



May 27, 2025

The Honorable Abigail Slater
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington DC 20530

RE: U.S. Department of Justice Anticompetitive Regulations Task Force (Docket No. ATR-2025-0001)

Dear Assistant Attorney General Slater:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Justice Anticompetitive Regulations Task Force (Docket No. ATR-2025-0001) to identify regulations that unnecessarily harm competition.¹

About Associated Builders and Contractors

ABC is a national construction industry trade association established in 1950 with 67 chapters and more than 23,000 members.

Founded on the merit shop philosophy, ABC helps 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.

The vast majority of ABC's contractor members are also small businesses. This is consistent with the U.S. 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 (81% of all construction firms have fewer than 10 employees)² and industry workforce employment (81% of the construction industry is employed by small businesses).³ In fact, construction companies that employ fewer

¹ See docket: <https://www.regulations.gov/document/ATR-2025-0001-0002>.

² U.S. Census Bureau 2022 County Business Patterns: <https://data.census.gov/table/CBP2022.CB2200CBP?q=CBP2022.CB2200CBP&hidePreview=true> and <https://www.census.gov/programs-surveys/cbp/data/tables.html>.

³ 2024 Small Business Profile, U.S. Small Business Administration Office of Advocacy (2024), at page 4, https://advocacy.sba.gov/wp-content/uploads/2024/11/United_States.pdf.

than 100 construction professionals comprise nearly 99% of construction firms in the United States and account for 69% of all construction industry employment.⁴

In addition to small business member contractors that build private and public works projects, ABC also has large member general contractors and subcontractors that perform construction services for private sector customers and federal, state and local governments procuring construction contracts subject to respective government acquisition policies.

ABC's membership is bound by a shared commitment to the merit shop philosophy in the U.S. construction industry. This philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on health and safety, quality and value.

ABC's Comments in Response to DOJ on Anticompetitive Regulations

ABC strongly supports comprehensive regulatory reform, which includes across-the-board requirements for departments and agencies to appropriately evaluate risks, weigh costs and assess the benefits of all regulations.

Unfortunately, the Biden administration moved forward with an aggressive and burdensome rulemaking agenda, where regulations were promulgated hastily with limited stakeholder input and questionable legal authority. Many of the Biden-era regulations are currently being litigated.

ABC urges the DOJ Task Force to seek rescission or withdrawal of the below Biden-era regulations, which create unnecessary barriers to competition, needless red tape and uncertainty to the regulated community. Additional background on each regulation is provided below.

Of the five focus areas designated by the DOJ Task Force, all of the regulations below have significant anticompetitive impacts on housing, transportation, health care and energy. By imposing increased regulatory burdens on contractors, these regulations discourage competition and drive up the costs to build affordable housing, roads, airports, hospitals, power plants and more.

The regulations are:

Federal Acquisition Regulation Council:

- Use of Project Labor Agreements for Federal Construction Projects Final Rule (RIN: 9000–AO40)

⁴ U.S. Census County Business Patterns by Legal Form of Organization and Employment Size Class for the U.S., States and Selected Geographies: 2022, available at <https://data.census.gov/table/CBP2022.CB2200CBP?q=CBP2022.CB2200CBP&hidePreview=true>.

U.S. Department of Labor:

- Updating the Davis-Bacon and Related Acts Regulations Final Rule (RIN: 1235-AA40)
- Employee or Independent Contractor Classification Under the Fair Labor Standards Act Final Rule (RIN 1235-AA43)

Federal Trade Commission:

- Non-Compete Clause Final Rule (RIN: RIN 3084-AB74)

FAR Final Rule of Concern

Use of Project Labor Agreements for Federal Construction Projects Final Rule (RIN: 9000-AO40)

On March 28, 2024, ABC and its Florida First Coast chapter filed suit⁵ against the federal government seeking to overturn the final rule implementing the Biden administration's Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects, which requires federal construction contracts of \$35 million or more to be subjected to anti-competitive and inflationary project labor agreements.⁶

ABC's complaint asserts that the Biden administration lacked the legal and constitutional authority to impose the mandate as it will injure economy and efficiency in federal contracting and illegally steer construction contracts to certain unionized contractors.

While there have been positive developments under the Trump administration, ABC continues to oppose the December 2023 final rule⁷ implementing the PLA mandate on all federal projects over \$35 million and is advocating for an executive order or rulemaking to overturn the requirement.

Additionally, ABC member federal contractors have filed several bid protests at the U.S. Court of Federal Claims against PLA mandates in federal agency solicitations for construction services and, on Jan. 19, 2025, the court ruled in favor of ABC members and ordered the federal agencies to remove the PLA mandate from the relevant solicitations.⁸

⁵ See complaint: <https://www.abc.org/Portals/1/NewsMedia/24229466-0--108732%20Complaint.pdf?ver=n2ZFHI6-GE0851GSygOtCw%3d%3d×tamp=1711644087179>.

⁶ See executive order: <https://www.federalregister.gov/documents/2022/02/09/2022-02869/use-of-project-labor-agreements-for-federal-construction-projects>.

⁷ 88 Federal Register 88708.

⁸ See decision: <https://www.abc.org/Portals/1/NewsMedia/01515829614-C.pdf?ver=0 ty 1ShqizDvGxG3mSKpA%3d%3d>.

A PLA is a multiemployer, multiunion, pre-hire collective bargaining agreement that all general contractors and subcontractors on a jobsite must agree to in order to win a contract to build a federal construction project. While differences may exist in the specific language of each PLA document, government-mandated PLAs typically contain provisions with anti-competitive and costly effects.

ABC and the federal contracting community broadly oppose government-mandated PLAs as these schemes needlessly restrict competition, discriminate against nonunion employees and place nonunion general contractors and subcontractors at a significant competitive disadvantage. Government-mandated PLAs will exacerbate the construction industry's skilled labor shortage by discouraging participation from 89.7% of the U.S. construction industry workforce who do not belong to a union.

Likewise, typical government-mandated PLAs are anti-competitive in nature and severely restrict fair and open bidding on taxpayer-funded projects, including from small businesses and their employees. Ultimately, studies have shown government-mandated PLAs drive up the costs of federal construction from 12% to 20%.⁹

Additionally, the final rule violates federal law and should be rescinded for this reason. It violates the Competition in Contracting Act, which states that, when awarding federal contracts, federal agencies "shall obtain full and open competition through the use of competitive procedures."¹⁰ By discriminating against nonunion contractors and employees who do not belong to a union, the final rule's PLA mandate drastically restricts competition and gives an unfair advantage to unionized businesses and employees.

The final rule also exceeds the authority of the executive branch under the Federal Property and Administrative Services Act.¹¹ Congress has never authorized across-the-board PLA mandates.

The final rule continues a trend of policies that have reduced small business participation in federal contracting. Small businesses have suffered a 60% decline in the number of firms awarded federal contracts from 2010 to 2020, according to SBA data.¹²

⁹ See various studies: <https://buildamericalocal.com/learn-more/#gmpla-studies>.

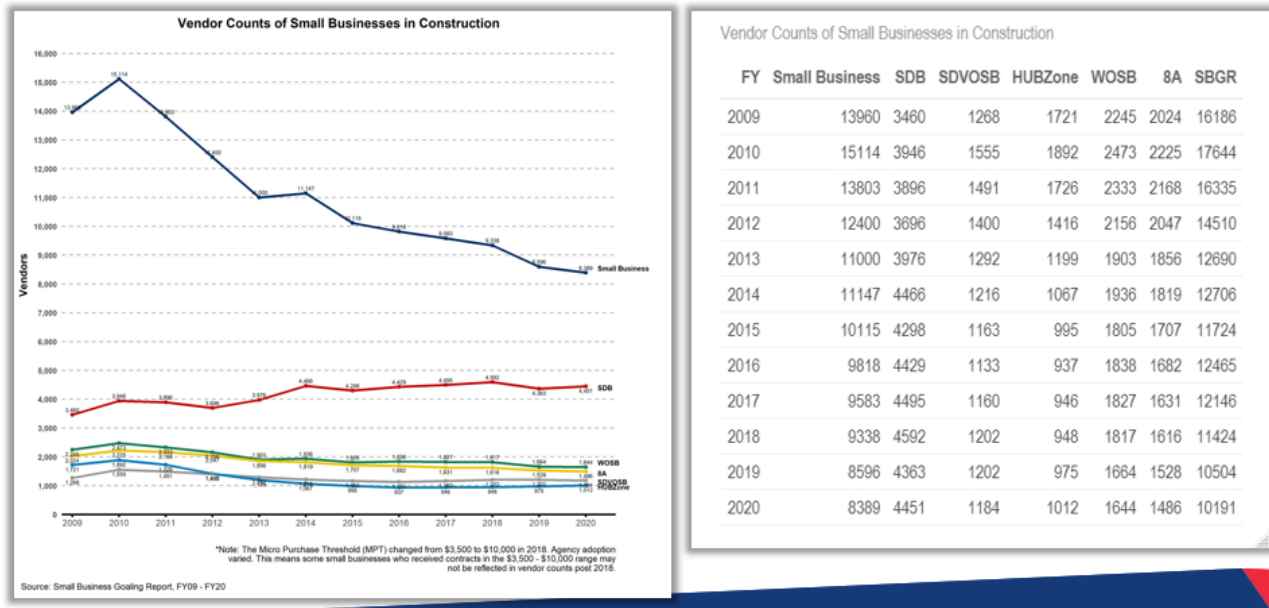
¹⁰ 41 U.S.C. § 253. The Competition in Contracting Act of 1984 (41 U.S.C. 253) ([FAR Subpart 6.1 "Full and Open Competition"](#)) is a public law enacted for the purpose of encouraging the competition for the award of all types of government contracts. The purpose was to increase the number of competitors and to increase savings through lower, more competitive pricing. CICA became law in 1984 as a foundation for the [Federal Acquisition Regulation](#).

¹¹ 40 U.S.C. § 101.

¹² Chart available at: <https://thetruthaboutplas.com/wp-content/uploads/2022/09/60-percent-decline-of-small-businesses-awarded-federal-construction-contracts-2010-to-2020.png>. The data was prepared by an SBA economist, who said, "The charts represent data on vendors who have received obligations. The definition of 'small' comes from the contracting officer's determination when the contract was awarded. The COs follow the NAICS size standards." Data is from FPDS that can be publicly accessed through sam.gov: <https://sam.gov/reports/awards/standard>.



Number of Construction Industry Small Businesses Awarded Federal Contracts Declined 60% From 2010-2020



The decline in small business participation in federal contracts directly correlates with increasing federal regulatory burdens. Small business contractors may choose to bid on private sector and state and local government contracts when increased regulatory clarity and lower regulatory burdens reduce costs related to the need for expertise from attorneys and compliance professionals.

According to a September 2022 survey of ABC contractor members, 98% surveyed opposed the PLA mandate at the proposed rule stage. Additionally, 97% surveyed said a construction contract that required a PLA would be more expensive compared to a contract procured via fair and open competition, 99% said they were less likely to bid on a taxpayer-funded construction contract if the bid specifications required the winning firm to sign a PLA with labor unions and 97% of respondents said that government-mandated PLAs decrease economy and efficiency in government contracting.¹³ When the rule was initially proposed, ABC filed extensive formal comments that further outline the anti-competitive and costly nature of government-mandated PLAs.¹⁴

For the reasons outlined above, ABC requests a new executive order that directs the FAR Council to rescind the 2023 final rule, restricts government-mandated PLAs and restores robust fair and open competition on federal and federally assisted construction projects.

¹³ See ABC Newline: <https://www.abc.org/News-Media/Newsline/survey-97-of-abc-contractors-say-bidens-government-mandated-project-labor-agreement-policies-would-make-federal-construction-more-expensive>.

¹⁴ See ABC's comments: <https://www.abc.org/News-Media/News-Releases/abc-lawmakers-and-industry-groups-call-on-president-biden-to-withdraw-his-inflationary-pla-mandate-policies1>.

DOL Final Rules of Concern

Updating the Davis-Bacon and Related Acts Regulations Final Rule (RIN: 1235-AA40)

ABC applauded a June 26, 2024, decision¹⁵ by the U.S. District Court for the Northern District of Texas granting a nationwide preliminary injunction that blocks some provisions of the DOL's Aug. 23, 2023, final rule, Updating the Davis-Bacon and Related Acts Regulations. This regulation drastically revises existing rules regarding government-determined prevailing wage rates that must be paid to construction workers on federal and federally assisted construction projects funded by taxpayers. The final rule took effect on Oct. 23, 2023.¹⁶

Associated General Contractors of America's lawsuit¹⁷ asserted that the Biden administration lacked the legal authority to expand the law to cover manufacturing facilities miles away from projects and delivery truck drivers spending any amount of time on a jobsite, or to retroactively impose the measure on already-executed contracts, among other provisions. The court granted AGC's motion for a nationwide preliminary injunction, asserting that the challenged provisions of the rule were "facially invalid" and blocking them pending a final ruling.

Previously, on Nov. 7, 2023, ABC and its ABC Southeast Texas chapter announced the filing of a complaint¹⁸ in the U.S. District Court for the Eastern District of Texas challenging the DOL's final rule. ABC's challenge is broader in scope than AGC's and seeks to fully overturn the final rule.

ABC challenged this final rule due to its exacerbation of longstanding flaws in the DOL's prevailing wage system in violation of the law. For decades, the U.S. Government Accountability Office,¹⁹ DOL Office of Inspector General,²⁰

¹⁵ See preliminary injunction: https://www.abc.org/Portals/1/0624%20AGC%20Injunction.pdf?ver=9CN_Pdo2bXRGKMV4jdTJYw%3d%3d.

¹⁶ 88 Federal Register 57526.

¹⁷ See AGC-filed complaint: https://www.agc.org/sites/default/files/Files/Communications/2023.11.07_AGC_v_DOL_Complaint_Challenging_DBA_Final_Rule_Final.pdf.

¹⁸ See ABC-filed complaint: https://www.abc.org/Portals/1/NewsMedia/2023-11-07_ABC-Su_Doc_1_Plaintiffs'_Complaint_for_Declaratory_and_Injunctive_Relief.pdf?ver=M4ZROolzbsnhK8iRmGtZPQ%3d%3d×tamp=1699381976724.

¹⁹ See, e.g., "Davis-Bacon Act Should Be Repealed," April 27, 1979; "Davis-Bacon Act: Process Changes Could Raise Confidence that Wage Rates Are Based on Accurate Data," May 31, 1996; "Davis-Bacon Act: Labor Now Verifies Wage Data, but Verification Process Needs Improvement," Jan. 11, 1999; "Davis-Bacon Act: Methodological Changes Needed to Improve Wage Survey," March 22, 2011.

²⁰ See "Report to the Wage and Hour Division: Better Strategies Are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Prevailing Wage Rates," DOL Office of the Inspector General, March 29, 2019; and "Concerns Persist with the Integrity of Davis-Bacon Act Prevailing Wage Determination," DOL Office of Inspector General, 04-04-003-04-420, March 30, 2004.

taxpayer advocates²¹ and construction industry stakeholders²² have criticized the DOL Wage and Hour Division's methodology used to determine prevailing wages as well as the WHD's enforcement of DBA regulations on taxpayer-funded construction projects covered by the DBA. The final rule failed to acknowledge or address these criticisms; in many instances, the changes to the DOL's DBA rules will only make things worse while violating the DBA statute, the Administrative Procedure Act, the Small Business Regulatory Flexibility Act and other laws.

The final rule made over 50 major changes to DBA prevailing wage regulations, needlessly driving up construction costs; discouraging competition from small businesses; and adding confusion, regulatory uncertainty and burdensome red tape for contractors pursuing contracts subject to the DBA as well as government stakeholders procuring taxpayer-funded construction contracts.

Among many other concerns, ABC opposed the following changes that make prevailing wages less accurate and compliance more burdensome for contractors:

- Lowering the definition of "prevailing wage" to a wage paid to at least 30% of workers in a locality, down from 50%;
- Allowing the DOL to adopt state or local prevailing wage rates as DBA wage rates; and
- Making DBA requirements effective by "operation of law."

The continued lack of regulatory clarity in DBA regulations, worsened by the final rule, has resulted in confusion from government and private sector stakeholders, unintentional violations and costly litigation resulting in fees, penalties and back pay that undermines the ability of many small businesses to be profitable in an industry with extremely low profit margins.

Further, Davis-Bacon rules around labor classifications tilt the scales toward unionized contractors. When union wage rates prevail for a specific classification, the union work rules in the relevant collective bargaining agreement define what work can be performed by workers in that profession. However, these CBAs are frequently not available publicly, leading contractors to face Davis-Bacon violations for paying their workers according to their usual practice.

Ultimately, the DOL's final rule is likely to result in less value and job creation from government investment in infrastructure to improve America's roads, bridges,

²¹ See Rep. Bob Good, R-Va., press release on H.R. 2218, the Repeal Davis-Bacon Act, April 14, 2021: <https://good.house.gov/media/press-releases/rep-good-introduces-two-bills-confront-corrupt-union-bosses> and Rachel Greszler, "Why Congress Must Cancel the Davis Bacon Act," The Heritage Foundation, April 7, 2021.

²² See written congressional testimony by ABC General Counsel Maury Baskin before the U.S. House Education and Workforce Subcommittee on Workforce Protections, June 18, 2013, https://www.abc.org/Portals/1/Documents/Newsline/2013/ABC%20Testimony_Baskin_House%20EW%20Wkfc%20Protections%20Subcmte_Hearing_061813_FINAL.pdf and hearing transcript at <https://www.govinfo.gov/content/pkg/CHRG-113hhrg81435/html/CHRG-113hhrg81435.htm>.

transportation systems, schools, affordable housing and water, energy and broadband utilities.

On May 17, 2022, ABC submitted extensive comments urging the DOL to rescind the rule.²³ Despite this, the final rule was largely implemented as proposed. ABC's comments further outline in detail the unnecessary cost increases, compliance burdens on small businesses and numerous unlawful provisions inherent to the final rule.

For the reasons outlined above, ABC urges the DOL to rescind the Biden administration's Davis-Bacon Act prevailing wage final rule. Additionally, the DOL should take steps to ensure union collective bargaining agreements are publicized when union work rules are controlling.

Employee or Independent Contractor Classification Under the Fair Labor Standards Act Final Rule (RIN 1235-AA43)

On May 1, 2025, ABC applauded the DOL's announcement²⁴ that it will pause enforcement of the Biden administration's 2024 Employee or Independent Contractor Classification Under the Fair Labor Standards Act final rule²⁵ in current enforcement matters while the agency reviews this regulation. ABC, its Southeast Texas chapter, the Coalition for Workforce Innovation and five other organizations are currently challenging the 2024 final rule in federal court,²⁶ arguing that the 2024 final rule is unlawful and a violation of the APA. The final rule went into effect on March 11, 2024.

The 2024 final rule creates an ambiguous and difficult-to-interpret standard for determining independent contractor status. Under the rule's multifactor test, employers are forced to guess which factors should be given the greatest weight in making the determination. Instead of promoting much-needed economic growth and protecting legitimate independent contractors, the final rule results in more confusion and expensive, time-consuming, unnecessary and often frivolous litigation, as both employers and workers will not understand who qualifies as an independent contractor.

Regrettably, the confusion and uncertainty resulting from the final rule causes workers who have long been properly classified as independent contractors in the construction industry to lose opportunities for work. Legitimate independent contractors are a vital part of the construction industry, providing specialized skills, entrepreneurial opportunities and stability during fluctuations of work common to the industry. They play an important role for large and small contractors, delivering construction projects safely, on time and on budget for their government and private customers.

²³ See ABC's comments: [https://www.abc.org/Portals/1/NewsMedia/ABC Comments on Updating the Davis-Bacon and Related Acts NPRM - 5.17.22.pdf?ver=2022-05-17-234901-040](https://www.abc.org/Portals/1/NewsMedia/ABC%20Comments%20on%20Updating%20the%20Davis-Bacon%20and%20Related%20Acts%20NPRM%20-%205.17.22.pdf?ver=2022-05-17-234901-040).

²⁴ See DOL's release: <https://www.dol.gov/newsroom/releases/whd/whd20250501>.

²⁵ 89 Federal Register 1638.

²⁶ See amended complaint: [https://img1.wsimg.com/blobby/go/afca31c0-5c41-4b51-a572-dc8f062842f4/downloads/show temp.pdf?ver=1709665069260](https://img1.wsimg.com/blobby/go/afca31c0-5c41-4b51-a572-dc8f062842f4/downloads/show_temp.pdf?ver=1709665069260).

ABC continues to support the Trump administration's 2021 final rule,²⁷ which simplified and clarified the factors for determining when a worker is an independent contractor versus an employee under the FLSA. The Biden-era DOL froze and then rescinded the 2021 rule over the opposition of ABC and other industry associations. In 2022, the U.S. Court for the Eastern District of Texas found that the DOL violated the APA when it first attempted to delay and later withdraw the 2021 final rule.²⁸

On Dec. 13, 2022, ABC submitted detailed comments²⁹ in opposition to the independent contractor proposed rule.³⁰

For the reasons stated above, following the completion of the litigation regardless of which way the courts decide, the DOL should rescind the Biden administration's independent contractor final rule and reinstate the 2021 Trump independent contractor final rule.

FTC Final Rule of Concern

Non-Compete Clause Final Rule (RIN: RIN 3084-AB74)

On Aug. 20, 2024, the U.S. District Court for the Northern District of Texas blocked³¹ the Federal Trade Commission from implementing its final rule to ban noncompete agreements,³² which was set to take effect on Sept. 4, 2024. The court found that the FTC lacked statutory authority to promulgate the rule and that the rule is arbitrary and capricious. On Oct. 18, 2024, the FTC appealed the court's Aug. 20 decision, and the litigation is ongoing.

The FTC's 2024 final rule to ban all noncompete agreements nationwide—except existing noncompetes for senior executives—is a radical departure from hundreds of years of legal precedent. In comments³³ submitted on April 19, 2023, ABC urged the FTC to withdraw its proposed rule³⁴ to ban noncompete agreements for several reasons.

²⁷ See ABC's news release: <https://www.abc.org/News-Media/News-Releases/abc-supports-final-dol-revisions-to-independent-contractor-status>.

²⁸ See court decision: <https://www.abc.org/Portals/1/CWI%20v.%20Walsh%20Decision%20re%20DOL%20IC%20Rule.pdf?ver=2022-03-15-151525-497>.

²⁹ See ABC's comments: https://www.abc.org/Portals/1/2022%20Files/Government%20Affairs/ABC_DOL%20Independent%20Contractor%20Proposed%20Rule_12.13.2022.pdf?ver=TCRglZzCdSIObU_3uuvWWQ%3d%3d.

³⁰ 87 Federal Register 62218.

³¹ See decision: <https://files.lbr.cloud/public/2024-08/ryan%20opinion.pdf?VersionId=yjmZ75Ewhedpbx9.7nFN2gwqLTR6qwVt>.

³² 89 Federal Register 38342.

³³ See ABC's comments: https://www.abc.org/Portals/1/2023/ABC_FTC%20Noncompete%20Clause%20Proposed%20Rule_04.19.2023.pdf?ver=6dUqh_qUNP3R-W9uxhSmlQ%3d%3d.

³⁴ 88 Federal Register 3482.

First, the FTC lacks the statutory authority to issue the rule and regulate competition in the market—there is no congressional authorization for such action. In fact, recent U.S. Supreme Court cases indicate this will likely be viewed by the courts as an improper delegation of legislative authority.

Second, there is a lack of evidence supporting the need for a federal standard. There is already robust regulation at the state level, and currently state courts do not and should not enforce unreasonably restrictive noncompete clauses.

Third, issuing a categorical ban and rejecting any of several available alternatives is an additional arbitrary and capricious act in violation of the APA, though the agency lacks authority to impose even the lesser restrictions.

Finally, a blanket ban on noncompete agreements will harm the construction industry overall, especially small businesses. If allowed to go into effect, the overbroad rule would have invalidated millions of reasonable contracts—including construction project contracts—around the country that are beneficial for both businesses and employees.

ABC members have valid business justifications for utilizing noncompete agreements, such as protecting confidential information and intellectual property. The FTC's 2024 rule would have had a harmful effect on their companies as well as their employees, forcing companies to rework their compensation and talent strategies.

For the reasons stated above, ABC urges the FTC to rescind the Biden administration's 2024 final rule to ban noncompete agreements.

Conclusion

Rescinding or withdrawing the Biden-era rules outlined in this letter aligns with the Trump administration's deregulatory efforts and will eliminate needless red tape, uncertainty and burdensome barriers to job creation while unleashing competition and providing regulatory clarity for the construction industry.

Thank you for the opportunity to submit comments on these important matters.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kristen Swearingen', written in a cursive style.

Kristen Swearingen
Vice President of Government Affairs