[CHAPTER LOGO/LETTERHEAD]

[DATE]

[ADDRESS]

Re: [State] [Name of State FOCA Legislation] and Recent Federal Spending Legislation

Dear [Local Official/Body/Agency]:

I write on behalf of Associated Builders and Contractors [chapter] (ABC). Our members include more than X construction industry contractors and related businesses in [state/surrounding states]. ABC and its members are passionate about the benefits and prosperity fostered by fair and open competition on taxpayer-funded construction projects. [State]’s citizens and taxpayers are best served when public contracts are awarded through a competitive bidding process that awards construction contracts to contractors based on merit and the quality and safety of construction services provided, which is why [state] passed the [State FOCA Statute], [bill citation], in [X year].

As you know, the United States Congress passed the American Rescue Plan Act earlier this year—which President Biden signed into law in March. The ARPA includes $350 billion of federal funding for state and local fiscal recovery.

On May 17, the U.S. Department of Treasury issued an interim final rule allowing eligible infrastructure projects to receive federal ARPA dollars, if certain conditions are met.

Unfortunately, in its interim final rule, the Treasury Department, “encourages recipients [of ARPA funds] to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreement and community benefits agreements that offer wages at or above the prevailing rate…” The interim final rule also states that at a future date, “Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects” receiving ARPA funds.

While merely an encouragement and not a mandate, ABC is concerned this language will cause confusion and might result in needless state and local government-mandated PLAs on eligible projects even though these controversial schemes typically reduce competition, increase costs and discourage competition from quality contractors and local construction workers.

While the terms and conditions of PLAs may vary, they typically require companies to agree to recognize unions as the sole 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 multi-employer pension plans that nonunion employees will be unlikely to access unless they leave their current employer, join the union and become vested. The few, if any, token nonunion employees permitted to work on PLA projects are likely to suffer a reduction in their take home pay and benefits estimated at 20%.[[1]](#footnote-1) Thus, these mandated agreements effectively shut out the vast majority of qualified contractors and the X%of the construction workforce that freely chooses not to join a labor union in [State].

While it is difficult to address the exact added costs of a PLA without knowing its terms and providing a direct cost comparison by bidding a project with and without a PLA, research of public school construction projects across multiple states has found that government-mandated PLAs increase the cost of construction between 12% to 20%.[[2]](#footnote-2)

Making much-needed investments in infrastructure is a strong solution to make America competitive in a global economy and to lift small businesses, the construction industry and the American worker out of the economic devastation caused by the COVID-19 pandemic, is a strong solution to make America competitive in a global economy. However, mandating PLAs on APRA-funded infrastructure projects would be an unwise and damaging decision if made by state and local entities procuring public works projects.

The factual reality is [state or locality] may not overlook their statutory obligations under [State FOCA Statute], that still apply and preempt any nonbinding guidance or encouragement by the federal government or any other entity.

As mentioned, [State] has already determined that government-mandated PLAs are bad policy and should be prohibited on all public construction work. Indeed, our state enacted [State FOCA Statute] to “[insert language from FOCA statute describing its stated purpose if applicable].” This law precludes any state, county, or municipal body, when awarding contracts, from requiring that contractors enter into a PLA with one or more labor organizations as a condition of bidding on and winning the ability to work on a particular project.

In the context of recent and anticipated federal spending legislation and Treasury’s related position on and encouragement of the use of PLA mandates, these legal obligations and restrictions apply regardless of whether the state or local unit of government is using ARPA or other federal funds. This has been made clear in [applicable court case upholding FOCA statute if possible]. As a result, government bodies in our state may not condition or encourage the awarding of contracts using APRA’s funds on the basis of a contractors’ willingness to execute a PLA.

We trust that [state/municipality] will follow these legal requirements. However, we are providing this letter in advance, to raise awareness about this issue and avoid any confusion that proponents of PLAs may attempt to create on this matter. Thank you for helping ensure that all contractors and employees in our state will continue to have equal opportunities to bid on publicly funded construction projects based on their own merit, not on labor affiliation and politically motivated special favors. Merit shop contractors have provided outstanding, high-quality, safe and valuable construction services throughout [state] for decades, and we look forward to helping rebuild [state] infrastructure and economy after more than a year of a costly worldwide pandemic.

1. An October 2009 report by Dr. John R. McGowan, "[The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements](https://thetruthaboutplas.com/wp-content/uploads/2012/12/McGowan-Impact-of-Union-Fringe-Benefits-on-Nonunion-Workers-Under-PLAs.pdf)," found that employees of nonunion contractors that are forced to work on government-mandated PLAs suffer a reduction in their take-home pay that is conservatively estimated at 20%. [↑](#footnote-ref-1)
2. See [multiple studies](http://beaconhill.org/labor-economics) 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; 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)*.* [↑](#footnote-ref-2)