



May 8, 2024

The Honorable Tammy Baldwin  
Chairwoman  
Committee on Appropriations  
Labor, Health and Human Services,  
Education, and Related Agencies Subcommittee  
U.S. Senate  
Washington, DC 20510

The Honorable Shelley Moore Capito  
Ranking Member  
Committee on Appropriations  
Labor, Health and Human Services,  
Education, and Related Agencies Subcommittee  
U.S. Senate  
Washington, DC 20510

Dear Chairwoman Baldwin, Ranking Member Moore Capito and Members of the Senate Labor, Health and Human Services, Education and Related Agencies Subcommittee:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 23,000 members, I write today to thank you for holding [a Review of the President's Fiscal Year 2025 Budget Request for the Department of Labor](#). This hearing is critical to ensuring the U.S. Department of Labor conforms with congressional intent. Specifically, it enhances the Senate's ability to consider the fiscal year 2025 budget request by evaluating the DOL's use of funds in the preceding fiscal years.

During the 2023 and 2024 fiscal years, the DOL promulgated numerous partisan rulemakings with a significant impact on all American workers, employers and taxpayers. ABC believes that the DOL has used taxpayer funds to appease organized labor in its rulemakings at the expense of all workers and taxpayers. At the direction of Acting Secretary Julie Su, the DOL has revoked worker freedoms, limited access to opportunity and rejected business community feedback. ABC is extremely concerned with the trajectory of Acting Secretary Su's DOL. Most critical for ABC and our members are the determinantal rulemakings which the DOL advanced during its 2023 and 2024 fiscal years highlighted below:

- [Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees final rule](#): On April 26, 2024, the DOL's Wage and Hour Division published its overtime final rule, which increases the minimum annual salary level threshold for exemption in two phases: from the current level of \$35,568 to \$43,888 on July 1, 2024, and to \$58,656 on January 1, 2025. ABC issued a [press release](#) in opposition to the final rule, noting that virtually all of ABC's members employ workers who qualify for exempt status, and phase two of the final rule will reclassify huge numbers of these employees as nonexempt. This will disrupt the entire construction industry, specifically harming small businesses, as the rule will greatly restrict employee workplace flexibility in setting schedules and hours, hurting career advancement opportunities.
- [Worker Walkaround Representative Designation Process final rule](#): On April 1, 2024, the DOL's Occupational Safety and Health Administration issued its worker walkaround final rule, which allows two or more employees to authorize a third-party representative, such as an outside union representative or community organizer, to accompany an OSHA safety inspector into nonunion workplaces during site inspections. [ABC believes](#) there simply is no business case for this final rule and no benefit during a compliance inspection. At the same time, it injects OSHA into labor-management disputes and casts doubt on its status as a neutral enforcer of the law.
- [Employee or Independent Contractor Classification Under the Fair Labor Standards Act final rule](#): On Jan. 10, 2024, the DOL's WHD issued its independent contractor final rule, which creates an ambiguous and difficult-to-interpret standard for determining independent contractor status. Under the rule's multifactor test, employers will now be 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 will result 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. ABC and a coalition of business groups filed a [legal challenge](#) against the final rule.

- [Updating the Davis-Bacon and Related Acts Regulations final rule](#): On Aug. 23, 2023, the DOL's WHD issued its Davis-Bacon final rule, which made drastic revisions to the Davis-Bacon Act and Related Acts regulations that apply to federal and federally assisted construction projects funded by taxpayers. It makes it much more likely that the DOL will adopt union wage scales at the prevailing wage at a greater frequency than in current practice, which already adopts union wage scales at improbable rates considering just [10.7%](#) of the construction industry is unionized. As argued in [ABC's legal challenge](#) to the rule, the final rule includes numerous illegal provisions that artificially inflate construction costs and undermine taxpayer investments in infrastructure.
- [National Apprenticeship System Enhancements proposed rule](#): On Jan. 17, 2024, the DOL's Employment and Training Administration issued its apprenticeship proposed rule, which overhauls regulations related to government-registered apprenticeship programs. Rather than address the labor shortage, this rule reduces flexibility by replacing competency-based GRAPs with time-based GRAPs, eliminates state governments' ability to approve apprenticeship programs for new occupations needed to keep up with the modern economy and incorporates dozens of expensive new recordkeeping and administrative requirements. Overall, this proposal will cost the regulated community more than \$1.3 billion over the next 10 years, according to the DOL's own flawed and stunningly low-ball regulatory cost analysis. ABC submitted [comments](#) on the rule and released a [statement](#) criticizing the proposal's limitations on flexibility and calling on the DOL to withdraw the rule's concerning provisions.

Given the above-mentioned rulemakings promulgated by the DOL at the direction and oversight of Acting Secretary Su, the DOL appears determined to advance policies that lack necessity, oppose congressional intent and cripple longstanding processes in the construction industry. ABC believes that if Congress provides the Su-led DOL with more funds than in the prior fiscal years, the funds will be weaponized to advance more harmful and litigious regulations unable to pass muster.

ABC appreciates the opportunity to provide comments on the committee's important work to improve our nation's economy. ABC urges the committee to consider the DOL's trajectory and its impact on the American workforce and taxpayers when evaluating its Fiscal Year 2025 Budget Request.

Sincerely,



Kristen Swearingen  
Vice President, Legislative & Political Affairs