuing federal and federally assisted construction projects.

At 90 years old, the Davis-Bacon Act is a law that requires contractors and subcontractors that perform work on federally funded or assisted construction contracts in excess of \$2,000 to pay a government-determined “prevailing” wage and benefit rate on an hourly basis to on-site workers.

Currently, DOL’s WHD determines and updates the prevailing wage and benefits rates that contractors are required to pay to construction workers on applicable construction projects subject to the Davis-Bacon Act. The WHD conducts surveys to collect and compile data about hourly rates contractors pay to employees in dozens of trades for four types of construction (building, highway, heavy and residential) for every single county in America.

In particular, the survey process leading to the determination of prevailing wages has long been recognized to be arbitrary and unworkable, leading to inflated, outdated and inaccurate prevailing wage determinations and other errors on many projects. Numerous reports from the GAO,²⁹ DOL’s Office of Inspector General and congressional hearings³⁰ have highlighted the DOL’s failure to properly determine prevailing wage rates under the Davis-Bacon Act.

In a 2021 survey of ABC member companies, 88% of participants stated they do not support prevailing wage laws and the Davis-Bacon Act in its current form, with 82% supporting reforms to and/or full repeal of prevailing wage laws.³¹

Further, 94% of ABC member survey respondents believe that government prevailing wage laws make projects more expensive. Meanwhile, 67.6% said the laws result in less competition from subcontractors and 75% said it would make contractors less likely to bid on public works projects in their own communities, paid for by their own tax dollars.³²

As a result of a flawed, unscientific wage calculation methodology, the DOL’s published determinations of federal “prevailing” wages in construction no longer reflect actual local wages. In fact, despite years of low union density, hovering around 13% of the U.S. construction industry workforce,³³ the DOL’s wage-survey process somehow mandates

²⁹ U.S. Government Accountability Office, *Davis–Bacon Act: Methodological Changes Needed to Improve Wage Survey*, GAO-11-152, March 2011, at <https://www.gao.gov/products/gao-11-152> (April 13, 2011).

³⁰ <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm>.

³¹ ABC Prevailing Wage/Davis-Bacon Act Survey, March 3, 2021, at Page 16-17, <https://www.abc.org/Portals/1/News%20Releases/ABC%20National%202021%20Survey%20on%20Prevailing%20Wage%20Davis%20Bacon%20Policies%20FINAL.pdf?ver=2021-03-03-102740-943>.

³² ABC Prevailing Wage/Davis-Bacon Act Survey, March 3, 2021, at Page 2, 3 and 9, <https://www.abc.org/Portals/1/News%20Releases/ABC%20National%202021%20Survey%20on%20Prevailing%20Wage%20Davis%20Bacon%20Policies%20FINAL.pdf?ver=2021-03-03-102740-943>.

³³ <https://www.bls.gov/news.release/union2.nr0.htm>.

union wage rates more than 48% of the time and is estimated to utilize union wage rates 80% of the time for nonresidential construction categories.

ABC continues to support transferring the prevailing wage survey process away from the DOL's WHD in favor of BLS, which would use proven statistical sampling techniques to arrive at an accurate, current and fairer local approximation of prevailing wages throughout the country. Additionally, with modification and enhancements to its Occupational Employment and Wage Statistics and National Compensation Survey, the BLS could develop the methodology to include fringe benefits in its calculation for more precise local Davis-Bacon estimates.³⁴ Studies show that the wage and benefit rates set for projects in rural areas reflect rates predominantly from urban markets that are not local and are from other parts of the state due to the lack of participation in the WHD's current archaic survey process.³⁵

In addition, the DOL's failure to provide detailed information about job duties that correspond to each wage rate makes it difficult to determine the appropriate wage rate for many construction-related jobs. These wage determinations force federal contractors to use outdated and inefficient union job classifications that ignore the productive work practices successfully used in the merit shop construction industry. Further, the DOL has failed to give contractors notice of many of its letter rulings and, with rare exceptions, has not posted such rulings on its website. ABC supports regulatory language requiring the DOL to publish any union work assignment rules that contractors are expected to abide by and prohibiting the DOL from penalizing contractors for misclassifications based on unpublished work rules.

Because diverse contractors are generally smaller in size and have limited resources, they are less likely to bid to perform work covered by Davis-Bacon, due to its greater complexity. As the nation's economy continues to feel the impact of the COVID-19 pandemic, it is critical that we continue to ensure more women- and minority-owned and -operated businesses are not disincentivized from bidding on and winning work to increase competition among businesses and deliver the most value on taxpayer-funded projects.

Goal 4: Statistical Goal—Produce Gold-Standard Statistics and Analyses

Despite the data collection maintained through the DOL's Registered Apprenticeship Partners Information Data System, the department does not have a centralized source of data on all registered apprenticeship programs operating within the 50 states and the District of Columbia.

Currently, the oversight of registered apprenticeship programs is controlled directly by the Office of Apprenticeship in 25 states (OA states), but for the other 25 states and the

³⁴ The Heritage Foundation, *Labor Department Can Create Jobs by Calculating Davis–Bacon Rates More Accurately*, Jan. 21, 2017, at <https://www.heritage.org/jobs-and-labor/report/labor-department-can-create-jobs-calculating-davis-bacon-rates-more>.

³⁵ *Id.*

District, the OA delegates some of its authority and oversight to state apprenticeship agencies (SAA states). While a substantial majority of states contribute data to RAPIDS, 16 states and the District, all of which are SAA states, do not collect and/or report comprehensive information on their registered apprenticeship programs to the OA, thus making a standardized 50-state analysis of these programs difficult.

As a result, there is no substantive data to inform employers of the average cost and returns for a registered apprenticeship program in specific occupations within the construction industry. In addition, it is unclear how many construction workers participate and complete registered apprenticeship programs on an annual basis and/or in the current workforce, calling into question government policies promoting government-registered apprenticeship mandates or preferences on taxpayer-funded construction projects.

In addition, some lawmakers and construction industry stakeholders are unaware that government-registered apprenticeship programs are not keeping up with industry demand for skilled labor to meet the current backlog of construction projects—which stood at 8.5 months in June 2021³⁶—and future spending expectations. In fact, DOL data indicates that in 2020, only 20,749 apprentices from the 25 OA states completed construction registered apprenticeship programs.³⁷ However, an analysis³⁸ of BLS data shows construction companies will need to hire 430,000 more workers in 2021 than they employed in 2020 in order to meet the current industry demand.

As DOL's strategic plan is finalized, we urge the department to implement a centralized, coherent data collection system on registered apprenticeship programs in all 50 states and the District of Columbia. Absent this comprehensive collection process, we encourage a more detailed data collection from the SAA states that do not participate in RAPIDS and DOL to make RAPIDS data publicly available by state in order to help establish the credibility and marketability of registered apprenticeship programs and provide critical evidence to employers, prospective apprentices and other industry stakeholders when trying to understand the costs and benefits of these programs.

As part of this comprehensive data collection, ABC urges DOL to gather data on and make publicly available the total number of construction industry workers who have completed a registered apprenticeship program, sorted by state and trade, and the average cost of sponsoring an apprentice through registered apprenticeship programs

³⁶ [ABC's Construction Backlog Indicator and Contractor Confidence Index Rise in June](#), July 13, 2021, ABC News Release.

³⁷ See <https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020> and for a breakdown of this data by state: <https://thetruthaboutplas.com/wp-content/uploads/2021/03/FY17-20-Federal-Registered-Apprenticeship-Program-Data-from-OA-States-for-Construction-Industry-from-US-DOL-020521-Created-032921.xlsx>. The DOL-provided state data is from federal OA-registered programs affiliated with construction unions and programs not affiliated with unions such as those run by ABC chapters, ABC member contractors, industry associations, community and technical education workforce development programs.

³⁸ [ABC: The Construction Industry Needs to Hire an Additional 430,000 Craft Professionals in 2021](#), March 23, 2021, ABC News Release.

for various construction industry occupations, among other key points. Additionally, DOL should attempt to gather data from non-RAPIDS states and publicize it.

BLS 4.1 Provide timely, accurate, and relevant information on labor market activity, working conditions, price changes, and productivity in the U.S. economy.

As explained in further detail in the above section, “*WHD 2.2 Enforce labor standards and ensure workers in the United States are paid the wages they have earned,*” ABC continues to support transferring the prevailing wage survey process away from the DOL’s WHD in favor of BLS, which would use proven statistical sampling techniques to arrive at an accurate, current and fairer approximation of local prevailing wages throughout the country. Additionally, with modification to its Occupational Employment and Wage Statistics and National Compensation Survey, the BLS could develop the methodology to include fringe benefits in its calculation for more precise local Davis-Bacon estimates.³⁹

Conclusion

ABC appreciates the opportunity to comment on DOL’s draft strategic plan for fiscal years 2022-2026. We look forward to working with the department to create careers in construction for all career-seekers, ensure safety and fairness at workplaces nationwide and grow the economy.

Respectfully submitted,



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³⁹ The Heritage Foundation, *Labor Department Can Create Jobs by Calculating Davis–Bacon Rates More Accurately*, Jan. 21, 2017, at <https://www.heritage.org/jobs-and-labor/report/labor-department-can-create-jobs-calculating-davis-bacon-rates-more>.