



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

On Dec. 21, 2020, Congress passed a \$2.3 trillion COVID-relief and federal government funding package. The president signed it into law on Dec. 27. Associated General Contractors of America's (AGC) government relations team worked day and night for months 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

- 9 Blocking a surprise federal tax increase of up to 37% on Paycheck Protection Program (PPP) loan forgiveness by overturning the IRS position barring deduction of PPP loan-forgiven business expenses
- 9 Enabling eligible contractors to claim tax credits \$14,000 per employee through an extension of the Employee Retention Tax Credit into 2021
- 9 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
- 9 Providing \$10 billion for state departments of transportation to help mitigate the impacts of transportation revenue losses on bidding delays and project cancellations
- 9 Ensuring that some of the \$82 billion for public and private schools and higher education in COVID-relief is eligible for construction/renovation projects related to pandemic needs;
- 9 Obtaining \$25 billion in tax incentives for commercial buildings development through the extension of the New Markets Tax Credit for five years;
- 9 Expanding tax credits for constructing more than 550,000 family housing units via the Low Income Housing Tax Credit;
- 9 Securing nearly \$3 billion for wastewater and drinking water infrastructure investment;
- 9 Landing upwards of \$3.3 billion for broadband installation and construction activities; and
- 9 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 them as follows:

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

Within those categories, AGC outlines the provisions based on where they were included: either the general funding (appropriations) bill—which provides federal and federal construction programs with resources through Sept. 30, 2024—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: providing 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 vitality of the multiemployer pension system by providing the Pension Benefit Guaranty Corporation funding and tools—including the authorization of composite-plan avoid insolvency.



POLICIES IMPACTING PUBLIC & PRIVATE CONSTRUCTION MARKETS

COVID-Relief & Other Provisions:

Transportation:

- x *Highways & Transit:*
 - o 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
 - o Clarifies/strengthens the eligibility for payroll expenses of private providers of public transit.
- x *Airports:* Provides \$2 billion for airports that will help mitigate revenue loss impacts to ongoing and planned construction projects

Building Construction:

- x *K-12 Schools & Higher Ed:*
 - o 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
 - o Establishes coordination of existing federal resources towards energy retrofitting projects for schools
 - o Creates a new grant program for energy efficiency and renewable energy improvements at public schools
- x *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 inner city and rural areas
- x *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
- x *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:

- x *Water Resources Development Act of 2020:* Includes WRDA 2020, which authorizes funding for U.S. Army Corps of Engineers

Last Updated:
December 28, 2020



FY 2021 Appropriations:



TAX & FISCAL POLICIES IMPACTING CONSTRUCTION FIRMS

COVID-Relief & Other Provisions:

Paycheck Protection Program (PPP)

- x *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)
- x *Expedited Loan Forgiveness*: Expedites loan forgiveness for PPP loans less than \$150,000
- x *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
- x *EIDL Impact*: Repeals CARES Act provision that required businesses to subtract Small Business Administration (SBA) Economic Injury Disaster Loan (EIDL) advances from PPP loan forgiveness
- x *Second Draw*: Allocates \$28 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):

- x *Expansion/Extension of ERTC*: Significantly expands and extends the ERTC through June 30, 2021. Employers can claim up to \$14,000 per employee.
 - o The provision expands eligibility for the credit by:
 - f 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
 - f Increasing the 100 employee delineation for determining the relevant qualified wage base to employers with 500 or fewer employees
- x *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 PPP loan funds

Paid Leave Tax & Fiscal Policies

- x *FFCRA Paid Leave Tax Credit*: The Families First Coronavirus Response Act (FFCRA) signed and paid family leave mandates expire on Dec. 31, 2020 and are NOT extended into 2021. However, the bill extends the [refundable payroll tax credits](#) through March 31, 2021
- x *Section 3610 of CARES Act*: Extends until March 31, 2021 a 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

- x *Work Opportunity Tax Credit*: Extends the [Work Opportunity Tax Credit](#) through 2025, helping employers continue to hire disadvantaged individuals
- x *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-time employee who is an Empowerment Zone resident.
- x *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 (which 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 February 18, 2021.
- x *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 expenses

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