



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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April 22, 2022

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Highways and Transit
FROM: Staff, Subcommittee on Highways and Transit
RE: Subcommittee Hearing on “Examining Workforce Development and Job Creation in Surface Transportation Construction”

PURPOSE

The Subcommittee on Highways and Transit will meet on Wednesday, April 27, 2022, at 2:00 p.m. in 2167 Rayburn House Office Building and virtually via Zoom to receive testimony related to the hearing titled “Examining Workforce Development and Job Creation in Surface Transportation Construction.” The purpose of this hearing is for Members of the subcommittee to learn about the current state of the surface transportation construction workforce, how recent investments in American infrastructure will increase the need for a skilled construction workforce, and how current programs and initiatives can provide pathways into the construction sector. The subcommittee will hear from representatives of the Colorado Department of Transportation, the North Carolina Department of Transportation, North America’s Building Trades Unions, the Associated General Contractors of America, the National Taskforce on Tradeswomen’s Issues, and the Conference of Minority Transportation Officials.

BACKGROUND

Last year, Congress enacted H.R. 3684, the *Infrastructure Investment and Jobs Act* (IIJA, P.L. 117-58), which provides historic levels of investment in modernizing our nation’s roads, bridges, transit, and other transportation infrastructure. The IIJA authorizes more than \$660 billion for the U.S. Department of Transportation (DOT) to invest in our nation’s infrastructure over the next five

years.¹ Carrying out projects with this investment is anticipated to require thousands of new positions for skilled craft workers in construction.

Much of the funding provided by the IIJA is federal funding assistance to state and local transportation agencies to invest in state and local transportation projects, subject to federal requirements.² The recipient of funds is responsible for administering the project and the funding, ensuring compliance with all applicable federal requirements, and overseeing the project to completion.³ The contracting agency solicits bids and awards the construction contract, pays contractors for their work, and then seeks reimbursement from DOT for approved project costs.⁴ A surface transportation construction project funded and administered in this manner will be referred to as a “federally-assisted construction project.”

Federally-assisted construction projects are subject to certain federal requirements under titles 23 and 49, United States Code (U.S.C.). Examples of such requirements include statewide and metropolitan planning, environmental reviews, payment of prevailing wages, compliance with federal or state construction design standards, and competitive bidding.

Pursuant to 23 U.S.C. 113 and 49 U.S.C. 5333, laborers and mechanics employed for construction work on federally-assisted construction projects are to be paid wages at rates not less than those prevailing wages as determined by the Secretary of Labor under the *Davis-Bacon Act*. The 1931 *Davis-Bacon Act* (Davis-Bacon Act, P.L. 71-798) requires payment of prevailing wage rates to all laborers and mechanics on federal or federally-assisted construction projects. Overall program responsibilities are administered by the U.S. Department of Labor.⁵ Project specific responsibilities are administered by the contracting agency for the project.⁶

Surface Transportation Construction Workforce

Workforce Entry

The surface transportation construction workforce encompasses various skilled positions such as heavy equipment operators, flaggers, and pavers. Workers can learn their trade through on-the-job training by performing tasks under the guidance of experienced workers or by participating in an apprenticeship program which combines on-the-job training with classroom learning.⁷ The length of training provided depends on the training pathway and the specialization.⁸ Through additional experience and training, construction workers can advance into high-paying, skilled positions that involve more complex tasks.⁹

¹ <https://www.transportation.gov/mission/budget/bipartisan-infrastructure-law-dashboard>.

² *See id.* For a description of the federally assisted, state administered Federal-aid Highway Program, *see* 23 U.S.C. 145 and *Funding Federal Aid Highways*, FHWA, <https://www.fhwa.dot.gov/policy/olsp/fundingfederalaid/>.

³ *Funding Federal Aid Highways*, FHWA, <https://www.fhwa.dot.gov/policy/olsp/fundingfederalaid/>.

⁴ *Id.*

⁵ <https://www.fhwa.dot.gov/construction/cqit/dbacon.cfm>

⁶ *Id.*

⁷ <https://www.bls.gov/ooh/construction-and-extraction/construction-laborers-and-helpers.htm#tab-4>

⁸ *Id.*

⁹ *Id.*

Demographics

According to the U.S. Bureau of Labor Statistics (BLS) Current Population Survey, there were approximately 11.3 million workers employed in the construction industry in 2021.¹⁰ Of that total, 87.9 percent identified as white, 32.6 percent identified as Hispanic or Latino, 6.3 percent identified as Black, and 2.1 identified as Asian.¹¹ Additionally, while women make up 47 percent of the total workforce in the U.S., they account for only 11 percent of the construction workforce.¹² According to BLS data, from 2011 to 2021 the percentage of women working in construction increased by 1.8 percent.¹³

Workforce Development Programs at DOT

On-the-Job Training and Supportive Services Program

Federal efforts to address historically underrepresented groups in surface transportation construction began following the enactment of the *Federal Aid Highway Act of 1968* (P.L. 90-495), which required State Departments of Transportation (State DOTs) to ensure equal employment opportunities on federally-assisted construction projects as a condition of receiving federal funds. Federal regulations require State DOTs to establish apprenticeship and training programs targeted at moving women, minorities, and disadvantaged persons into journey-level positions on federally-assisted construction contracts.¹⁴ Under the *Federal Aid Highway Act of 1970* (P.L. 91-605), Congress authorized the Secretary of Transportation (Secretary) to establish the On-the-Job Training and Supportive Services (OJT/SS) program, which supports state training programs aimed at increasing participation of historically underrepresented individuals in the construction workforce. The OJT/SS program is administered by the Federal Highway Administration (FHWA).¹⁵

The objective of the OJT/SS program is to increase the overall effectiveness of state training programs and to support further efforts to increase the participation of women, minorities, and disadvantaged individuals in the skilled and semi-skilled construction crafts.¹⁶ Each year, FHWA requests a Statement of Work from participating State DOTs that demonstrates the state's construction workforce needs and how their proposed program will help provide a career path to journey-level status for underrepresented groups. Examples of program activities include recruitment, skills training, job placement, childcare, career counseling, transportation to work-sites, post-graduation follow-up, and jobsite mentoring, among others.¹⁷ FHWA and State DOTs work together to determine the state's annual training goals, including the total number of training slots or hours, and which transportation projects will include such requirements. State DOTs are also required to submit regular progress reports to FHWA.¹⁸

¹⁰ <https://www.bls.gov/cps/cpsaat18.htm>.

¹¹ *Id.*

¹² *Id.*

¹³ See <https://www.bls.gov/cps/aa2011/cpsaat18.pdf>; <https://www.bls.gov/cps/cpsaat18.htm>.

¹⁴ 23 CFR 230.111.

¹⁵ 23 CFR 230.113.

¹⁶ <https://www.fhwa.dot.gov/civilrights/programs/ojt.cfm>.

¹⁷ *Id.*

¹⁸ 86 Fed. Reg. 8827.

Funding for the OJT/SS program is authorized by section 140(b) of title 23, United States Code, as a set-aside of FHWA's administrative budget. The program was initially authorized at up to \$5,000,000 per year for fiscal year (FY) 1972 and FY 1973 and was increased to up to \$10,000,000 per year starting in FY 1974.¹⁹ Since then, authorized funding has remained stagnant at no more than \$10,000,000 annually.²⁰ Section 140(b) also authorizes states to develop and administer summer transportation institutes aimed at increasing transportation career awareness among secondary-school students. Of the \$10,000,000 authorization, approximately \$6,000,000 is allocated to states via formula for the OJT/SS programs, while the remainder supports summer transportation institutes and internship programs at DOT.²¹

To build on the success of the OJT/SS program, FHWA recently developed the Highway Construction Workforce Partnership (HCWP) guide aimed at bringing together industry and workforce representatives to identify, recruit, train, and place workers into highway construction jobs. To date, FHWA has awarded \$4 million in grants to 11 recipients to establish and expand HCWP programs.²² For more information about HCWP, please visit FHWA's HCWP website.²³

Section 504(e)—Surface Transportation Workforce Development, Education, and Training

Section 504(e) of title 23, United States Code, authorizes States to use a portion of their core Federal-aid Highway Program formula funds from the National Highway Performance Program (NHPP), the Surface Transportation Block Grant Program (STBG), the Highway Safety Improvement Program (HSIP), and the Congestion Mitigation and Air Quality Improvement (CMAQ) Program to support transportation workforce development, training, and education activities.

Examples of common activities carried out under 504(e) include training programs, academic course study, and support for short-term work details or “rotational” assignments for employee development.²⁴ States may also use these funds for employee training and professional development necessary to support a specific surface transportation capital project, such as a major roadway or bridge construction project.²⁵ These funds may not be used to pay any portion of employee salaries.²⁶

Section 13007 of the IIJA expanded the list of eligible activities under 504(e) to include pre-apprenticeships, apprenticeships, career opportunities for on-the-job training, and activities that address current workforce gaps, such as work on construction projects of state and local transportation agencies. It also allows activities associated with workforce training and employment services, such as targeted outreach and partnerships with industry representatives, economic development organizations, workforce development boards, and labor organizations.

¹⁹ P.L. 93-87.

²⁰ 23 U.S.C. 140(b).

²¹ This information was provided to Committee Majority staff by FHWA on March 16, 2022, via email.

²² This information was provided to Committee Majority staff by FHWA on March 18, 2022, verbally.

²³ https://www.fhwa.dot.gov/innovativeprograms/centers/workforce_dev/hcwp/.

²⁴ https://www.fhwa.dot.gov/innovativeprograms/centers/workforce_dev/504e_state_core_programs_guidance_0318.aspx.

²⁵ *Id.*

²⁶ *Id.*

Section 504(f)—Transportation Education and Training Development and Deployment Program

Section 504(f) of title 23, United States Code, as amended by section 13007 of the IIJA, authorizes the Secretary to establish a program to make grants to education institutions or State DOTs to develop and implement new curricula and education programs to train individuals at all levels of the transportation workforce, including in the construction sector.

Contracting Initiatives

Local hire

Prior to enactment of the IIJA, DOT grant recipients were generally prohibited from utilizing geographic, economic, or other hiring preferences—commonly referred to as “local hire”—on federally-assisted construction projects due to concerns about the adverse impact on competitive bidding.²⁷ In 2013, DOT received an opinion from the Department of Justice’s Office of Legal Counsel clarifying that the Secretary has the discretion to permit grant recipients to utilize local hire requirements as long as they did not unduly limit competition.²⁸ In 2015, DOT launched a pilot program to allow FHWA and Federal Transit Administration (FTA) grantees to utilize local hire contracting requirements on an experimental basis.²⁹ On January 18, 2017, the pilot program was extended for a period of five years ending on March 6, 2022,³⁰ but the extension was subsequently withdrawn later that year.³¹ In May 2021, DOT re-launched local hire pilot programs for both FHWA and FTA grant recipients.³²

Additionally, beginning in 2016 and each year thereafter, the annual appropriations bill funding transportation programs has included a provision authorizing the Secretary to permit grant recipients the ability to utilize local hire requirements on federally-assisted construction projects, subject to certain mandatory certifications.³³

Section 25019 of the IIJA provided permanent statutory authority for recipients or subrecipients of a DOT grant provided under title 23 or title 49, United States Code, to implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by the grant. Based on this statutory authorization, both FHWA and FTA announced the rescission of their pilot programs stating they were no longer needed.³⁴

²⁷ 87 Fed. Reg. 8081.

²⁸ 80 Fed. Reg. 12257.

²⁹ *Id.*

³⁰ 82 Fed. Reg. 5645.

³¹ 82 Fed. Reg. 46716.

³² *See* 86 Fed. Reg. 27667; 86 Fed. Reg. 27672.

³³ PL 114–113, Sec. 192.

³⁴ *See* 87 Fed. Reg. 8081; 87 Fed. Reg. 7897.

WITNESS LIST

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