



AGC
THE CONSTRUCTION
ASSOCIATION

AGC's Legislative and Regulatory Priorities for 2019-2020

Building a Construction-Friendly Regulatory Environment - All federal agency actions can be described in two words: (1) “rulemakings,” where they issue industry-wide regulations; and (2) “adjudications,” where they take individual enforcement actions. The principles below outline AGC’s priorities when it comes to these two actions.

Rulemaking Priorities

- **Account for the Uniqueness of the Construction Industry** - Ensure that federal agencies take into account and address regulatory impacts upon the construction industry through association comments, conferences, and meetings
- **Return to Fact-Based Rulemaking** - Ensure that regulations undergo thorough economic analysis, are based in sound science and/or substantial empirical data and are transparent in methods and goals
- **Streamline Pre-Construction Regulatory Processes** - Speed up and/or limit time for pre-construction reviews, studies, reports, and permits
- **Advocate Against Unreasonable Rules** - Oppose unfounded, unnecessary, unlawful and/or unworkable executive orders and regulations
 - Examples include, but are not limited to:
 - Government-mandated project labor agreements executive order, federal contractor paid sick leave executive order, NLRB regulations tipping the scales in favor of union organizers, and EPA regulations instituting a tax on carbon and expanding federal jurisdiction over water
- **Support Needed Reforms to the Process** - Support common sense regulatory reforms that help prevent the president and federal agencies from overburdening contractors and taking unreasonable unilateral action
 - Examples include, but are not limited to:
 - Requiring Congress to vote on and approve major regulations before they become law,
 - Requiring agency guidance, policy and enforcement statements to undergo notice and comment rulemaking procedures, and
 - Strengthening existing regulatory checks like the Small Business Regulatory Enforcement Fairness Act and Congressional Review Act
- **Public Construction Site Data** - Oppose the public sharing of construction site-specific compliance data and ensure that where such data is made public it is properly contextualized so that it cannot be misrepresented or misconstrued

Adjudication Priorities

- **Preserve Due Process** - Any enforcement actions must preserve contractor due process rights, consider mitigating factors, and preserve judicial review of any decision to suspend or debar a contractor

- **Right to Cure** - Promote the concept of ‘Right to Cure’ for regulatory violations prior to contractors facing monetary fines
- **Alternative Dispute Resolution Methods** - Support mediation, arbitration, and dispute resolution boards to resolve factual contract disputes

National Infrastructure Priorities - Make sure major infrastructure legislation is long-term and builds on existing, successful programs

Transportation Infrastructure - Invest in our nation’s transportation infrastructure to ensure a thriving economy

- **Highway Trust Fund** – Increase Highway Trust Fund revenues to meet present and future transportation needs
 - **Revenue Sources** - Support an immediate increase in the federal motor fuels tax or other revenue sources that are recurring, reliable, dedicated, and focused on the users and beneficiaries of our transportation, including customs user fees, registration fees and driver license fees, energy related fees, and also begin the transition to a mileage-based user fee
- **Additional Financing Sources** - Support supplemental financing sources, such as an infrastructure bank, increased tolling, lifting the volume cap on private activity bonds, private investment, bonding, and increased credit assistance, loans and loan guarantees through a reformed TIFIA Program
- **DBE Program Reforms** - Clarify requirements for compliance with complicated, confusing and sometimes contradictory preference programs, include qualifications and business development planning as eligibility criteria, and establish one standard definition of a “small business concern” for contractors participating in Federal Highway Administration, Federal Transit Administration and Federal Aviation Administration construction projects
- **FAST Act Reauthorization**
 - **Environmental Streamlining** - Ensure that regulations speed up agency actions and limit reviews to only projects with significant environmental impacts by, for example, broadening the scope and application of the FAST-41 provisions and making them permanent
 - **Judicial Review Reform** - Further shorten and standardize time limitations on claims for the review of final NEPA documents or an environmental permit, license or approval issued by a federal agency for an infrastructure project (current inconsistencies exist between MAP-21 and FAST-41)
 - **Project Delivery** - Encourage measures that expedite use of new technologies and procurement methods
 - **State Performance Measures** - Support measurements that focus on achieving national transportation objectives
 - **Freight Network** - Prioritize national freight policies and goals
 - **Hours of Service** - Strengthen the distinction between long-haul truckers and short-haul truckers working in the construction industry
- **Aviation Infrastructure** - Support increased investment in aviation infrastructure, including an increase in the passenger facility charge and additional funding for the airport improvement program
- **Congestion Relief** - Reduce road congestion by eliminating critical bottlenecks, thereby enhancing mobility and improving air quality

- **Transit Infrastructure** - Support increased transit infrastructure to alleviate congestion and provide increased mobility through additional funding sources, maintain funding for the ‘New Starts’ Program, and expedite project delivery
- **Border Crossing Infrastructure** - Support investments in border crossing infrastructure to facilitate growth in international trade
- **Port and Harbor Infrastructure** - Increase investment in multi-modal connections at our nation’s ports and harbors to enhance economic growth and national security

Public Building Infrastructure - Rebuild our nation’s public building infrastructure

- **Federal Facility Infrastructure** - Invest in, maintain, and modernize federal facilities, such as military housing, military hospitals, federal prisons, federal courthouses, border stations, embassies, locks, dams, levees, and other federal facilities
- **Civilian BRAC** - The federal government must better utilize its real estate inventory. This should include a thorough evaluation of assets, a realigning of personnel and an evaluation of what assets need improvement and what assets need to be repurposed, traded, sold or otherwise discarded
- **Social Infrastructure** - Allow the use of private activity bonds for the construction and modernization of schools, hospitals, public buildings, and other public infrastructure

Water Infrastructure - Protect property, the environment, and our health through investment in our nation’s water, wastewater, and water resources infrastructure

- **Water Trust Fund** - Support creation of a water trust fund with dedicated revenue sources that support the ‘user pays’ concept for disbursement to the clean water and drinking water state revolving funds
- **Water & Wastewater Infrastructure Funding** - Support expansion of funding for federal drinking water and wastewater state revolving funds and provide funding for the “Securing Required Funding for Water Infrastructure Now (SRF WIN) Act” through the WIFIA Program
- **Private Investment in Water Infrastructure** - Remove water and sewer from the private activity bond volume cap
- **Water Resources Development Act Authorization** - Support long-term investment for water resources navigation, flood control, and environmental restoration
- **Water Resources Investment** - Increase funding for water resources programs of the U.S. Army Corps of Engineers and the Bureau of Reclamation, and improve the viability of the WIFIA Program
- **Water Resources Trust Funds** - Ensure that the funds in the Harbor Maintenance Trust Fund and the Inland Waterways Trust Fund become mandatory spending (rather than discretionary spending) and that those funds are fully utilized for water infrastructure and cannot be used for other purposes

Innovative Infrastructure Financing - Support innovative financing proposals that will help supplement traditional infrastructure funding and financing sources

- **Innovative Funding and Financing Sources**
 - Expand and make permanent the Build America Bonds Program
 - Exempt construction from private activity bond caps
 - Create a national infrastructure bank or fund capitalized with non-user-fee supplemental revenue to leverage additional private investment in infrastructure
- **Public Private Partnerships (P3s)**

- Ensure P3s apportion risk to the entity best able to manage the risk
- Ensure P3s preserve contracting opportunities for medium and small contractors

Energy and Environment - Ensure that federal environmental laws and regulations are modernized to improve the efficiency of project delivery, based in sound science, undergo thorough cost-benefit analysis, are transparent in methods and goals

- **Energy Infrastructure** - Support national energy initiatives and investment that increase domestic production, generation, refinery, and transmission capacity, as well as the efficient production, transmission, and use of fossil fuel energy sources (such as oil, coal, and natural gas) in addition to alternative energy sources (such as wind, solar, and nuclear)
- **Greenhouse Gases** - Ensure that efforts to reduce greenhouse gas emissions do not jeopardize U.S. economic competitiveness
- **Green Standards and Rating Systems** - ensure green construction programs and rating systems are voluntary and feasible. Oppose federal mandates or endorsements of a single green construction standard or rating system to the exclusion of other programs
- **Infrastructure Resilience** - Support a coordinated and practical national strategy to invest in infrastructure and build resilience to disasters
- **Lead Paint** - Oppose EPA efforts to expand lead-based paint regulation to areas beyond what is currently regulated
- **Wetlands and Other Clean Water Act Permits** – Support efforts to limit federal jurisdiction to the intent of the Clean Water Act and provide clear guidelines as to what types of waters require such permits
- **Numeric Limits** - Oppose effluent (discharge) standards that contains strict numeric limits on sediment runoff during construction and post-construction
- **Water Flow Regulation** - Oppose efforts to regulate (under the Clean Water Act NPDES Permitting Program) stormwater flow as a pollutant, impervious surfaces as point sources during construction and post-construction, or point source discharges to groundwater
- **Diesel Emissions Reductions** - Oppose diesel-powered construction equipment retrofit or replacement mandates that put unreasonable financial burdens on contractors; promote full funding of voluntary grant programs that provide support to interested firms
- **Air Quality Controls** - National ambient air quality standards should be scientifically based, attainable, and economically feasible
- **Endangered Species Protection** - Support common sense reforms to the Endangered Species Act to protect both species and private property rights
- **Hazardous Materials** - Ensure that rules for hazardous substances make sense for the construction industry
- **Migratory Bird Treaty Act** - Clarify that the MBTA does not prohibit incidental take of protected birds
- **Environmental Mitigation** - Ensure that as many mitigation options as possible are available to the contractor, and that mitigation is not a barrier to construction
- **Citizen Suits** - Federal rules and regulations are complex and cumbersome and should only be enforced by trained staff of government agencies

Federal Contracting - Support sensible reforms to improve procurement and delivery of federal construction projects

- **Federal Procurement Reform** - Support sensible federal procurement reform that encourages fair and open competition, more streamlined procurements and efficient project delivery as well as good faith and fair dealing in contract administration
 - **Pre-Contract Award**
 - **Bid-Listing** - Oppose efforts to require subcontractor bid-listing
 - **Design-Build** - Support efforts to limit one-step design-build procurement and encourage two-step design-build procurement
 - **Reverse Auctions** - Expand restrictions on the use of reverse auctions to procure construction services
 - **Politicization of Federal Procurement** - Oppose efforts to politicize the procurement process, including any analysis of contractor political contributions as a condition of submitting bids
 - **Post-Contract Award**
 - **Change Orders** - Support improved oversight and accountability for timely agency execution of and payment for change orders
 - **Past Performance Evaluations** - Ensure past performance evaluations are implemented, conducted fairly, consistently and filed in a timely manner
 - **Mitigating Against Legal Risks**
 - **False Claims Act** - Oppose expansion of the universe of claims that may be considered under the False Claims Act
 - **Statute of Repose** - Support a statute of repose for federal construction
 - **Miller Act** - Preserve the intent of the Miller Act
- **Small Business Contracting** - Ensure fair small business opportunities for participation in federal contracting, and advocate for sensible small business contracting reforms
 - **Contract Bundling** - Allow review of construction contracts to eliminate inappropriate and improper reliance on contract bundling
 - **Small Business Participation** - Allow prime contractors to count all small business subcontractors towards small business subcontractor goals

Labor & Employment - Strengthen our nation's workforce and the economy

- **Union Organizing and Collective Bargaining** - Support policies that preserve an employee's right to a free and informed decision in choosing union representation while maintaining an employer's ability to make an adequate case in communicating the implications of such a decision
 - **Joint Employer** - Restore definition of joint employer status to those that exercise direct control over employees' essential terms and conditions of employment
 - **Advice Exemption** - Maintain an employer's ability to seek legal advice during union elections
 - **Quickie Elections** - Support timeframes in union representation elections that grant employers due process and adequate time to prepare
- **Employment Discrimination Law Reform** - Ensure the construction industry's unique nature is recognized, remains a middle-class jobs creator and eliminate unnecessary impediments to hiring

- **Affirmative Action** - Support efforts to simplify affirmative action data collection and reporting requirements
- **Paid Leave** - Oppose paid leave mandates that fail to recognize the unique nature of the construction industry and its workforce design
- **Wage and Hour Laws** - Ensure the construction industry’s unique nature is recognized and restrict burdensome impediments to workforce management
 - **Employee Misclassification** - Oppose unnecessary administrative burdens and recordkeeping requirements for employers, and clarify the definition of independent contractor to preserve legitimate independent contractor relationships
 - **Overtime** - Ensure any recalibration of the overtime threshold aligns with market data
 - **Duties Test** - Replace the duties-based exemptions under the Fair Labor Standards Act with a simple salary-based exemption
 - **Work Hours** - Support flexibility to offer employment options that meet the needs of employees
 - **Davis-Bacon Reform** - Support revisions to the Davis-Bacon Act and implementing regulations that simplify compliance requirements and yield more appropriate wage determinations
- **Health Care** - Amend the Affordable Care Act to expand employer and employee choice, reduce health care costs, reduce employer reporting requirements, and promote employee responsibility and accountability
 - **“Cadillac Tax”** - Repeal the “Cadillac Tax” on health plans
 - **Employer Wellness Programs** - Promote employer-sponsored wellness programs
 - **“Full-Time” Definition** - Repeal the Affordable Care Act’s 30-hour definition of “full-time employment”
 - **Medical Liability Reform** - Support medical liability reform
 - **Reporting Requirements** - Support common sense affordable care act information reporting and verification
 - **Seasonal Employees** - Simplify rules for seasonal employees under the Affordable Care Act
 - **Alternative Purchase Options** - Expand the ability to use tax deferred accounts to purchase additional health care products and services
 - **Association Health Plans** - Support the formation of small business health plans by associations to expand coverage options and limit costs
 - **Substance Abuse** - Support policies that increase the mental health and substance abuse professional workforce and provide job training and treatment services for those with substance use disorders
- **Immigration** - Support immigration reform that strengthens national security, functions efficiently and fairly, and addresses future workforce needs
 - **Border Wall Contractor Blacklisting** - Oppose state and local government efforts to blacklist or discriminate against contractors lawfully performing work on the southern border for the federal government
 - **Employer Liability** - Support penalties that are commensurate with violations, retention of the “knowing standard” for employment of unauthorized workers, and federal preemption over state immigration laws, and oppose vicarious liability for subcontractors hiring practices
 - **Low-Skilled Worker Visas** - Create a new visa program to legally alleviate employer-identified worker shortages and secure the border
 - **Seasonal/Temporary Visas** - Exempt returning workers from the annual H-2B visa cap and provide regulatory relief from burdensome rules

- **Legal Immigration** - Oppose efforts to restrict current legal immigration that could worsen the existing construction worker shortage
- **Retirement Security** - Ensure stable retirement for all generations of workers
 - **Multiemployer Pension Plan Reform** – Provide multiemployer pension plans with the tools necessary to protect the benefits of their participants, which includes supporting the adoption of composite plans
 - **PBGC Premiums** - Oppose unreasonable Pension Benefit Guarantee Corporation (PBGC) premium increases
 - **Funding Rules** - Avoid misguided funding requirements which could destabilize plans
 - **Multiple Employer Retirement Plans** - Support the formation of small business retirement plans to expand coverage options and limit costs

Safety & Health - Support policies that promote a safe and healthy work environment for the construction industry

- **Cooperative Programs** - Ensure OSHA cooperative programs continue to promote worksite safety and health, and support collaborative relationships between contractors and regulators
 - **Employee Incentive and Involvement Programs** - Support improved safety and efficiency through the use of employee incentive and involvement programs
- **Crane Safety** - Ensure clear and effective OSHA crane operator certification and qualification requirements
- **Drug Testing** - Support efforts to protect employers’ right to maintain drug-free workplaces
- **Ergonomics** - Oppose attempts to impose ergonomics/musculoskeletal disorder regulations on the construction industry
- **Mineral Definition/Health Standards** - Ensure there is sound science, research, and examination of the impact on small businesses
- **Multi-Employer Policy** - Oppose OSHA’s efforts to increase multi-employer liability
- **Recordkeeping** - Oppose OSHA’s efforts to increase the complexity of federal recordkeeping requirements
- **Silica Standard** - Expand silica-generating tasks with specific engineering controls and respirator requirements identified in Table One to provide more clarity for contractor compliance
- **Susan Harwood Grants** - Support Susan Harwood Training Grant Program funding and appropriate congressional oversight of the program
- **Underground Infrastructure Safety** - Ensure that underground facility safety and damage prevention is a shared responsibility of utility owners, locators, and contractors
- **One-Call Membership** - Ensure that all underground facility owners/operators become members of one-call systems and mark their lines when requested

Tax - Ensure that tax and spending policies promote long-term economic growth; Promote investment in the nation’s infrastructure; Simplify and modernize the tax code for all businesses; and Extend the solvency of Medicare and Social Security for multiple generations.

- **Qualified Business Income Deduction** - Preserve the Section 199A Qualified Business Income deduction for pass-through businesses to ensure relative tax parity between business entities
- **Estate Tax** - Make permanent the increased \$11 million exemption, and ultimately repeal the Death Tax

- **Alternative Minimum Tax** - Repeal the Alternative Minimum Tax (ATM) to simplify tax preparation and planning and provide needed capital for businesses to grow and invest
- **IRS Regulations** - Ensure the construction industry benefits from provisions of the Tax Cuts and Jobs Act (TCJA) as Congress intended, including regulations implementing the Qualified Business Income deduction (Section 199A), Opportunity Zones Program, and limitation on net business interest expense deduction (Section 163(j))
- **Construction Tax Code Sections** - Support efforts to improve tax code for transportation and transit funding, energy efficiency and generation, pension plan reform, health care taxes and requirements for independent contractors and employer workforce incentives, and trade related tariffs and quotas
- **Percentage-of-Completion Accounting** - Exempt percentage-of-completion method of accounting from AMT Calculations
- **Lookback Accounting** - Eliminate the burdensome lookback accounting requirement for long-term contracts
- **Carried Interest** - Reject efforts to increase tax on carried interest that would undercut the economic incentive to build projects and drive away investments from the commercial real estate sector
- **Commercial Building Energy Efficiency Tax Deduction** - Extend and increase commercial building energy efficiency tax deduction, and convert it into a tax credit to provide a significant financial incentive for property owners to improve the energy efficiency of commercial buildings and ensure that 179D does not get charged to the contractor doing the work
- **Tax Exempt Public Works Financing** - Preserve the preferable tax treatment of debt used to finance public infrastructure
- **Net Operating Loss Carryback** - Reinstate net operating loss carrybacks that allow a three-year carryback to ensure cash-strapped businesses can convert future tax benefits into cash today
- **Retirement Security** - Reform the Social Security System and provide alternative savings vehicles to ensure stable retirement for all generations of workers
- **Private Sector Retirement Security** - Preserve the tax preferred retirement savings vehicles currently available to employers and employees
- **Per Diem Allowances** - Allow the full deductibility of per diem allowances in construction
- **Taxation of Income While in Dispute** - Stop taxation of income while in dispute
- **Extend and Make Permanent Certain Tax Credits Expiring in 2019:**
 - **Investing in Distressed Communities** - Extend and make permanent the New Markets Tax Credit that was designed to increase the flow of capital to businesses and low-income communities by providing a modest tax incentive to private investors
 - **Hiring Veterans and Disadvantaged Workers** - Extend the work Opportunity Tax Credit to promote the hiring of individuals who qualify as members of target groups, including veterans, by providing a federal tax credit incentive for employers who hire them
- **Extend and Make Permanent Temporary Provisions of the Tax Cuts and Jobs Act Expiring in 2025** - Prevent a tax increase on pass-through construction businesses by making the expiring provisions of the TCJA permanent, including: lower individual tax rates; increased AMT exemption; Qualified Business Income deduction (Section 199A); increased estate and gift tax exemption

Workforce - Support increased training opportunities and promotion of construction industry careers to meet the skilled worker shortage

- **Career and Technical Education** – Prepare the next generation of skilled construction workers by doubling federal CTE funding over five years and implementing the reauthorized Perkins Act
- **Higher Education** - Support students’ access to federal funds for non-traditional degrees
- **Workforce Innovation & Opportunity Act** - Ensure that the Workforce Innovation and Opportunity Act implementation and funding provides incentives for employers to partner with the workforce system to design and provide occupational training
- **Apprenticeships** - Support increased access and funding for apprenticeship programs without regard to union affiliation
- **Veterans** - Connect transitioning service members to construction industry jobs
- **Ex-Offenders** - Support policies that prepare and support transitioning ex-offenders into the workforce

Congressional Policy - Ensure that Congress executes its constitutional duties

- **Regular Order** - Support regular order in the federal budget and appropriations process
- **Reform Federal Budget Process** - Reform federal scoring rules to better accommodate the use of long-term leases and P3s for federal facilities; Establish a federal multiyear capital budget for public works infrastructure
- **Earmark Reform** - Support reform that encourages earmark transparency and quality, allowing for reasonable congressional project priority input in executive agency decision-making
- **Prior Approval for Political Action Committee (PAC) Solicitations** - Repeal the prior approval requirement for PAC solicitations
- **Congressional Oversight** - Actively engage and support Congress to ensure Executive Branch accountability to protect against unilateral policy and rulemaking that unnecessarily impedes business management or growth

Other Important Construction Issues

- **Materials Sourcing** - Oppose efforts to expand requirements for domestically produced construction materials and push for a single definition of compliance across agency frameworks
- **Trade Policy** - Support efforts to expand international trade and ensure such efforts do not unfairly impact U.S. construction companies
- **Good Samaritan Protection** - Support legislation to provide construction contractors with limited immunity from liability for negligence when responding to declared emergencies, terrorist attacks or other disasters