

FAQs on Executive Order 14063

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On Feb. 4, President Biden signed Executive Order 14063, [Use of Project Labor Agreements for Federal Construction Projects](#). On August 19, the Federal Acquisition Regulatory Council issued a proposed rule, [Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects](#), implementing EO 14063, with a [public comment deadline of Oct. 18](#). Once implemented, federal agencies will require that every prime contractor and subcontractor on a federal construction project of \$35 million or more performed within the United States to sign a project labor agreement as a condition of winning a contract, with some possible exceptions.

Government-mandated PLAs increase the cost of construction by [12% to 20%](#), reduce competition from [87.4% of the construction industry workforce](#) and [steal up to 34% of wages from the few nonunion workers allowed to work on a PLA jobsite](#).

ABC [slammed the EO](#) and [the proposed rule](#) in statements picked up in dozens of publications nationwide: “This anti-competitive and costly executive order rewards well-connected special interests at the expense of hardworking taxpayers and small businesses who benefit from fair and open competition on taxpayer-funded construction projects.”

A Feb. 9 ABC [op-ed in The Wall Street Journal](#) lays out arguments against the Biden administration’s policy and concludes, “Taxpayers would be best served by the adoption of inclusive, win-win policies that help America’s construction industry realize the potential of the Infrastructure Investment and Jobs Act of 2021. We can’t rebuild our nation’s crumbling infrastructure effectively, increase accountability and reduce waste with PLAs.”

ABC has long been a leader in [successfully opposing](#) government PLA mandates and preferences on taxpayer-funded construction projects procured by federal agencies. On Feb. 15, [an ABC-led coalition sent a letter](#) to President Biden opposing EO 14063 and “other policies encouraging PLAs on federally assisted projects via grant programs administered by federal agencies for state and local governments.” The coalition urged the White House to support “inclusive, win-win policies that welcome all of America’s construction industry to compete to rebuild our nation’s infrastructure, increase accountability and reduce waste and favoritism in the procurement of federal and federally assisted construction projects.” Subsequently, [governors and U.S. House and Senate lawmakers have also communicated to the White House](#) opposition to its pro-PLA policies.

ABC will fight this anti-competitive and costly EO—and other separate Biden administration policies pushing PLA mandates on federally assisted contracts [via federal agency grant programs for infrastructure projects procured by state and local governments](#)—with every legal, legislative, public relations, regulatory, grassroots and educational tool in our advocacy toolbox.

The EO and other pro-PLA policies by the Biden administration present great uncertainty to federal contractors, their employees and industry stakeholders. The following answers to FAQs provide insights and will be updated as we learn more about the policy as it continues through the federal rulemaking process.

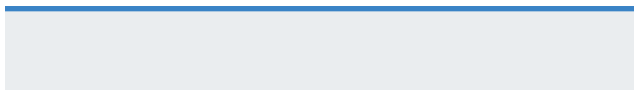
1. The White House claims PLAs benefit taxpayers and will enhance the economy and efficiency of federal construction contracts. Is this true?

No. Government-mandated PLAs are not beneficial to taxpayers or the federal government. They needlessly:

- Increase taxpayer-funded construction costs by 12% to 20%.
- Result in less school, road, transportation, utility, clean energy and affordable housing construction.
- Steer contracts to contractors employing less than 13% of the U.S. construction industry and create jobs for unionized construction workers at the expense of hardworking taxpayers and the local construction industry workforce and businesses.
- Discourage competition from quality contractors not affiliated with unions, who employ 87.4% of America's construction workforce.
- Exacerbate the U.S. construction industry's 2022 skilled labor shortage of 650,000 craft workers by excluding almost 9 out of 10 construction workers from taxpayer-funded construction projects because they freely choose not to affiliate with a union.
- Harm America's small, minority and women contractors, as well as the overall construction industry, because almost all are not affiliated with specific unions designated in a PLA.

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Research suggests that the few nonunion employees permitted to work on a PLA jobsite lose 34% of wages and benefits unless they pay union dues and/or join a union and meet benefits plan vesting schedules. In short, these anti-competitive provisions in typical PLAs promote wage theft, eliminate employee choice and make it extremely difficult for many nonunion firms to win public works contracts subject to anti-competitive PLAs, including small, minority- and women-owned businesses that are typically nonunion.

All of these provisions negatively affect nonunion contractors and workers and discourage competition from some of the most qualified and experienced contractors and workers who want to compete on a level playing field to deliver to taxpayers the best possible product at the best possible price.

9. Can nonunion contractors and workers compete for and win a federal project subject to a PLA?

Technically, nonunion contractors and workers are permitted to compete for federal projects subject to a PLA. However, the anti-competitive and costly terms and conditions of the PLA discourage nonunion contractors from competing for projects and make it difficult for them to win the prime contract or perform work as a subcontractor due to labor uncertainty, increased risk and unnecessary additional costs.

Nonunion construction workers are also harmed by PLAs. An October 2021 report by John R. McGowan, Ph.D., CPA, [Government-Mandated Project Labor Agreements Result in Lost and Stolen Wages for Employees and Excessive Costs and Liability Exposure for Employers](#), finds that employees of nonunion contractors who are forced to perform under government-mandated PLAs suffer a reduction in their take-home pay conservatively estimated at 34% unless they join a union, pay union dues and become vested in union plans. PLAs force employers to pay employee benefits into union-managed funds, but employees will never see the benefits of the employer contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, often continue to pay for existing programs as well as into union programs under a PLA. The McGowan report found that nonunion contractors are forced to pay in excess of an estimated 35% in compensation costs above and beyond existing

new U.S. construction contracts of \$35 million or more in total cost, valued at a total of \$9.5 billion, were awarded in FY2021. It is unclear how many federal construction contracts of \$35 million or more will be issued in FY22 and beyond. In addition, it is unclear which of these projects will be subjected to PLA mandates.

14. What criteria can federal agency senior procurement officials use to exempt certain projects from PLA mandates?

The [proposed rule](#) permits an exception to the PLA requirement for federal construction projects of \$35 million or more only under a very narrow set of circumstances [listed in FAR 22.504\(d\)](#):

(d) Exceptions to project labor agreement requirements —(1) Exception. The senior procurement executive may grant an exception from the requirements at 22.503(b), providing a specific written explanation of why at least one of the following conditions exists with respect to the particular contract:

(i) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. The exception shall be based on one or more of the following factors:

(A) The project is of short duration and lacks operational complexity.

(B) The project will involve only one craft or trade.

(C) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors.

(D) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable.

(ii) Market research indicates that requiring a project labor agreement on the project would substantially reduce the number of potential t (.8 (um)-057 (-57.4 (a(6r60.7 -057 (b)-3.e1 (x1a)x)64(r t)-(l)3))p (g)6 (t (.8 (

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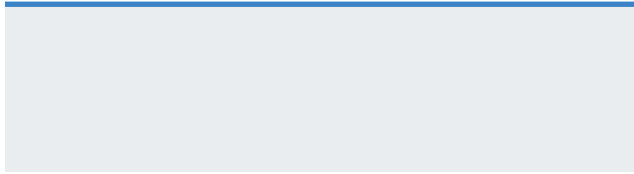
supporting government-mandated PLAs on federal and federally assisted construction projects are needed to steer work to certain unionized firms and union labor, which are large political supporters of the Biden administration and need government intervention to maintain and grow their market share because they cannot compete in a free market successfully.

16. Does the Biden EO apply to federally assisted construction projects?

No. However, other Biden administration policies independent of EO 14063 [promote the use of PLAs on certain federally assisted construction projects such as those funded by federal agency infrastructure grant programs for state and local governments procuring infrastructure projects](#). 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. In addition, a Feb. 7 White House Task Force on Worker Organizing and Empowerment [report](#) makes a number of new policy recommendations to expand PLAs onto federally assisted projects and other federal contracting opportunities that the Biden administration may implement in the future.

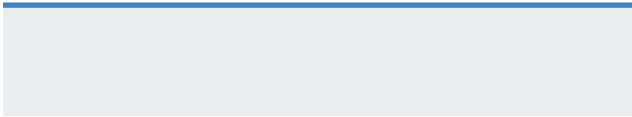
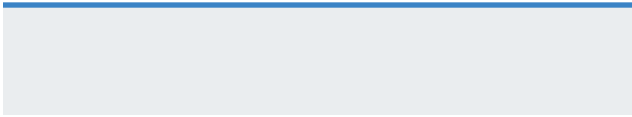
17. Does EO 14063 only apply to projects funded in the infrastructure bill signed into law in 2021?

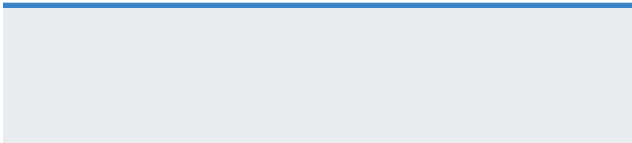
No. EO 14063 applies to all federal construction projects of \$35 million or more, regardless of the legislation funding applicable projects. For example, military construction projects were not funded by the Infrastructure Investment and Jobs Act of 2021 but are covered by this EO. The Feb. 3 [White House Fact Sheet on the EO](#) regrettably caused confusion when it included the following text inconsistent with the EO: “The Order will only apply to provisions in the Bipartisan Infrastructure Law that are direct federal procurement, which excludes construction projects financed through grant dollars to non-federal entities.”



bargaining agreements of unions signatory to the PLA and pay into applicable union pension and benefits plans, which creates additional uncertainty, risk and increased costs.

However, the [FAR proposal revised FAR 22.504\(c\)](#) and removed “direction that allowed agencies to specify terms and conditions of the PLAs and to





29. Will the Biden EO apply to existing contracts or new contracts?

The FAR rulemaking may clarify this. We expect it to apply to new construction contracts for projects of \$35 million or more only and not ongoing projects that have already been awarded. However, the [proposed rule says this about IDIQ contracts](#):

Some agencies use indefinite-delivery indefinite-quantity (IDIQ) contracts to award orders for large-scale construction projects. IDIQ contracts may cover multiple projects of varying values. For an order at or above \$35 million, an agency shall require a PLA, unless an exception applies. An exception may only apply to the entire IDIQ contract if the basis for the exception cited would apply to all orders. Use of PLAs on orders is also not 5er0.008 TID40tice exllg1 (o)-5.6

costs and decrease the value of investment by hardworking taxpayers in schools, roads, bridges, utilities, clean energy, transportation, aordable housing and infrastructure. 97% of survey respondents said a construction contract that required a PLA would be more expensive compared to a contract procured via free and open competition. Overall, PLA mandates will lead to fewer construction projects and fewer construction industry jobs created and/or additional state and local tax hikes to pay for construction needs.

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35. How can I find out how many construction workers in my state or region belong to a union?

According to Bureau of Labor Statistics data, 87.4% of the U.S. construction workforce does not belong to a union. Updated state-specific union membership information for various industries, including the construction industry, is available at unionstats.com (see Table 3), which is mined from raw data published by BLS data. ABC has created a [map](#) of state unionization rates with data from unionstats.com and the BLS.

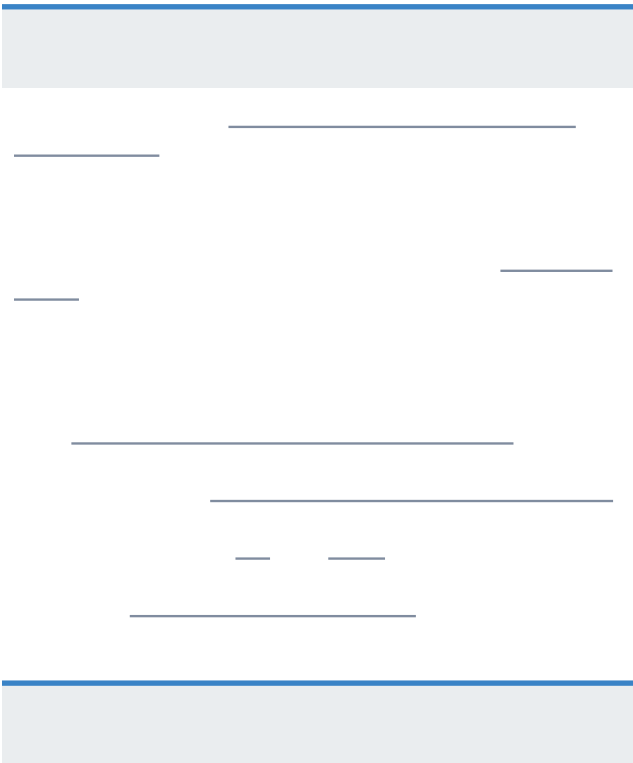
36. PLA advocates claim PLAs are needed to prevent strikes and labor unrest on a federal construction project. Don't unions cause strikes, and how do I know if there is a history of strikes and labor unrest in a marketplace?

Why lawmakers continue to soak taxpayers with a 20% cost premium on public works projects for a solution to a problem that is rare in today's construction marketplace and rewards the party that creates the problem is baffling. It's even more puzzling when examining the government data on union strikes on public and private projects subjected to PLA mandates, despite promises that PLAs allegedly prevent strikes⁵

37. Will government-mandated PLAs harm federal agency and state and local small, minority and disadvantaged businesses and workforce utilization goals?

Yes. The vast majority of...

In addition, participants in the September 2022



for President Biden “to be equitable in your treatment of America’s construction workers whether union or nonunion.”

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