



December 3, 2015

The Honorable Mitch McConnell
Leader
U.S Senate
Washington, D.C. 20510

The Honorable Thad Cochran
Chairman
Senate Committee on Appropriations
Washington, D.C. 20510

The Honorable Roy Blunt
Chairman
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Washington, D.C. 20510

Dear Leader McConnell and Chairmen Cochran and Blunt:

On behalf of Associated Builders and Contractors (ABC), a national construction industry trade association with 70 chapters representing nearly 21,000 chapter members, I am writing in regard to the omnibus spending package the U.S. Senate Committee on Appropriations is working on for Fiscal Year 2016. As you consider the bill, we urge you to include three provisions that are especially important to the construction industry and the U.S. economy as a whole: a provision that stops the National Labor Relations Board (NLRB) from rewriting the existing definition of “joint employer,” a provision that defunds the President’s Fair Pay and Safe Workplaces Executive Order (E.O.) 13673, and one that requires the Occupational Safety and Health Administration (OSHA) to scientifically justify its proposed crystalline silica rule.

In the 2014 *Browning Ferris Industries* case, the NLRB drastically altered the longstanding definition of a joint employer under the National Labor Relations Act (NLRA). When the Board decided to throw out the 30-year-old existing standard, it set off a ticking time bomb that will turn the contractor/subcontractor relationship on its head and discourage entrepreneurs from pursuing the American dream of opening their own business. By ruling that the term joint employer now should include all businesses that have a mere right to exercise direct, indirect or even ultimate control over employment terms, contractors and their contracts with subcontractors have been thrown into legal limbo with businesses left to guess which activities they have liability for.

Included in the FY 2016 Labor, Health and Human Services (LHHS) funding bill was a provision that prevented any enforcement of the Board’s new interpretation of joint employer. In June of this year, the full Appropriations Committee approved the LHHS spending measure.

A second, equally important measure that we urge you to adopt is a provision that would prevent the implementation of President Obama’s Fair Pay and Safe Workplace Executive Order, also known as “blacklisting.” It is clear this policy will give the Obama administration an opportunity to subjectively create what is tantamount to a “blacklist” of federal contractors that would not be permitted to compete for federal work, similar to the controversial proposal offered by the Clinton administration in the

1990s. At best, this E.O. creates a host of unintended problems for federal contracting officers and federal contractors that will seriously disrupt the federal procurement process and ultimately increase costs to taxpayers.

This E.O. is likely to result in the needless debarment of qualified federal contractors, while entirely circumventing longstanding suspension and department procedures concerning labor and workplace violations that are already part of the federal contracting process. We urge you to prevent the implementation of this E.O. as a whole.

A provision to prevent the funding of a new Department of Labor office tasked with implementing the blacklisting E.O. was included in the Senate FY 2016 Labor, Health and Human Services (LHHS) bill report language.

Lastly, we respectfully request you support the inclusion of an amendment submitted by Senator John Hoeven (R-ND) related to OSHA's crystalline silica exposure regulation. We are very concerned over the proposal, which has the potential to be the most far reaching regulation ever imposed on the construction industry and will cost nearly \$5 billion annually.

The Senate Appropriations Committee included an amendment by Sen. Hoeven that would require OSHA to explain to Congress (1) its justification for the proposed regulation, (2) demonstrate the ability of laboratories to measure the new requirement, and (3) account for the costs of this new requirement on small businesses. The Hoeven amendment is a good compromise that asks the OSHA to answer a number of legitimate questions before going forward to finalize the regulation.

ABC appreciates your hard work to craft a government-wide spending measure and respectfully urges you to include these three important measures that will help to revitalize our economy and ensure job creators operate in the legal environment needed to succeed.

Sincerely,



Kristen Swearingen
Senior Director, Legislative Affairs