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Congressional Overview

With unemployment benefits set to begin running out on March 14, Congress spent much of the week focusing on passing President Biden's $1.9 trillion COVID-19 Relief Package (The "American Rescue Plan"). The Congressional Budget Office (CBO) estimated that $1.1 trillion of spending under the package would go out this year, with a further $459 billion coming in 2022. Additionally, the House voted 225-206 to pass the Protecting the Right to Organize Act, which would allow employees to hold union elections off of company premises and use mail or electronic ballots. The legislation would address the status of independent contractors, by proving they are employees under federal labor law. The legislation faces a steep challenge overcoming a filibuster in the Senate.

The Senate confirmed Merrick Garland as Attorney General, Marcia Fudge as the Housing and Urban Development Secretary, and Michael Regan as the EPA Administrator. Also this week, Defense Secretary Lloyd Austin approved the U.S. Capitol Police's request to continue deployment of the National Guard at the U.S. Capitol through at least May 23.

President Signs American Rescue Plan into Law – What Contractors Need to Know

President Biden signed the $1.9 trillion American Rescue Plan Act stimulus package into law on Thursday. The package includes $1,400 direct payments, an extension of unemployment benefits and funding for vaccine distribution. Below is a brief overview of what signatory contractors need to know about this package:

- **Pensions** – The bill includes $86 billion for multi-employer pension funds**.**

- **COVID-19 Paid Leave** – The bill extends the FFCRA's tax credits for COVID-19 emergency paid sick leave (E-PSL) and the Emergency Family and Medical Leave Act (E-FMLA) through Sept. 30, 2021. These credits are available to employers who choose to provide these types of paid leave.

  The per employee limits for the programs (80 hours for E-PSL and 10-weeks for E-FMLA) reset after March 31, and the bill increases the limit on the credits for paid family leave to $12,000.

- **Small Business** – The American Rescue Plan broadens eligibility guidelines for the Paycheck Protection Program, allowing more nonprofit entities to be eligible. It tops off the program's funds and adds $15 billion in emergency grants. It also sets aside more than $28 billion in funding for restaurants.

- **Unemployment Benefits** – The plan extends expanded unemployment benefits with a $300 weekly supplement through Labor Day (September 6, 2021).

- **Child Tax Credit** – The bill expands the child tax credit, in 2021, for children under 6 years old to $3,600, and to $3,000 for older children up to age 17. The additional amount would phase out for individuals with income above $75,000, head-of-household filers with income above $112,500 and $150,000 for married couples filing jointly. The bill would also make the credit fully refundable, and it would make 17-year-olds eligible for the credit.

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The IRS is directed to make periodic advance payments of the credit, so that households could receive the credit in installments throughout the year instead of having to wait to file their taxes to receive all the money.

- **Earned Income Tax Credit** – The bill would expand the earned income tax credit (EITC) in 2021, and it would expand the eligibility and amount of the credit for workers without children and allow married but separated spouses to claim the EITC on separate returns in certain circumstances.

  It also would allow taxpayers to use their 2019 income for purposes of the credit instead of their 2021 income. Both the portions of the bill on the earned income tax credit and the child tax credit would direct the Treasury Department to make payments to U.S. territories to help reimburse the cost of the credits in those jurisdictions.

- **Child Care** – The bill would provide about $15 billion to the child care and development block grant program. States would be able to use the funds to help essential workers regardless of those workers' income.

  The measure also would provide about $24 billion for states to provide grants to child care providers. The bill would also expand the child and dependent care tax credit in 2021 and would increase the amount of a tax exemption for employer-provided dependent care assistance.

- **Transportation** – The bill contains $30 billion to bolster local subway and bus systems, which have seen their revenues collapse with people working from home. Ridership plummeted 79 percent in 2020, per the American Public Transportation Association. The bill also includes $8 billion for airports, $1.5 billion for furloughed Amtrak workers, and $3 billion for wages at aerospace companies.

- **Housing** – The rescue plan provides $27.4 billion in emergency rental assistance for eligible people. Another $10 billion is set aside to help homeowners avoid foreclosure. The bill gives $5 billion in vouchers for public housing, another $5 billion to tackle homelessness and $5 billion more to help cover utility bills.

- **Affordable Care Act** – The American Rescue Plan increases Affordable Care Act subsidies through 2022. It will allow individuals earning up to 150 percent of the federal poverty level to purchase an insurance plan with premiums fully subsidized by the federal government. Enrollees would have to pay no more than 8.5 percent of their income in health insurance premiums.

- **Medicaid Expansion** – The rescue plan expands Medicaid to people earning up to 138 percent of poverty, and the federal government will pay 90 percent of the costs. Under the legislation, newly expanding states would also receive a 5 percent bump for their traditional Medicaid programs for two years. New federal funds under that 5 percent bump are more than two times larger than new state expansion costs.

Promoting Infrastructure by Protecting Our Subcontractors and Taxpayers Act of 2021

On Tuesday, Sens. Chris Van Hollen (D-MD) and Mike Rounds (R-SD) and Reps. Stephen Lynch (D-MA) and Troy Balderson (R-OH) reintroduced the Promoting Infrastructure by Protecting Our Subcontractors and Taxpayers Act. This bipartisan, bicameral legislation would direct the U.S. Department of Transportation (DOT) to ensure public-private partnership (P3) projects using Transportation Infrastructure Finance Innovation Act (TIFIA) financing have appropriate payment and performance security and are sound federal investments by requiring a surety bond.

Unfortunately, P3 projects sometimes do not maintain the same level of protection that have been required on public infrastructure projects for over a hundred years through federal and state Miller Acts. Without these protections, in

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the event of a contractor default, the project is halted, and can be terminated, leaving subcontractors and workers without pay. Additionally, states and taxpayers are then forced to absorb additional costs of rebidding the project.

Payment and performance protections, through the use of surety bonds, provide monetary compensation in case a contractor fails to perform the acts as promised. These bonds play a vital role in ensuring contractors in financial distress avoid bankruptcy, allowing subcontractors and workers of public works projects to receive compensation and allowing the project to be delivered within budget and on time.

This bipartisan, bicameral policy seeks to provide added protection for our nation's workers, subcontractors, and small businesses as they look to solve our country's infrastructure needs by ensuring essential payment and performance security protections are in place for all forms of project procurement where federal funds are used. FCA International is a lead supporter of this legislation.

House Passes PRO Act

On Monday, the House voted 225-206 to pass the Protecting the Right to Organize (PRO) Act. The PRO Act would amend the National Labor Relations Act, which is a federal law that guarantees private-sector employees the right to unionize, engage in collective bargaining, and take collective action such as strikes. Among other changes, it would bar employers from retaliating against unionization efforts, protect workers' right to strike, and override state "right to work" laws that allow employees to opt out of paying dues in unionized workplaces.

Companies would be banned under the bill, for example, from holding "captive audience" meetings, in which workers are compelled to listen to anti-union messages from their employer. The legislation also would give the National Labor Relations Board power to levy fines against companies that engage in unfair labor practices, and require arbitration when unionized workers can't reach agreement on a contract with employers. The bill now heads to the Senate, where it will face a steep challenge in overcoming a filibuster.

Construction Employers of America Sends Letter to DOL Regarding a COVID-19 Emergency Temporary Standard

The Construction Employers of America (CEA) sent a letter this week to the Department of Labor regarding the necessity of an emergency temporary standard (ETS) related to the COVID-19 pandemic in response to President Biden's recently issued "Executive Order on Protecting Worker Health and Safety."

Per the letter, "As the Department evaluates whether a federal COVID-19 emergency temporary standard is necessary, we respectfully urge the DOL not to override the effective work practices that contractors have developed with their signatory unions. We ask that for workplaces in which management and a recognized collective bargaining representative of the workforce mutually agree on best practices, these joint labor management efforts supersede any ETS, so long as they are faithfully adhered to by all parties. If the Department refuses to allow labor and management to voluntarily adopt mutually agreed upon best practices, then it is imperative that any ETS avoid creating an uneven playing field for high road employers in industries with high rates of worker misclassification, like construction."

DOL Issues Proposed Joint Employment Liability Rule

The U.S. Department of Labor issued their proposed joint employment liability rule, which would limit the circumstances in which multiple companies such as fast-food corporations and their franchisees are jointly responsible for minimum wage and overtime violations. The Trump Administration's joint employer test was struck down in federal court last year.

The Justice and Labor departments appealed that ruling in November. Although the substance of the Biden Administration's rulemaking remains unclear, it's expected that it will highlight that businesses often are accountable for the labor standards at their franchisees, subcontractors, staffing firms, and other affiliated companies.

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