



CONSTRUCTION EMPLOYERS OF AMERICA

June 26, 2024

Hon. Nancy Mace
Chair, Subcommittee on Cybersecurity,
Information Technology, and
Government Innovation
House Oversight Committee
Washington, DC 20515

Hon. Gerald E. Connolly
Ranking Member, Subcommittee on
Cybersecurity, Information Technology,
and Government Innovation
House Oversight Committee
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Chair Mace and Ranking Member Connolly,

On behalf of the Construction Employers of America (CEA) and the 15,000 business owners we represent, we are writing to provide our views on the Subcommittee's hearing entitled "Cutting Competition in Contracting: The Administration's Pricey Project Labor Agreement Mandate." The CEA is a coalition of seven leading, national construction employer associations that collectively employ more than 1.4 million skilled construction industry trades employees. The CEA works to strengthen the construction industry and advocates for the interests of construction employers that provide the best value to project owners through a highly productive, highly skilled workforce that earns fair wages and benefits.

The Subcommittee's hearing is focused on Executive Order (EO) 14063, "Use of Project Labor Agreements for Federal Construction Projects"¹ and the Federal Acquisition Regulatory (FAR) Council's final rule implementing the EO, "FAR Case 2022-003: Use of Project Labor Agreements for Federal Construction Projects." However, the misleading title demonstrates that it will just be a rehashing of tired arguments against Project Labor Agreements (PLAs) that have been thoroughly discredited and rejected by Administrations of both parties, federal regulators, and credible scholars. As discussed in detail below, PLAs provide numerous and indisputable benefits to the government, as well as honest contractors, workers, and American taxpayers.

I. Three Presidents Have Determined that PLAs Promote Quality, Efficiency, and Economy in Taxpayer-Funded Construction

EO 14063 guides a contracting officer's discretion to use PLAs on federal government "large-scale construction projects." The EO is just the latest instance of a President making a reasoned determination as a matter of Administration policy that PLAs promote "economy and efficiency" and address "special challenges" on large and complex construction projects. This same policy animated President Obama's February 6, 2009 EO 13502. Notably, President Trump left EO 13502 in place throughout his Presidency. President Trump declined to revisit EO 13502 despite strident calls from proponents of this misguided hearing to rescind it that were grounded in the

¹ 87 Fed. Reg. 7363 (Feb. 9, 2022).

same discredited arguments² that have been repeated³ to no effect. These same flawed assertions are being presented at this hearing in the hope that through repetition they will somehow become credible and persuasive.

II. The Arguments Being Put Forward Against PLAs Have Been Debunked as Recently as this Week by the U.S. Treasury Department

The United States Treasury Department has repeatedly endorsed PLAs as promoting economy and efficiency for the government and taxpayers. For example, it did this in guidance associated with a January 27, 2022 final rule governing use of the \$350 billion in State and Local Fiscal Recovery Funds (SLFRF) authorized by the *American Rescue Plan Act* to help communities restore or improve infrastructure in response to the COVID-19 pandemic. The Treasury Department explained that PLAs and the labor standards associated with them “ensure a stronger skilled labor supply and minimize labor disputes and workplace injuries, which can result in costly disruptions to projects.”⁴ And the Treasury Department specifically found “*that these benefits will increase the economy and efficiency of infrastructure projects undertaken through SLFRF and will outweigh the potential for a marginal increase in labor costs.*”⁵ (Emphasis added)

Just this week, the Treasury Department and the IRS again rejected the same “studies” and arguments being made at this hearing about PLAs in its Final Rule “Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements.”⁶ The Treasury Department and IRS thoroughly debunked the long-discredited assertions that PLAs “are unwarranted, coercive” and increase the cost of construction by detailing the overwhelming weight of credible academic research confirming “that PLAs in general do not lead to a statistically significant increase in construction costs.”⁷ They correctly rejected the false assertions that encouraging PLAs will result in reduced hiring of local, minority, women, veteran, and other potentially disadvantaged groups—noting that “PLAs often include provisions that create or strengthen equitable paths to construction jobs for underserved workers, including local hire requirements, equitable recruitment goals, and community engagement

² January 24, 2018 Letter to President Donald J. Trump from Associated Builders and Contractors *et. al.* (urging repeal of EO 13502 encouraging the use of PLAs because the 14 signatories alleged that PLAs increase costs, reduce competition, exacerbate labor shortages, and create issues with existing collective bargaining agreements), available at <https://www.abc.org/Portals/1/aaaaaaaa.pdf>.

³ August 18, 2022 Associated Builders and Contractors News Release (making same arguments as January 24, 2018 letter to President Trump), available at <https://www.abc.org/News-Media/News-Releases/entryid/19556/president-bidens-inflationary-pla-schemes-hurt-taxpayers-and-construction-job-creators>.

⁴ . Final Rule Regarding “State and Local Fiscal Recovery Funds,” 87 Fed. Reg. 4338, 4444 (January 27, 2022).

⁵ *Ibid.*

⁶ 89 FR 53184, 53201 (June 25, 2024).

⁷ *Ibid.*, (citing, Emma Waitzman & Peter Philips, UC Berkeley Labor Ctr., *Project Labor Agreements and Bidding Outcomes: The Case of Community College Construction in California* 3,51 (2017) ((finding no statistically significant difference in costs between PLA and non-PLA projects); Peter Philips & Scott Littlehale, *Did PLAs on LA Affordable Housing Projects Raise Construction Costs?* (Univ. of Utah Dep’t of Econ., Working Paper No. 2015–03, 2015) (finding no statistically significant difference in costs between PLA projects and non-PLA projects); Cong. Research Serv., R41310, *Project Labor Agreements* at 9 (2012) (surveying the empirical literature about the effects of PLAs on costs and finding that it was inconclusive)).

requirements.”⁸ Treasury and the IRS also refuted the false claims that PLAs compel workers to become union members.⁹

III. Leading For-Profit Companies and State and Local Governments Rely on PLAs to Ensure Quality and Value for their Largest, Most Critical Construction Projects

Three Presidents and the U.S. Treasury are not alone in their assessments that PLAs and the labor standards associated with them promote economy and efficiency on large, complex, mission-critical construction projects.

A. Leading for-profit companies rely on PLAs for their largest, most important projects.

Leading businesses recognize that PLAs promote economy and efficiency when committing shareholder funds for their largest, most critical, and complex construction projects. A representative sampling of major private sector construction projects that have utilized PLAs include:

- *Shell Beaver County Cracker Plant (2016)*¹⁰: This massive energy project built under a PLA required 6,000 construction craft workers.
- *The Oregon Clean Energy Center*:¹¹ North America Project Development, LLC, a joint venture of CME and Pure Energy, utilized a PLA to build the Oregon Clean Energy Center. The Center is an 869 MW (Peak: 951 MW) natural gas-fired electric power plant in Oregon, Ohio that uses state-of-the-art technology to capture exhaust heat to generate enough electricity to power over 700,000 homes. The project required around 1,500 skilled construction craftspeople, whose services were secured and coordinated through a PLA.¹²
- *Micron microchip plant in Idaho (2023)*.¹³ Micron Technology, Inc. agreed to a PLA for construction of its state-of-the-art \$15 billion Idaho microchip manufacturing facility. This PLA includes provisions for workforce training and emphasizes local hiring.

⁸ *Ibid.*

⁹ *Id.* at 53202.

¹⁰ See “Shell’s multibillion-dollar PA plant project to create 6K construction jobs,” CONSTRUCTION DIVE, June 9, 2016, available at <https://www.constructiondive.com/news/shells-multibillion-dollar-pa-plant-project-to-create-6k-construction-jobs/420637/>.

¹¹ See “Oregon, Ohio Clean Energy Center,” CME-ENERGY.COM, available at <https://www.cme-energy.com/content/oregon-ohio-clean-energy-center>.

¹² See “Power plant project starts under PLA in Northwest Ohio,” ACTOHIO.ORG, Dec. 23, 2014, available at <https://www.actohio.org/power-plant-project-starts-under-pla-in-northwest-ohio/>.

¹³ See Mackenzie Hawkins, “Micron seals labor deal for \$15 billion plant, boosting bid for U.S. funds” THE SPOKESMAN-REVIEW, available at <https://www.spokesman.com/stories/2023/dec/08/micron-seals-labor-deal-for-15-billion-plant-boost/>.

B. State and local governments across the nation also recognize the benefits of PLAs.

State and local governments across the nation also recognize the economy and efficiency of PLAs for large-scale public construction projects that require economic and efficient use of taxpayer dollars. Representative examples of such projects include:

- *The Franklin County Ohio Hall of Justice (2015)*¹⁴: Franklin County Ohio’s Hall of Justice was built under a PLA. Eighty-two percent of the contractors used under this PLA were able to bring their portion of the project in significantly under budget, saving taxpayers over \$2 million.
- *The City of Boston Public Housing Energy Efficiency Project*¹⁵: Boston used a PLA for a \$66.7 million energy efficiency rehabilitation of 13 public housing properties owned by the Boston Housing Authority (BHA). The work resulted in millions of dollars in energy savings and capital upgrades to BHA’s public housing portfolio. The BHA was so pleased with the results that it subsequently entered into additional PLAs.
- *The City of Columbus, Ohio Linden Community Center (2019)*¹⁶: The Columbus Building Trades and the City of Columbus entered into a PLA with a Community Benefits Agreement for the construction of the city’s new Linden Community Center and Park.

IV. PLAs Ensure a Skilled Workforce to Meet the Government’s Future Construction Needs

The workforce training requirements generally associated with PLAs support the continued success of *privately-funded* apprenticeship training programs that ensure a future skilled workforce for large-scale, complex federal government construction projects. This includes the training programs CEA-affiliated contractor associations sponsor through their collective bargaining agreements. Under these agreements, the contractors pay a set amount per worker per hour into a training fund for their respective crafts that is matched by contributions from labor partners. This successful, privately-funded, industry-wide model provides training at *no cost* to the government or taxpayers. These training funds administer apprenticeship and training programs that invest between \$750 million and \$1 billion annually, ensuring properly staffed, resourced, and well-run programs. All successful PLA bidders – union and nonunion – can access this labor pool under a PLA. Non-union PLA signatories have recognized that union referrals enable them to compete for – and more likely successfully perform – jobs requiring a higher degree of worker skill and technical experience.

Joint apprenticeship programs in the building trades advance economy and efficiency by continuously updating and improving the value and relevance of their training. This is done through ongoing national instructor preparation and upgrading, arranging for college credit for

¹⁴ See “Project Spotlight,” ACTOHIO.ORG, available at <https://www.actohio.org/project-labor-agreements/>.

¹⁵ See “City Celebrates Largest Public Housing Energy Project in Nation’s History,” AMERESCO.COM, May 19, 2014, available at <https://www.ameresco.com/city-celebrates-largest-public-housing-energy-efficiency-project-nations-history/>.

¹⁶ See “Columbus Building Trades Sign Community Benefits Agreement with City of Columbus,” ACTOHIO.ORG, Apr. 11, 2019, available at <https://www.actohio.org/columbus-building-trades-sign-community-benefits-agreement-with-city-of-columbus/>.

learning during apprenticeships, and expansion of journey-level update training. Research confirms that: (1) union programs enroll the majority of building trade registered apprentices, (2) the apprentice completion rates from union programs are higher than from non-union programs, (3) union programs enroll non-traditional populations in higher numbers and at higher rates than non-union programs, and (4) the apprentice completion rates of non-traditional populations from union programs is higher than from non-union programs.¹⁷

V. PLAs Promote Labor Law Compliance and Business Practices that Allow Law Abiding Businesses to Compete on a Level Playing Field

The standard terms of PLAs also require compliance with applicable labor and employment laws while ensuring worker representatives are involved in the project to verify that these commitments are fulfilled. This reduces the prevalence of numerous types of labor and employment violations that are rampant in the construction industry, including the pervasive practice of misclassifying construction workers as independent contractors instead of employees. Congressional hearings and academic research have confirmed that by misclassifying their workforce, construction companies avoid costs such as overtime, workers' compensation, unemployment insurance, employment taxes, and compliance with health and safety requirements. Several studies and reports have verified the many costs transferred to workers and American taxpayers because of misclassification. Recent analysis using 2021 data estimates that construction employers “are projected to have reduced their aggregate payroll by \$12.8 billion” through misclassification and “off the books” payments.¹⁸ For 2021, this figure is the sum of:

- The \$5.1 billion in Social Security and Medicare taxes these employers dodged by misclassifying their workers or paying them “off the books”;
- The \$5.0 billion in workers' compensation premiums they evaded;
- The \$1.9 billion in overtime these employers did not pay to workers who were misclassified or paid “off the books”; and
- The \$791 million they did not pay to state unemployment insurance funds.¹⁹

Under the “most conservative” estimates, misclassified construction workers lose over \$800 million per year in overtime.²⁰

Misclassification also makes it hard for honest contractors to compete. As the President of the Signatory Wall and Ceiling Contractors Alliance (SWACCA)—a CEA member association—detailed in a 2019 Congressional hearing on worker misclassification, construction companies that misclassify their workforce as independent contractors save at least 20-30% on labor costs

¹⁷ Anneta Argyres and Susan Moir, *Building Trades Apprentice Training in Massachusetts: An Analysis of Union and Non-Union Programs, 1997-2007* at iv (Oct. 2008), available at https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1001&context=lrc_pubs.

¹⁸ Laura Valle-Gutierrez, Russ Ormiston, and Dale Belman, The Century Foundation, *Up to 2.1 Million U.S. Construction Workers Are Illegally Misclassified or Paid Off the Books*, November 2023, available at <https://tcf.org/content/report/up-to-2-1-million-u-s-construction-workers-are-illegally-misclassified-or-paid-off-the-books/#:~:text=This%20report%20finds%20that%2C%20nationally,pay%20them%20off%20the%20books>.

¹⁹ *Ibid.*

²⁰ Russell Ormiston, Dale Belman, and Mark Erlich, *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry* (2020) at 5, available at <https://stoptaxfraud.net/wp-content/uploads/2020/03/National-Carpenters-Study-Methodology-for-Wage-and-Tax-Fraud-Report-FINAL.pdf>.

compared to law-abiding competitors.²¹ When competing against companies like CEA members that pay middle-class wages, sponsor registered apprenticeship programs, and offer retirement plans and health benefits, contractors who misclassify their workers gain closer to a 50% cost advantage.²²

To the extent that PLAs make it harder for federal contractors to misclassify their workers and leave American taxpayers holding the bag for shortfalls in myriad federal, state, and local social safety net programs, PLAs promote economy and efficiency and benefit American taxpayers. These savings need to be considered in any discussion about the benefits of PLAs.

V. Conclusion

The Subcommittee's hearing is a poor use of Congress' valuable time. All the arguments being put forward against PLAs have been thoroughly refuted and rejected by credible scholars, regulators, and Presidents of *both* political parties. PLAs provide numerous, indisputable benefits to the government, honest contractors, workers, and American taxpayers. We hope that after this hearing Congress will be able to advance the discussion of PLAs beyond the discredited myths reflected in the hearing title that are akin to asserting that the earth is flat.

Respectfully,

The Construction Employers of America

FCA International

International Council of Employers of Bricklayers and Allied Craftworkers

Mechanical Contractors Association of America

National Electrical Contractors Association

Sheet Metal & Air Conditioning Contractors National Association

Signatory Wall and Ceiling Contractors Alliance

The Association of Union Constructors

²¹ Testimony of Matt Townsend, Workforce Protections Subcommittee, U.S. of Representatives Committee on Education and Labor, Hearing on Misclassification of Employees: Examining the Costs to Workers, Businesses, and the Economy (Sept. 26, 2019) at 3, *available* at <https://democrats-edworkforce.house.gov/imo/media/doc/TownsendTestimony092619.pdf>.

²² *Ibid.*