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March 30, 2023

The Honorable Gina Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Dear Secretary Raimondo:

We write to express our strong disapproval of a Notice of Funding Opportunity (NOFO) for the CHIPS Incentive Program that was recently issued by the Department of Commerce's (Department) National Institute of Standards and Technology.¹ Among multiple objectionable provisions contained within the NOFO, the Department appears intent on rewarding Democrat special interests by establishing a project labor agreement (PLA) preference policy to receive semiconductor subsidies. This preference policy intentionally disadvantages the majority of construction workers who choose not to join a union, and it thwarts congressional intent while doing massive harm to taxpayers.

As you know, a PLA is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project. PLAs typically force contractors to recognize unions as the representatives of their employees on that job, use the union hiring hall to obtain workers, exclusively hire apprentices from union programs, follow union work rules, and pay into union benefit and multiemployer pension plans.² Pre-hire agreements also undermine employee free choice because they deprive workers of a vote on union representation. In effect the government puts its thumb on the scale and discourages non-union contractors and their employees from working on projects when it adopts a PLA preference policy.

¹ NAT'L INST. OF STANDARDS & TECHNOLOGY, DEP'T OF COM., NOFO, CHIPS INCENTIVES PROGRAM-COMMERCIAL FABRICATION FACILITIES (Feb. 28, 2023),
https://www.nist.gov/system/files/documents/2023/02/28/CHIPS-Commercial_Fabrication_Facilities_NOFO_0.pdf.

² Letter from Am. Concrete Pumping Ass'n et. al. to Gina Raimondo, Sec'y of Com. (Mar. 7, 2023),
<https://www.abc.org/Portals/1/NewsMedia/Coalition%20Letter%20Supporting%20Competition%20Opposing%20PLAs%20on%20Commerce%20CHIPS%20Construction%20NOFO%20030722.pdf?ver=ktM83m8vy3GD8AzWvtoAuQ%3d%3d&timestamp=1678198528483>.

When Congress passed the *Creating Helpful Incentives to Produce Semiconductors and Science Act* (CHIPS Act),³ it chose not to include a PLA preference policy, despite including other harmful labor provisions. With this NOFO, the Department is attempting to use a semiconductor incentives program to stretch the authority granted to it under the CHIPS Act to promote Democrat policies, such as PLA preferences. The Department seems aware of this fact. You recently boasted to your staff that “if Congress wasn’t going to do what they should have done, we’re going to do it in implementation” of the CHIPS Act—an admission that the Department’s actions are not following congressional intent.⁴

We strongly oppose the Department pandering to special interests and favoring workers based on their union affiliation. Steering taxpayer dollars to organized labor – one of the largest funders of Democrats’ political campaigns – through the semiconductors incentives program, is as shameful as it is unsurprising under this administration. Further, the fact that the administration claims to be promoting the interests of workers with this preference policy is disingenuous because the policy is intended to discourage non-union contractors and their workers, who represent 88.3 percent of the construction industry, from bidding on these projects.⁵

Additionally, American taxpayers will shoulder the burden of the Department’s ill-advised PLA policy. Despite your recent statement that “we don’t want to spend a dollar more than necessary to make these projects happen,”⁶ the Department’s actions prove the opposite. Government-mandated PLAs are shown to significantly inflate the cost of construction by 12 percent to 20 percent compared to projects without a PLA.⁷ Ultimately, higher construction costs lead to fewer semiconductor construction projects being built in America. When PLA-mandates are promoted by the federal government in exchange for “free” money to corporations, hardworking taxpayers lose.

We urge the Department to abandon its PLA-preference policy for which it lacks congressional authorization. This ill-advised policy is unfair to the vast majority of construction workers who chose not to belong to a union, and it will dramatically increase construction costs. Workers and taxpayers deserve better than the Department’s union-first, America-last policies.

Sincerely,



Virginia Foxx
Chairwoman



Bob Good
Chairman
Subcommittee on Health, Employment, Labor, and Pensions

³ Pub. L. No. 117-167 (2022).

⁴ Jim Tankersley & Ana Swanson, *Biden’s Semiconductor Plan Flexes the Power of the Federal Government*, N.Y. TIMES, Feb. 27, 2023, <https://www.nytimes.com/2023/02/27/us/politics/chips-act-biden-commerce-department.html>.

⁵ U.S. BUREAU OF LAB. STAT., TABLE 3, UNION AFFILIATION OF EMPLOYED WAGE AND SALARY WORKERS BY OCCUPATION AND INDUSTRY (Jan. 19, 2023), <https://www.bls.gov/news.release/union2.t03.htm>.

⁶ Jim Tankersley & Ana Swanson, *supra* note 4.

⁷ Letter from Am. Concrete Pumping Ass’n et. al., *supra* note 2.