

THE 2020 YEAR-END FEDERAL LEGISLATIVE PACKAGE AN ANALYSIS FOR THE CONSTRUCTION INDUSTRY

On Dec. 21, 2020, Congress passed a \$2.3 trillion, [5,593-page](#) COVID-relief and federal government funding package. The president signed it into law on Dec. 27. The Associated General Contractors of America's (AGC) government relations team worked day and night for months fighting to ensure the best possible outcome for the construction industry. Although not everything AGC fought for made it into the package, there are many significant construction industry priorities that AGC secured, including but not limited to the items below.

Significant AGC Victories for Construction Markets, Construction Firms & the Construction Workforce

- ✓ **Blocking a surprise federal tax increase of up to 37 percent** on Paycheck Protection Program (PPP) loan forgiveness by overturning the IRS position barring deductions for PPP loan-forgiven business expenses;
- ✓ **Enabling eligible contractors to claim tax credits up to \$14,000 per employee** through an extension of the Employee Retention Tax Credit into 2021;
- ✓ **Securing \$46 billion for the federal-aid highway and transit programs** to help ensure ongoing and planned highway and transit construction projects move forward through at least September 30, 2021;
- ✓ **Providing \$10 billion for state departments of transportation** to help mitigate the impacts of transportation revenue losses on bid letting delays and project cancellations;
- ✓ **Ensuring that some of the \$82 billion for public and private K-12 schools and higher education** in COVID-relief is eligible for construction/renovation projects related to pandemic needs;
- ✓ **Obtaining \$25 billion in tax incentives for community buildings development** through the extension of the New Markets Tax Credit for five years;
- ✓ **Expanding tax credits for constructing more than 550,000 multifamily housing units** via the Low-Income Housing Tax Credit;
- ✓ **Securing nearly \$3 billion for wastewater and drinking water infrastructure** investment;
- ✓ **Landing upwards of \$3.3 billion for broadband** installation and removal construction activities; and
- ✓ **Guaranteeing the investment of an additional \$10 billion** towards harbor maintenance dredging;

This document provides a broad, non-exhaustive overview of the many provisions within the package and categorizes the as follows:

- **Policies impacting public and private construction markets;**
- **Tax and fiscal policies impacting construction firms; and**
- **Policies impacting the construction workforce.**

Within those categories, AGC outlines the provisions based on where they were included: either the federal government funding (appropriations) bill—which provides federal and federal-aid construction programs with resources through Sept. 30, 2021—or the COVID-19 relief or various other portions of the package. AGC staff will provide further updates as it further analyzes the contents of the package.

That stated, there were construction industry priorities that were not included in this package, which AGC will seek to advance in 2021. Those include but are not limited to enacting more robust, multi-year infrastructure investment; securing greater incentives for spurring public and private building construction; providing targeted and reasonable liability protections against legal COVID-19 claims to protect construction firms following recognized safety and health protocols; and addressing the viability of the multiemployer pension system by providing the Pension Benefit Guaranty Corporation funding and tools—including the authorization of composite plans—to avoid insolvency.

POLICIES IMPACTING PUBLIC & PRIVATE CONSTRUCTION MARKETS

COVID-Relief & Other Provisions:

Transportation:

- *Highways & Transit:*
 - Provides about \$10 billion for state departments of transportation and \$14 billion for public transit agencies, which will help mitigate revenue loss impacts to ongoing and planned construction projects
 - Clarifies/strengthens the eligibility for payroll/expenses of private providers of public transportation.
- *Airports:* Provides \$2 billion for airports that will help mitigate revenue loss impacts to ongoing and planned construction projects

Building Construction:

- *K-12 Schools & Higher Ed:*
 - Enables public and private K-12 schools and higher education owners to use some of the nearly \$82 billion provided for education-related COVID-relief towards construction improvements and/or renovation related to pandemic needs
 - Establishes coordination of existing federal resources towards energy retrofitting projects for schools
 - Creates a new grant program for energy efficiency and renewable energy improvements at public schools
- *New Markets Tax Credit:* Extends for five years the New Markets Tax Credit that will provide \$25 billion in tax incentives for community buildings development in low-income and rural areas
- *Low-Income Housing Tax Credit:* Expands the Low-Income Housing Tax Credit so it will generate more than 555,000 units of multifamily housing over ten years on top of the 3.2 million financed through it since 1986
- *Commercial Building Energy Efficiency Tax Credit:* Makes permanent, with updated ASHRAE standards, the commercial building energy efficiency tax deduction (Section 179D), which encourages private development

Water Resources Infrastructure:

- *Water Resources Development Act of 2020:* Includes WRDA 2020, which authorizes funding for 46 U.S. Army Corps of Engineers Civil Works projects (locks, dams, levees, so forth) and invests over 10 years the nearly \$10 billion accumulated balance in Harbor Maintenance Trust Fund for actual harbor maintenance

Broadband:

- *Broadband Construction:* Provides \$1 billion for the Tribal Broadband Connectivity Program, \$300 million for the Broadband Infrastructure Program, and \$2 billion to rip out and replace certain Chinese-made equipment

Energy Infrastructure:

- *Solar Investment Tax Credit:* the solar ITC will remain at 26% for projects that begin construction in 2021 and 2022, step down to 22% in 2023, and down to 10% in 2024 for commercial projects while the residential credit ends completely. Companies beginning construction on projects in 2021 would still have a four-year period to place their projects in service to take advantage of the ITC, with the statutory deadline for projects placed in service reset to before Jan. 1, 2026.
- *Renewable Production Tax Credit:* Extends the Renewable Production Tax Credit for another year, meaning it will now be available for new projects that qualify before the end of 2021. The PTC provides a corporate tax credit electricity generated from wind, closed-loop biomass and geothermal resources, among others.
- *Offshore Wind Investment Tax Credit:* Establishes a 30% investment tax credit for offshore wind when construction begins before 2026.
- *Construction on Federal Land:* Lays foundation for wind, solar and geothermal energy projects to be built on fed. land
- *New Department of Energy Programs:* Creates new programs geared towards research and development, but which also authorize funding for infrastructure construction related to hydropower, wind energy, solar energy, carbon sequestration and grid modernization.

FY 2021 Appropriations:

Transportation:

- *Highways & Transit:* Approximately \$46 billion for the Federal-aid Highway Program and approximately \$10 billion for federal public transit programs, which adheres to the funding levels in the previously enacted one-year extension of the FAST Act
- *Transit Grants:* Approximately \$2 billion for the Capital Investment Grant Program, a discretionary grant program for capital public transit projects that is authorized by the FAST Act, but subject to appropriations
- *Airports:* Approximately \$3.35 billion for airports, which adheres to the funding level in the FAA Reauthorization Act of 2018
- *BUILD Grants:* \$1 billion for National Infrastructure Investments (known as the BUILD grants), a discretionary grant program for various transportation projects
- *Additional Funds:* \$2 billion for highways and bridges, \$516 million for public transit systems, and \$400 million for airports to supplement the funding noted above

Military Construction & Other Federal Buildings

- *Military Construction:* Approximately \$5.65 billion for military construction accounts, which includes \$502 million in additional funds; \$1.33 billion for military family housing construction and O&M; and approximately \$481 billion for base realignment
- *General Services Administration:* \$230 million for construction and acquisition (major projects); Approximately \$577 million for repairs and alterations
- *Department of Veterans Affairs:* \$1.316 billion for major construction projects (above \$10M); \$390 billion for minor construction projects (below \$10M); \$90 million for grants for construction of state extended care facilities; and \$45 million for grants for construction of veterans' cemeteries

Water Resources Infrastructure:

- *Corps Civil Works:* About \$7.8 billion for the U.S. Army Corps of Engineers Civil Works Program
- *Bureau of Reclamation:* Approximately \$1.5 billion for the water and related resources account

Water Infrastructure:

- *State Revolving Loan Funds:* About \$2.8 billion in total for the clean water and drinking water state revolving fund programs
- *WIFIA:* approximately \$60 million for Water Infrastructure Finance and Innovation Act (WIFIA) program

TAX & FISCAL POLICIES IMPACTING CONSTRUCTION FIRMS

COVID-Relief & Other Provisions:

Paycheck Protection Program (PPP):

- *Loan Deductibility:* Allows full deductibility of ordinary and necessary business expenses paid for with forgiven PPP loan funds for both first and second draw loans (overturning the IRS position)
- *Expedited Loan Forgiveness:* Expedites loan forgiveness for PPP loans less than \$150,000
- *Retroactive Expense Modifications to Original PPP Loans Impacting Forgiveness:* Expense categories for PPP loan forgiveness eligibility are expanded to include worker protection expenditures (e.g., personal protective equipment) related to the pandemic, among other expenditures. This change could potentially increase loan forgiveness for some borrowers
- *EIDL Impact:* Repeals a CARES Act provision that required businesses to subtract Small Business Administration (SBA) Economic Injury Disaster Loan (EIDL) advances from PPP loan forgiveness
- *Second Draw:* Allocates \$284 billion for second draw for PPP loans (subject to more stringent eligibility requirements than the original PPP loan program, among other things)

Employee Retention Tax Credit (ERTC):

- *Expansion/Extension of ERTC:* Significantly expands and extends the ERTC through June 2021. If eligible, employers can claim up to \$14,000 per employee.
 - The provision expands eligibility for the credit by:
 - Reducing the required year-over-year gross receipts decline from 50% to 20% and provides a safe harbor allowing employers to use prior quarter gross receipts to determine eligibility; and
 - Increasing the 100-employee delineation for determining the relevant qualified wage base to employers with 500 or fewer employees
- *PPP & ERTC:* Allows PPP loan recipients to also collect the ERTC (which was prohibited under CARES Act) with respect to wages that are not paid for with forgiven PPP loan funds

Paid Leave Tax & Fiscal Policies

- *FFCRA Paid Leave Tax Credit:* The Families First Coronavirus Response Act (FFCRA) paid-sick and paid-family leave mandates expire on Dec. 31, 2020 and are NOT extended into 2021. However, the bill extends the [related refundable payroll tax credits](#) through March 31, 2021
- *Section 3610 of CARES Act:* Extends until March 31, 2021 this provision that authorizes (but does not require) agencies to reimburse Department of Defense contractors for the cost of paid leave incurred to keep contractor or subcontractor personnel in a “ready state” to the extent that the personnel were (i) unable to access a government-approved facility, and (ii) unable to telework because their jobs could not be performed remotely

Other Tax and Fiscal Policies Impacting Construction Firms

- *Work Opportunity Tax Credit:* Extends the [Work Opportunity Tax Credit](#) through 2025, helping employers continue to hire disadvantaged individuals
- *Empowerment Zone Employment Tax Credit:* Extends the [Empowerment Zone Employment Tax Credit](#) through 2025, under which employers can claim a federal tax credit of up to \$3,000 for each full- or part-time employee who is an Empowerment Zone resident.
- *Employee Retention Tax Credit for Disaster Zones:* The [Employee Retention Tax Credit for Disaster Zones](#) provides a tax credit of up to \$2,400 for employers in major disaster zones (but does not include COVID-19 declared disasters). The credit applies to wages paid without regard to whether services associated with those wages were performed. This legislation extends eligibility for the credit from January 1, 2020 through on or about February 18, 2021.
- *Full Deduction for Business Meals:* Provides a 100% deduction for business meal food and beverage expenses provided by a restaurant that are paid or incurred in 2021 and 2022. Currently the deduction is available for only 50% of such expenses



POLICIES IMPACTING THE CONSTRUCTION WORKFORCE

COVID-Relief & Other Provisions:

- *FFCRA Paid Leave Mandates:* The Families First Coronavirus Response Act (FFCRA) [paid-sick and paid-family leave mandates](#) expire on Dec. 31, 2020 and are NOT extended into 2021. However, the bill extends the related refundable payroll tax credits through March 31, 2021
- *Unemployment Insurance:* Provides an additional \$300 per week to supplement all state and federal unemployment benefits, starting after December 26, 2020 and ending March 14, 2021. Individuals receiving benefits beyond the standard 26-week period as of March 14, 2021 will continue receiving them through April 5, 2021 if they have not reached their maximum number of benefit weeks.
- *Surprise Billing:* Congress took an important step in reigning in surprise medical billing. However, unfortunately, Congress addresses policy through an independent dispute resolution process and will thereby add administrative costs and burdens on employers
- *Prevailing Wage:* Extends Davis-Bacon requirements to five new Department of Energy programs (hydropower, wind energy, solar energy, carbon sequestration and grid modernization)

FY 2021 Appropriations:

- *Apprenticeships:* Provides \$185 million for DOL's registered apprenticeship program, a \$10 million increase.
- *Immigration:* Continues [H-2B program](#) and increases visa cap if needs of seasonal businesses cannot be met with U.S. workers
- *Job Corps:* DOL's program for disadvantaged youths would be encouraged to ensure remote training opportunities exist in areas where campuses have closed. Includes \$5 million increase over FY 2020
- *Safety Training Grants:* Modest increase in [Susan Harwood Grants](#) from FY 2020 and restores funding from budget request which eliminated program