

February 28, 2022

Dear Senator/Representative:

The diverse group of construction and business associations undersigned below writes in strong support of the Fair and Open Competition Act (S. 403/H.R. 1284), sponsored by Sen. Todd Young, R-Ind. and Rep. Ted Budd, R-N.C.

The Fair and Open Competition Act would prevent federal agencies and recipients of federal assistance from requiring or encouraging contractors to sign a controversial project labor agreement as a condition of winning a federal or federally assisted, taxpayer-funded construction contract.

Co-sponsoring the Fair and Open Competition Act is critical in light of President Biden's Feb. 4, 2022, E.O. 14063, which requires PLAs on federal construction projects of \$35 million or more.¹ In addition, the Biden administration is promoting PLAs on federally assisted projects² procured by state and local governments competing for federal dollars authorized and funded through bipartisan legislation—like the Infrastructure Investments and Jobs Act of 2021 and other bills—that do not require or encourage the use of PLAs on taxpayer-funded construction projects.

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 multiemployer pension plans that nonunion employees could not access. This forces employers to pay “double benefits” into their existing plans and union plans and places firms opposed to these costly provisions at a significant competitive disadvantage. 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.³

When mandated by government agencies and lawmakers, PLAs can interfere with existing union collective bargaining agreements.⁴ In addition, PLA mandates exacerbate the construction industry's skilled labor shortage of 650,000 workers in 2022⁵ by unfairly discouraging competition from quality nonunion contractors and their employees, who comprise 87.4% of the private U.S. construction industry workforce.⁶

Our coalition objects to the Biden administration's false assertion that businesses not affiliated with construction trade unions are unable to deliver safe, on-time, on-budget government construction projects while obeying federal labor laws and paying high wages to employees.⁷ For example, President 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

¹ Executive Order 14063, [Executive Order Executive Order on Use of Project Labor Agreements For Federal Construction Projects](#), Signed Feb. 4, 2022.

² Federal dollars distributed to state and local governments via multiple grant programs administered by the departments of [Treasury](#), [Transportation](#), [Agriculture](#) and [Interior](#) encourage state and local applicants to mandate PLAs on water, sewer, broadband, offshore wind, energy and infrastructure projects.

³ 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.

⁴ [Union Leaders and Contractors Oppose Government-Mandated Project Labor Agreements Too](#), March 1, 2021, <https://tinyurl.com/yc727s58>.

⁵ [Construction Industry Faces Workforce Shortage of 650,000 in 2022](#), Feb. 23, 2022.

⁶ See [bls.gov Union Members Summary](https://www.bls.gov/news.release/union2.nr0.htm). Jan. 20, 2022, <https://www.bls.gov/news.release/union2.nr0.htm>.

⁷ 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.

economy and efficiency in federal procurement.”⁸ However, federal government data indicate that, of the 2,075 large-scale federal construction contracts procured from FY 2009 to FY 2021 subject to President Obama’s pro-PLA policy, at least 50% of contracts were awarded to prime contractors not signatory to unions.⁹ In addition, federal agency contracting officers chose to require PLAs on just 12 large-scale federal construction contracts out of more than 2,075 opportunities. There were no reports of widespread cost overruns, delays, labor unrest or poor-quality construction on \$127.47 billion worth of non-PLA projects, indicating that PLA mandates are not needed to ensure economy and efficiency in government contracting.¹⁰

In contrast, government-mandated PLAs on federal and federally assisted projects¹¹ during this time have resulted in reduced competition, increased costs, delays, poor local hiring outcomes and litigation. In addition, multiple studies of hundreds of taxpayer-funded affordable housing¹² and school construction 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.¹³ 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.

The Fair and Open Competition Act seeks to counteract potential 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.

Likewise, state and local government construction projects in 24 states benefit from laws similar to the Fair and Open Competition Act, which curb waste and favoritism in the procurement of construction projects and ensure taxpayer dollars are spent responsibly by letting the market determine if a PLA is appropriate.

The undersigned organizations support fair and open competition and oppose government-mandated PLAs on federal and federally assisted projects because hardworking taxpayers deserve more efficient and effective policies that will encourage all qualified contractors and their skilled workforce to compete to build long-lasting, quality projects at the best price.

Promote fairness, efficiency and transparency in government contracting by contacting Nancy Martinez (nancy_martinez@young.senate.gov) in Sen. Todd Young’s office or Charlie Hobbs

⁸ See *FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects*, published April 13, 2020, 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>).

⁹ Federal contract award data downloaded from usaspending.gov compared to list of nonunion prime contractors, December 2021.

¹⁰ With or without a PLA, all federal projects are subject to federal Davis-Bacon prevailing wage regulations, which typically require union-scale wages for building, heavy and highway projects where PLAs are typically considered.

¹¹ See *Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects*, March 10, 2021.

¹² Ward, Jason M., *The Effects of Project Labor Agreements on the Production of Affordable Housing: Evidence from Proposition HHH*. Santa Monica, California: RAND Corporation, 2021. https://www.rand.org/pubs/research_reports/RRA1362-1.html.

¹³ See multiple studies measuring the impact of PLA mandates on public school construction already subject to state prevailing wage laws in Connecticut, Massachusetts, New Jersey, New York and Ohio by the Beacon Hill Institute (<http://beaconhill.org/labor-economics/>); 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* (https://www.nj.gov/labor/forms_pdfs/legal/2010/PLAReportOct2010.pdf); 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* (<http://www.nusinstitute.org/assets/resources/pageResources/Measuring-the-Cost-of-Project-Labor-Agreements-on-School-Construction-in-California.pdf>).

(charlie.hobbs2@mail.house.gov) in Rep. Ted Budd's office and ask to co-sponsor the Fair and Open Competition Act (S. 403/H.R. 1284). Get the facts about PLA mandates at BuildAmericaLocal.com.

Your opposition to President Biden's pro-PLA EO and any legislative and regulatory language promoting controversial government-mandated PLAs on spending bills, coupled with your support of the Fair and Open Competition Act, will create a level playing field in the procurement of government construction contracts, increase competition, help small businesses grow, decrease construction costs and spread the job-creating benefits of federal and federally funded contracts throughout the construction industry.

Sincerely,

American Fire Sprinkler Association
American Pipeline Contractors Association
American Road and Transportation Builders Association
Associated Builders and Contractors
Business Coalition for Fair Competition
Construction Industry Round Table
Electronic Security Association
Independent Electrical Contractors
National Association of Home Builders
National Black Chamber of Commerce
NFIB
National Ready Mixed Concrete Association
National Stone, Sand & Gravel Association
National Utility Contractors Association
Plastics Pipe Institute
Power and Communication Contractors Association
Small Business and Entrepreneurship Council
U.S. Chamber of Commerce
U.S. Pan Asian American Chamber of Commerce