This memorandum addresses the question of whether President Obama’s Executive Order No 13502 (Feb. 6, 2009) requires state or local governments to impose union-only project labor agreements (PLAs) on construction projects built with federal assistance.¹ As further explained below, the Executive Order is quite clear on this point: Nothing in the Executive Order requires any state or local government to impose a union-only PLA on any federally assisted project.

By its terms, E.O. 13502 imposes obligations only on “executive agencies” of the federal government, as defined in Section 2 of the Executive Order. As to such agencies, and only such agencies, the Executive Order states that in awarding contracts or obligating funds in connection with large-scale construction projects, the federal agencies “may, on a project-by-project basis,” require the use of a project labor agreement by a contractor where certain limited conditions are met. See Section 3.

Section 5 of the Executive Order states that the order “does not require an executive agency to use a project labor agreement on any construction project.…” So even within the federal government no PLAs are required by Executive Order No. 13502. In any event, the Executive Order imposes no obligations on state or local governments whatsoever.

¹ The Executive Order defines a project labor agreement as “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 and is an agreement described in 29 U.S.C. 158(f).”
Section 7 of the Executive Order calls upon the Office of Management and Budget (OMB) to make recommendations *in the future* about whether broader use of project labor agreements would be helpful on construction projects receiving federal financial assistance. Such projects could include state and local projects. However, OMB has not yet made any recommendations in response to this Section, and there is again nothing in this provision that requires state or local governments to impose projects labor agreements as a condition of receiving federal financial assistance, either now or in the future.

Section 8 of the Executive Order revokes President Bush’s Executive Order No. 13202 (as further amended in E.O. No. 13208). President Bush’s Order had, among other things, *prohibited* state and local governments from imposing union-only PLAs on any federally assisted construction project. By revoking President Bush’s Order, Executive Order No. 13502 can be said to have removed the federal prohibition against state or local PLAs; nevertheless, the new Executive Order clearly did not thereby *require* any state or local action on federally assisted projects. Indeed, Executive Order No. 13502 does not direct or authorize state or local governments to do anything with regard to union-only PLAs, and the imposition of such anti-competitive bidding requirements remains subject to challenge under most state competitive bidding laws.

In conclusion, nothing in Executive Order No. 13502 requires (or even authorizes) any state or local government to impose a union-only PLA on any federally assisted construction projects.²

² The Federal Acquisition Regulation Council has recently issued a proposed rule implementing Executive Order No. 13502 (to be published in the Federal Register on July 14, 2009), and OMB has issued a guidance memo to federal agencies on the Order and the proposed rule. See 131 Daily Labor Report (BNA) A-16 (July 13, 2009). Consistent with the above analysis, neither document imposes any obligations whatsoever on state or local governments with regard to union-only PLAs.