



## AGC of America Review of Debt Limit Bill’s Impacts on Construction

The AGC of America-backed debt limit law entitled *Fiscal Responsibility Act of 2023* (FRA) includes the most impactful federal environmental review and permitting reforms in the last 40 years, helps address the industry’s workforce shortages, and averts a catastrophic national credit default until at least 2025, among other things.

**The generational and transformative FRA reforms to the *National Environmental Policy Act* (NEPA) represent significant, long fought victories for AGC of America victories.** These are reforms that the association helped craft through its work with AGC members, legislators, and federal agency regulators over many years. The breadth of AGC of America’s multi-year advocacy and outreach campaign includes but is not limited to:

- The production of a [Construction Advocacy Fund](#)-financed [34-page white paper](#) detailing reforms to the environmental review and permitting process;
- Creating a thorough environmental permitting [flowchart](#) to showcase the need for these reforms; and
- Many years of AGC [members](#) and [staff](#) testifying before Congress and sending tens of thousands of communications to their members of Congress and the president in support of these reforms.

In this document, AGC of America lays out not only the environmental review and permitting reforms in the chart below, but also details the **impacts the FRA will, will not, or could have on the federal budget, federally assisted construction programs, and direct federal agency construction programs.** AGC will fight to ensure Congress fully funds promised construction project investments during the appropriations process. This document also explains possible impact on workforce participation.

NEPA Issue	AGC Recommendation	Included in Trump EO or Regulation (but repealed under Biden)	Included in Infrastructure Investment & Jobs Act	Included in Financial Responsibility Act
Too Many Frivolous, Project Delay-Oriented Lawsuits	NEPA reviews should only consider <b>technically and economically feasible</b> project alternatives and environmental impacts with <b>reasonably close or foreseeable</b> impacts to projects			
Agencies Take Years to Complete Reviews	Establish <b>hard deadlines</b> and <b>page limits</b> on reviews for all types of construction projects and include real penalties if missed; Establish <b>lead agencies</b> with concurrent review process on all types of construction projects		 Only road, bridge, and transit projects and no penalties for missed deadlines	
Minor projects or changes are major federal actions that trigger NEPA	NEPA should not apply when there is <b>no or minimal federal involvement or funding</b>			
Categorical exclusions are specific to agencies, instead of projects	Agencies must be allowed to <b>share categorical exclusions (CE)</b> (exemptions) from NEPA with other agencies. So, for example, a project at USDOT with a CE could also be granted a CE if undertaken by USDA, USACE, etc.			

## FRA Impact on Federal Environmental Review & Permitting

Historically, environmental review documents required under the *National Environmental Policy Act* (NEPA) can take agencies years and hundreds—if not thousands—of pages to complete. Even then, these documents often face judicial scrutiny as NEPA is, according to the U.S. Department of Justice, the most frequently litigated federal environmental statute. Lawsuits stemming from NEPA can delay projects for years, and in some cases, the environmental documentation expires before construction can begin.

The FRA includes a host of long-sought, AGC-backed reforms to the federal environmental review and permitting process, without jeopardizing environmental protections, by amending NEPA to, among other things:

- ***Claw Back the Overexpansive Reach of Federal Environmental Review to its Intended Purpose.*** NEPA is triggered when a project or activity involves a “major Federal action” that “significantly affect[s]” the quality of the human environment. Over time, this term has been expanded to include projects or actions that are neither major federal actions nor significant in effect, including: the inclusion of only one federal dollar for an otherwise wholly non-federally financed project; a minor or incidental incursion onto federal lands; or the mere need for only one federal permit or license required under one of the dozens of other federal environmental permitting statutes that demand their own environmental reviews. The FRA explicitly identifies and excludes what are not “major Federal actions” to address the over-triggering of NEPA that has unnecessarily delayed the benefits of construction projects to millions of Americans.
- ***Extend One Federal Decision Policies to All Construction Projects.*** The *Infrastructure Investment and Jobs Act* (IIJA) codified many policies (such as establishing a lead federal agency, limiting reviews to no more than two years, and setting page limits for reviews) of President Trump’s One Federal Decision Executive Order 13807. However, these IIJA reforms only apply to surface transportation projects. The FRA would not only extend these policies to all types of construction projects but would also allow project sponsors to hold agencies accountable, in court, for missing deadlines.
- ***Curtail Frivolous Lawsuits to Delay or Cancel Projects.*** NEPA requirements for environmental assessment and environmental impact statement analyses are ambiguous, uncertain, and have proven to be prone to endless litigation. The FRA narrows and clarifies these requirements by tying them—and, in turn, federal agency analyses—to documenting and defending in court only “reasonably foreseeable” environmental effects of a proposed project, thereby abandoning the agencies’ current practice of trying to document and consider any environmental effects no matter how speculative or remote. And the FRA makes further improvements by ensuring federal agencies need only consider and defend in court a “reasonable range of alternatives” to the proposed project that are “technically and economically feasible” instead of *any* possible alternatives to the proposed project or activities, no matter how implausible which has added time and cost to these reviews.
- ***Enable Agencies to Adopt Other Agencies’ Categorical Exclusions from NEPA.*** A categorical exclusion (CE) refers to a category of projects or activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required. If a determination has been made that a project or activity does not have a significant impact, then that determination should apply across government and not be specific to just one agency. Unfortunately, for too long some agencies that do not have CEs for these same or similar projects or activities have had to take on the NEPA process or a complex procedure to secure the CE from another agency. The FRA establishes a streamlined process to facilitate agencies’ adoption of other agencies’ CEs.

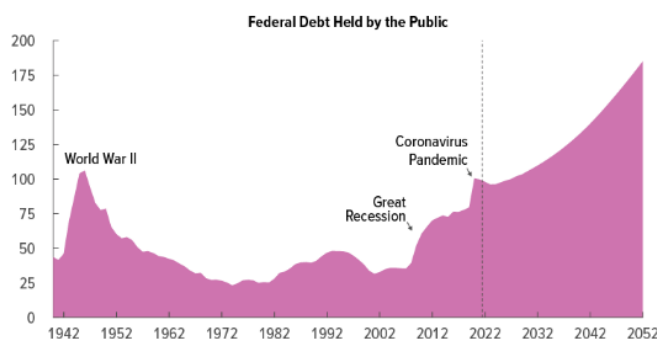
Congress last amended NEPA more than 40 years ago, in 1982. These are meaningful, generational reforms that will help reduce agency timelines for issuing environmental reviews, curtail frivolous lawsuits, and accelerate project delivery. AGC will work with all federal agencies to begin implementing these historical reforms immediately.

## FRA Overall Federal Budget Outlook & Impact

Every summer, the Congressional Budget Office (CBO) issues a report called the “Long-Term Budget Outlook.” It can make for depressing reading. The most recent report (published in July 2022) states:

Debt that is high and rising as a percentage of Gross Domestic Product (GDP) could slow economic growth, push up interest payments to foreign holders of U.S. debt, heighten the risk of a fiscal crisis, elevate the likelihood of less abrupt adverse effects, make the U.S. fiscal position more vulnerable to an increase in interest rates, and cause lawmakers to feel more constrained in their policy choices.

The report contains an illustrative chart, showing the projected rise in debt held by the public as a percentage of GDP that leaves little doubt about the size of the fiscal challenge Congress faces in the coming years absent any action to rein in deficits and debt.



The FRA takes some small but meaningful steps to reduce federal spending, and thus the deficit, over the next six years. It would do so by enforcing spending caps on “discretionary spending” for both defense and non-defense spending, and by rescinding \$27.1 billion in unspent COVID-relief and \$1.4 billion in funding for the Internal Revenue Service (IRS) that was included in the Inflation Reduction Act. The net effect of these rescissions and spending caps (if enforced), along with other reforms in the FRA, would be a reduction in the projected deficit by \$1.5

trillion over CBO’s “baseline projection,” and an additional savings of \$188 billion in reduced interest expense on the debt.

However, spending caps have a somewhat checkered history when it comes to actually reducing spending. Most recently, Congress, working with President Obama, enacted the Budget Control Act (BCA) in 2011, that set discretionary spending limits from 2011-2021. Congress and the president, nonetheless, enacted new legislation altering the spending caps for *every year from FY2013 – FY2021*, because one “Congress cannot tie the hands of future Congresses” by limiting their ability to make new laws. That said, there could be some downward pressure on infrastructure funding subject to the annual appropriations (funding) process, such as for military construction, water and wastewater projects, and affordable housing and so on. AGC will continue to advocate that robust infrastructure funding should be a priority in the budget and appropriations process.

Importantly, the FRA spending caps and/or rescissions have no impact on funding that has already been appropriated, or for programs that are funded through “mandatory spending,” such as Social Security, Medicare, and Medicaid. **This means that the FRA will not impact most projects or most funding included in the bipartisan *IIJA* (see below for which specific programs could see spending cuts) and *CHIPS and Science Act*,<sup>1</sup> or the *Inflation Reduction Act*,<sup>2</sup> the first two of which were strongly supported by AGC.** While a future Congress could hypothetically rescind this funding in future legislation, AGC will continue to defend this vital investment in our nation’s infrastructure.

<sup>1</sup> For example, the \$39 billion in funding for the construction of semiconductor chip manufacturing plants or related facilities faces no threat of cuts via the FRA or annual appropriations process, because Congress already appropriated these funds and the FRA protects such “advanced appropriations” from being cut. Additionally, the FRA makes no changes to the advanced manufacturing tax credit that also supports construction of such facilities.

<sup>2</sup> For example, the various new renewable energy tax credits remain untouched by the FRA.



## Impacts on Federal Investments in Federally Assisted Infrastructure

The FRA will rescind less than \$4 billion in funding for federally assisted infrastructure projects and other purposes that was provided through COVID relief in 2020. There was about \$10B provided for state DOTs and about \$10B for airport infrastructure in these COVID relief measures. The good news is most of the \$20B was spent over the last three years and the actual rescission should be less than \$4B.

The IIJA funds infrastructure programs through three main methods:

1. **The Highway Trust Fund** – Revenues from the gas and diesel tax and other sources are funneled into the Highway Trust Fund (HTF) and in addition, Congress made a transfer from the General Fund into this account. Programs funded by the Highway Trust Fund will not be impacted by the FRA.
2. **Advance Appropriations** – The IIJA provided additional funding for programs through what they call “advance appropriations,” where funding is immediately provided to those programs and does not have to be approved in the annual appropriations process. The agreement in the FRA treats these as emergency funds and they will not be subject to cuts.
3. **Subject to Appropriations** – There was additional funding that was authorized in the IIJA but actual funds were not provided at the time of passage. For these programs, they rely on annual funding from Congress through the appropriations process. For the construction industry the programs that are most noteworthy are for transit (Capital Investment Grants) and passenger rail funds. These programs could face cuts in the next few years due to spending limits put in place by the FRA. This is not unusual, programs that are subject to appropriations are always at risk of not getting fully funded.

	Funding for Infrastructure	Financial Responsibility Act
Covid Funds	\$10B for <b>Highway Infrastructure</b> Programs from Dec 2020	Rescinds <\$3B
	\$10B for <b>Airport Infrastructure</b> from March 2020	Rescinds <\$1b
IIJA	Over \$350 billion for <b>Roads and Bridges</b>	Fully Funds
	Nearly \$45 billion for <b>Broadband Deployment</b>	Fully Funds
	Over \$60 billion for <b>Water Infrastructure</b>	Fully Funds
	\$20 billion for <b>Airport Runways and Taxiways</b>	Fully Funds
	About \$36 billion for Passenger Rail*	TBD – Pending Cong. Action
	About \$9 billion for Transit Capital Investment Grants (CIG)**	TBD – Pending Cong. Action

\*In the IIJA there was \$36 billion for passenger rail that was subject to future appropriations. Due to the spending limits put into place by the Fiscal Responsibility Act, Congress could make cuts to this funding.

\*\*In the IIJA there was \$15 billion for CIG (\$6 billion has already been appropriated) that was subject to future appropriations. Due to the spending limits put into place by the Fiscal Responsibility Act, Congress could make cuts to this funding.

## **FRA Impact on Direct Federal Construction**

As noted above in the overall federal budget outlook and impact section, the FRA sets top-line spending limits to defense (for FY 2024, a 3.3 percent increase over FY 2023 levels) and non-defense discretionary spending (for FY 2024 it is considered to be essentially the same as FY 2023 levels). Because these topline numbers are capped and do not address inflation, AGC anticipates having to fight to increase federal agencies' construction funding, but also ensure there are not appropriations cuts in both FY 2024 and FY 2025.

With the current FY 2023 fiscal year ending on September 30, leaving only three months of legislative session to pass all 12 appropriations bills to fund federal agencies, federal construction agencies are likely to operate under a Continuing Resolution (CR) beginning October 1. When operating under a CR, federal agencies are typically prohibited from initiating new starts to projects—meaning projects slated to start in and use funding from FY 2024 will likely be delayed until appropriations bills are enacted. Projects that are ongoing can still use funding from previous fiscal years to move forward and are generally unaffected by CRs.

Under the FRA, if agencies are still operating under a CR on January 1, 2024, then an automatic one percent reduction will be implemented. Depending on the level of inflation, the true reduction is likely to be more than one percent. It is unknown how these federal agencies would distribute the reduced funding under such a scenario. AGC will seek additional information from federal owners at its [Federal Contractors Conference](#) on June 12-14.

## **FRA Impacts on Workforce Participation**

The FRA expands work requirements for some individuals receiving federal food aid assistance which should help bring more people back into the workforce. The change reverses pandemic-era policies that paid people not to work and contributed to workforce shortages.

Specifically, the FRA changes the Supplemental Nutrition Assistance Program, SNAP, requirements for food assistance from adults to 54 years old, up from 49 years old under existing law. To receive the food assistance aid, individuals must meet certain work requirements or be in training programs. Increasing the number of able-bodied adults into the workforce should help make labor shortages less severe while delivering people from dependency to the dignity of work.