

June 25, 2020

Summary and Analysis of House Democrats' Infrastructure Bill

On June 22, House Democrats released the text of H.R. 2, the *Moving Forward Act*, a \$1.5 trillion comprehensive infrastructure package. In addition to funding traditional infrastructure priorities—surface transportation, rail and transit systems and ports—it also includes proposals that invest in schools, affordable housing, broadband access, green energy and child care.

The proposal also includes a section that addresses infrastructure financing. Mechanisms include reinstating Build America Bonds and Advance Refunding Bonds, and expanding the issuance of Private Activity Bonds. The financing section does not contain revenue provisions—House Ways and Means Committee Chair Richard Neal (D-MA) has noted that Congress and the administration will need to work together on pay-for proposals.

In a statement accompanying the release of the bill, House Democrats noted that the proposal will create millions of jobs, take bold action on the climate crisis, and address disparities in urban, suburban and rural communities across the nation.

While the *Moving Forward Act* is the House Democrats' most expansive infrastructure proposal of the current Congress, the bill is unlikely to gain any traction in the Republican-controlled Senate. In fact, given that Congress is still negotiating another COVID-19 economic stimulus package, a comprehensive infrastructure bill will likely be tabled until next year. However, lawmakers will still need to reauthorize the *Fixing America's Surface Transportation (FAST) Act* (P.L.114-94) before it expires on Sept. 30, 2020.

Below is a summary of various tax and financial services provisions in the bill.

- **Division J**—Committee on Financial Services
- **Division M**—Revenue Provisions
 - **Title I**—Infrastructure Financing
 - **Subtitle A**—Bond Financing Enhancements
 - **Subtitle B**—School Infrastructure Bonds
 - **Subtitle C**—Other Provisions Related to Infrastructure Financing
 - **Title II**—New Markets Tax Credit
 - **Title III**—Rehabilitation Credit
 - **Title IV**—Green Energy
 - **Subtitle A**—Renewable Electricity and Reducing Carbon Emissions
 - **Subtitle B**—Renewable Fuels
 - **Subtitle C**—Green Energy and Efficiency Incentives for Individuals
 - **Subtitle D**—Greening the Fleet and Alternative Vehicles
 - **Subtitle E**—Investment in the Green Workforce
 - **Subtitle F**—Environmental Justice
 - **Subtitle G**—Treasury Report on Data From the Greenhouse Gas Reporting Program

- **Title VI**—Housing
 - **Subtitle A**—Low-income Housing Tax Credit Improvements
 - **Subtitle B**—Neighborhood Homes Credit
- **TITLE VII**—Highway Trust Fund and Related Taxes

Division J—Committee on Financial Services

Overview: Division J directs appropriations, ranging from \$1 billion to \$100 billion, to affordable housing programs administered by the Department of Housing and Urban Development and the Department of Agriculture. The programs would use the funds to provide loans, grants and other financial support to projects to create safe and accessible housing for individuals who are homeless, very low-income, low-income, elderly, disabled and Native Americans, among other groups. It also provides funding for the Federal Emergency Management Agency’s flood mitigation program, mandates that funding recipients include minority and women’s business enterprises and requires agencies to report to Congress on how funds appropriated under this section are used.

Sec. 60002: Findings

- Declares the importance and shortage of affordable housing, particularly for minority communities and individuals with disabilities. Emphasizes the need for federal investments in affordable housing and the positive externalities created by such investments.

Sec. 60003: Public Housing Capital Fund

- Authorizes \$70 billion for the Public Housing Capital Fund. Between 35% and 75% of the funds would be distributed to public housing agencies (PHAs), as determined by the formula used to allocate funding to the agencies in fiscal year 2020.
- PHAs in states or localities with plans to increase water or energy efficiency through the housing project would be given priority.
- Any remaining funds would be made available for priority investments, including ones that address health and safety concerns, through a competitive process.

Sec. 60004: Rural Multifamily Preservation and Revitalization Demonstration Program

- Provides \$1 billion for the Rural Housing Service’s Multifamily Preservation and Revitalization Demonstration Program.
- Requires at least 10% of the funds to be used for projects that would improve environmental sustainability.

Sec. 60005: Flood Mitigation Assistance Grant Program

- Provides \$1 billion for the Flood Mitigation Assistance Grant Program.
- Defines “multifamily residence.”

Sec. 60006: Housing Trust Fund

- Authorizes \$5 billion for the National Housing Trust Fund. Individuals who are homeless or are at risk of experiencing homelessness would be given priority in residences constructed with support from the fund.
- Requires at least 10% of the funds to be used for projects that would improve environmental sustainability.

Sec. 60007: Single-Family Housing Repair Loans and Grants

- Provides \$100 billion for single family housing repair loans and grants, also known as the §504 Home Repair program.
- Requires at least 10% of the funds to be used for projects that would improve environmental sustainability.

Sec. 60008: Native American Housing Block Grant Program

- Provides \$1 billion for the Native American Housing Block Grant Program (NAHBG).
- Requires at least 10% of the funds to be used for projects that would improve environmental sustainability.

Sec. 60009: HOME Investment Partnerships Program

- Authorizes \$5 billion for the HOME Investment Partnership Program.
- Requires at least 10% of the funds to be used for projects that would improve environmental sustainability.

Sec. 60010: Program for Supportive Housing for Persons with Disabilities

- Authorizes \$2.5 billion for the Supportive Housing for Persons with Disabilities Program.
- Requires at least 10% of the funds to be used for projects that would improve environmental sustainability.

Sec. 60011: Program for Supportive Housing for the Elderly

- Provides \$2.5 billion for the Supportive Housing for the Elderly program, including for capital advances, project rental assistance, senior preservation rental assistance and related supportive services.
- Requires at least 10% of the funds to be used for projects that would improve environmental sustainability.

Sec. 60012: Capital Magnet Fund

- Provides \$2.5 billion for the Department of Health and Urban Development’s Capital Magnet Fund.
- Requires at least 10% of the funds to be used for projects that would improve environmental sustainability.

Sec. 60013: Community Development Block Grant Funding for Affordable Housing and Infrastructure

- Authorizes \$10 billion for the Community Development Block Grant Program to support the development and preservation of affordable housing, the elimination of certain prohibitive zoning requirements or projects that are eligible for discretionary grants from the Department of Transportation. Funds appropriated under this section would be awarded through a competitive process.
- Defines “qualified affordable housing.”
- Requires at least 10% of the funds to be used for projects that would improve environmental sustainability.

Sec. 60014: Inclusion of Minority and Women’s Business Enterprises

- Requires agencies that receive funding under this Division to work with grantees and recipients to ensure minority and women owned businesses are included in the projects supported by the funds.
- Defines “minority” and “minority and women’s business enterprise.”

Sec. 60015: Reports on Outcomes

- Requires the Secretaries of Housing and Urban Development, Agriculture, and Treasury, and the Administrator of the Federal Emergency Management Agency to submit an annual report to Congress on the use of funds authorized under this section.

Division M—Revenue Provisions

Title I—Infrastructure Financing

Subtitle A—Bond Financing Enhancements

Overview: Subtitle A provides a variety of new incentives, enhancements and exemptions designed to encourage public and private infrastructure investments. A new credit is provided with respect to interest paid on certain state and local bonds used for infrastructure expenditures. The applicable dollar thresholds for the qualified small issuer exception (allowing issuers to deduct expenses associated with tax-exempt income), the exemption on uses of private activity bonds for farmers, the state cap on private activity bonds, and the limitation on use of qualified highway or surface weight transfer facilities, are increased to allow more taxpayers to qualify or to provide increased benefits. This Subtitle also provides that exempt facility bonds for sewage and water supply are not subject to the private activity bond volume cap and expands the definition of exempt facility bond to include zero-emission vehicle infrastructure facilities.

Sec. 90101: Credit to Issuer for Certain Infrastructure Bonds (§ 6431A)

- Applicable to bonds issued more than 30 days after the enactment date, this provision creates a credit for a percentage of the interest a state or local government issuer pays with respect to qualified infrastructure bonds.
- Generally, qualified infrastructure bonds are bonds (other than private activity bonds) issued by state and local governments where the bond proceeds are used for infrastructure expenditures.

Sec. 90102: Advance Refunding Bonds (§ 129)

- Applicable to bonds issued more than 30 days after the enactment date, this provision generally exempts interest on advance refunding bonds issued by state and local governments from income tax.

Sec. 90103: Permanent Modification of Small Issuer Exception to Tax-Exempt Interest Expense Allocation Rules for Financial Institutions (§ 265)

- Deductions are generally not permitted for expenses allocable to tax-exempt income. One exception is for the interest expense allocable to certain tax-exempt obligations issued by qualified small issuers (as defined in I.R.C. § 265(b)(3)(C)).
- Applicable to obligations issued after the enactment date, this provision increases the qualified small issuer limit from \$10 million to \$30 million (adjusted for inflation) and permits certain I.R.C. § 501(c)(3) bonds to be treated as tax-exempt obligations for purposes of the small issuer exception.

Sec. 90104: Volume Cap on Private Activity Bonds (§ 146)

- Commencing Jan. 1, 2021, this provision increases the annual state cap on private activity bonds from the greater of \$75 multiplied by the state population, or \$225,000,000 (in base year 2001), to the greater of \$135 multiplied by the state population, or \$402,220,000 (in base year 2019).

Sec. 90105: Modifications to Qualified Small Issue Bonds (§ 144)

- Applicable to obligations issued after the enactment date, with respect to eligibility for financing through qualified small issue bonds, this provision expands the definition of manufacturing facilities to include facilities used to create intangible property, as well as facilities directly related and ancillary to manufacturing facilities, which are located on the same site as the manufacturing facility, and not more than 25% of the net proceeds of the issue are used to fund such facilities.
- This provision also raises the \$10 million aggregate cap for prior issues to \$30 million, indexed for inflation.

Sec. 90106: Expansion of Certain Exceptions to the Private Activity Bond Rules for First-Time Farmers (§§ 147, 144)

- Applicable to obligations issued after the enactment date, this provision increases the exemption limitation on the use of private activity bond proceeds for first-time farmers from \$450,000 to \$552,500, indexed for inflation.
- With respect to qualified small issue bond limitations, this provision also increases the \$250,000 limitation on the acquisition of depreciable farm property to \$552,500, indexed for inflation.
- I.R.C. § 147(c)(2)(E) is amended to provide that the definition of substantial farmland is determined with reference to the average size (as opposed to the median) of a farm in the county in which the parcel is located.

Sec. 90107: Exempt Facility Bonds for Zero-Emission Vehicle Infrastructure (§ 142)

- Applicable to obligations issued after Dec. 31, 2020, this provision expands the definition of exempt facility bond (eligible for tax-exempt private activity bond financing) to include zero-emission vehicle infrastructure, so long as 95% or more of the net bond proceeds are used for such purpose.
- Qualifying infrastructure must be available for use by the general public, accept payment by credit card, and be capable of charging or refueling vehicles produced by more than one manufacturer.

Sec. 90108: Exempt Facility Bonds for Sewage and Water Supply Facilities (§ 146)

- Applicable to obligations issued after the enactment date, this provision provides that exempt facility bonds for facilities furnishing water or providing sewer facilities are not subject to the private activity bond volume cap.

Sec. 90109: Qualified Highway or Surface Freight Transfer Facility Bonds (§ 142)

- Applicable to qualified highway or surface freight transfer facility bonds issued after the enactment date, this provision requires application of the Davis-Bacon Act requirements to any laborer or mechanic or contractor using qualified highway or surface freight transfer facilities (i.e. each contract over \$2,000 to which the U.S. or District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract, at no less than the prevailing wage rates determined by the Secretary of Labor).
- This provision also increases the \$15 billion aggregate limitation on the use of qualified highway or surface freight transfer facilities to \$18.75 billion.

Subtitle B—School Infrastructure Bonds

Overview: Subtitle B provides a variety of incentives for school infrastructure. It generally restores pre-Tax Cuts and Jobs Act (TCJA, P.L.115-97) qualified zone academy bonds and related tax credits (while removing private business contribution requirements). It also designates \$30 billion for school infrastructure bonds (and a tax credit for related interest) to renovate school facilities, improve energy and water efficiency, and expand high-speed broadband access for digital learning, among other permitted uses. To ensure proper oversight, the Secretary of Education will submit annual reports that include demographic information as well as the local educational agencies that did/did not participate in the programs, and the reasons for such participation/lack thereof.

Sec. 90111: Restoration of Certain Qualified Tax Credit Bonds (§ 54A, § 6431, § 54E)

- Applicable to obligations issued after December 31, 2020, this provision generally restores pre-TCJA I.R.C. 54A for qualified zone academy bonds, and the 6431 credit for qualified bonds.
- The provision also removes the private business contribution requirement for qualified zone academy bonds.
- However, former 54A is not restored in full, as the 54A(d)(1) definition of qualified tax credit bond only applies to qualified school academy zone bonds and qualified school construction bonds – trimming qualified forestry conservation bonds, new clean renewable energy bonds, and qualified energy conservation bonds.

Sec. 90112: School Infrastructure Bonds (§ 54BB)

- This provision designates \$30 billion (\$10 billion per year) for qualified school infrastructure bonds, to be used in 2021, 2022, and 2023.
- Generally, to be a qualified school infrastructure bond, (i) such bond must be used 100% for the 20 purposes listed in section 70112 of the Act (i.e. major repairs of school facilities, improving air quality); (ii) interest would otherwise be excludable from income under §103; (iii) issuer must designate such bond as a qualified school infrastructure bond; and (iv) issuer reasonably expects to spend 100% of the proceeds within the 6-year period beginning on the date of issuance.
- States may distribute up to 10% of the total bond limitation to local educational agencies to expand access to high-speed broadband for digital learning.
- This provision also creates a tax credit for 100% of the interest on any qualified school infrastructure bond (subject to limitations).

Sec. 90113: Annual Report on Bond Program

- This provision requires the Secretary of Education to submit an annual report to Congress that includes the local educational agencies that did/did not participate in the program as well as certain demographic information.

Subtitle C—Other Provisions Related to Infrastructure Financing

Overview: Subtitle C is a miscellaneous compilation of various infrastructure incentives. A temporary tax credit is provided for states and localities to encourage the expansion of high-speed internet access through 2027. Financial guaranty insurance companies meeting certain conditions are permitted to include unearned premium reserves for purposes of determining whether such company is a qualifying insurance corporation for purposes of the passive foreign investment company rules, and \$10 billion is set aside through 2024 to incentivize states, tribes, territories and certain intermediary organizations to improve childcare access and safety.

Sec. 90121: Credit for Operations and Maintenance Costs of Government-Owned Broadband (§ 6431B)

- Applicable to years beginning after Dec. 31, 2019, this provision creates a 30% tax credit for state, local and tribal governments (or subdivisions thereof) for the operation and maintenance costs of government-owned broadband systems.
- To be eligible for the credit, the broadband service must provide a download speed of at least 25 Mbps and an upload speed of at least 3Mbps.
- Expenses taken into account for purposes of the credit are capped at \$400 per newly subscribed household living within a low-income community, and the 30% credit is reduced to 26% for 2026, 24% for 2027, and then expires for taxable years beginning after Dec. 31, 2027.

Sec. 90122: Treatment of Financial Guaranty Insurance Companies as Qualifying Insurance Corporations under Passive Foreign Investment Company Rules (§ 1297)

- Generally applicable to taxable years beginning in 2018, this provision provides that a financial guarantee insurance company that satisfies certain conditions may include unearned premium reserves in its applicable insurance liabilities for purposes of determining whether it is a passive foreign investment company.
- Generally, those conditions are: (i) the company is prohibited under GAAP from reporting on its applicable financial statements reserves for losses and loss adjustment expenses with respect to a financial guaranty or reinsurance contract; (ii) the applicable financial statement of such company reports financial guaranty exposure of at least 15:1; and (iii) the company includes in its insurance liabilities only its unearned premium reserves relating to insurance written or assumed that is within the single risk limits set forth in subsection (D) of section 4 of the Financial Guaranty Insurance Guidelines.

Sec. 90123: Infrastructure Grants to Improve Child Care Safety (§ 418A)

- This provision authorizes \$10 billion to be used from 2020-2024 to finance grants to improve child care infrastructure (state, tribal and territorial grants would be capped at \$35 million per year, and additional \$10 million grants would be available to intermediary organizations with demonstrated experience in child care facilities financing).
- Awards may not be awarded to a state unless such state agrees to prioritize child care facilities (i) serving low-income populations; (ii) primarily serving children under 5; (iii) closed due to COVID-19; and (iv) serving children of parents deemed essential during COVID-19.
- States and territories (but not tribes or tribal organizations) would be required to provide a cash or in-kind match for 10% of the grant funds.

Title II—New Markets Tax Credit

Overview: The New Markets Tax Credits (NMTC) provision makes significant enhancements to the credit and makes it permanent. The provision is currently set to expire Dec. 31, 2020.

Sec. 90703: New Markets Tax Credit (§ 45D)

- Under current law, the NMTC is designed to increase capital to businesses and low-income communities by providing tax incentives to private investors. Investors receive the tax credits, amounting to 5% of their initial investment for three years, then 6% for the next four years, for a total of 39%.
- The term low-income community is currently defined as communities with a poverty rate of at least 20% and non-metropolitan communities with a median family income below 80% of the statewide median family income. This provision amends I.R.C. §45D(e)(A) by adding to the definition of low-income community, a new provision in relation to metropolitan areas. Specifically, the provision states that in the case of tracts located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income.
- This provision also amends the NMTC program to ensure that tribal areas that otherwise meet NMTC eligibility requirements, but may be in census tracts that do not meet those requirements, are still eligible for the program. It also instructs Treasury to provide a proportional allocation to tribal areas, similar to the proportional allocation provided under current law for non-metropolitan areas.

Title III—Rehabilitation Credit

Overview: The federal historic rehabilitation tax credit (HTC) program is an indirect federal subsidy to finance the rehabilitation of historic buildings. The credit offers an incentive for owners to renovate and restore old or historic buildings. The bill expands the credit by increasing the percentage of expenses that qualify and by making it easier for tax-exempt entities to access the credit.

Sec. 90301: Increase in Rehabilitation Credit (§ 47)

- Amends I.R.C. § 47(a)(2) by increasing the HTC from 20% to 30% for taxable years 2020 through 2024.
- The credit will phase down to 26% in 2025 and 23% in 2026. It would return to 20% for 2027 and beyond.

Sec. 90302: Increase in the Rehabilitation Credit for Certain Small Projects (§ 47)

- This provision amends I.R.C. § 47 by adding new subsection (e)—a special rule that increases the HTC from 20% to 30% through 2024 for small projects to ensure rural and non-urban areas have a better ability to take advantage of the credit.
- A small project is defined as those for which (i) rehabilitation expenditures do not exceed \$3.75 million; (ii) no credit was allowed under this section during the prior two taxable years; and (iii) the makes an election for this provision to apply by choosing between the HTC and the small project credit.
- The increased small project credit would cap Qualified Rehabilitation Expenses (QREs) at \$2.5 million.

Sec. 90303: Modification of Definition of Substantially Rehabilitated (§ 47)

- Current law defines a substantial rehabilitation as expenditures exceeding the greater of the adjusted basis of the building or \$5,000.
- The provision modifies the definition by reducing the rehabilitation investment from 100% to 50% of the adjusted basis.

Sec. 90304: Temporary Extension of Period for Completing Rehabilitation (§ 47)

- Projects eligible for the credit under current law have either 24 months or 60 months to complete substantial rehabilitation.
- The provision extends both periods by 12 months.

Sec. 90305: Elimination of Rehabilitation Credit Basis Adjustment (§ 50)

- Current law requires that the basis of the property be reduced by the amount of credit so determined.
- The provision eliminates the basis adjustment, reducing the adjustment from 100% to zero.

Sec. 90306: Modifications Regarding Certain Tax-Exempt Use Property (§ 47)

- Current law disqualifies certain leases from qualification of the rehabilitation credit (i.e. purchase options, leases in excess of 20 years, or those using tax-exempt financing).
- The provision would allow these leases to qualify.

Sec. 90307: Qualification of Rehabilitation Expenditures for Public School Buildings for Rehabilitation Credit (§ 47)

- Current law applies “prior use” limitations related to leases by tax-exempt entities which prevents public school buildings from being rehabilitated using the credit.
- The provision provides an exception for public school buildings that have been used as public schools within the past five years from certain tax-exempt use rules.

Title IV—Green Energy

Subtitle A—Renewable Electricity and Reducing Carbon Emissions

Overview: This subtitle provides an extension of several current credits that support the renewable energy sector. These energies include geothermal, wind, solar, and carbon dioxide sequestration, among others. The investment tax credit has been expanded to include newly eligible property including energy storage technology, water energy recovery property, biogas property, and linear generators. Most credits in Subtitle A are extended to 2025 and then have a phase-down component. Subtitle A also includes a provision allowing taxpayers to utilize payment of tax credits as opposed to carrying the investment tax credit or production tax credit forward. The language also includes a credit specifically for offshore wind facilities that prevents phase-out unlike onshore wind. Finally, the subtitle includes a modified definition for qualified income for publicly traded partnerships.

Sec. 90401: Extension of Credit for Electricity Produced from Certain Renewable Resources (§§ 45 and 48(a)(5))

- This provision extends the production tax credit (PTC) for producers of electricity generated from renewable resources including closed loop biomass, open loop biomass, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy facilities. For these energies, the credit is extended to facilities for construction that begins in 2025.
- For geothermal energy, the PTC is extended to the end of 2020; and for the wind PTC, the credit is preserved at the current phase-outs for 2019 and 2020 but is extended at 60% through the end of 2025.

Sec. 90402: Extension and Modification of Energy Credit (§ 48)

- This provision extends the investment tax credit, allowing taxpayers to receive a credit of up to 30% of the cost of the energy property. For solar, geothermal and other qualified energies, the credit is extended through 2025 at 30% and then phases down.
- The credit also covers newly eligible property including energy storage technology, water energy recovery property, qualified biogas property, and linear generators. The new property is eligible for the 30% credit through the end of 2025 and then phases down.

Sec. 90403: Extension of Credit for Carbon Oxide Sequestration (§ 45Q)

- This provision extends the credit of carbon dioxide sequestration for facilities that start construction before the end of 2025.

Sec. 90404: Elective Payment for Energy Property and Electricity Produced from Certain Renewable Resources, etc. (§ 6431)

- This provision allows taxpayers to take a reduced credit and request a refund of tax immediately as opposed to carrying forward either investment tax credits or production tax credits. This benefits taxpayers with little or no tax liability to receive liquidity.
- The provision requires that taxpayers elect to be treated as having made a payment of tax equal to 85% of the credit.

Sec. 90405: Extension of Energy Credit for Offshore Wind Facilities (§ 48(a)(5))

- This provision exempts offshore wind facilities that utilize the investment tax credit, and not the production tax credit, from the phase-out of the onshore wind facilities.
- It requires that facilities begin construction by the end of 2025 or at the end of the year the national offshore wind capacity is at 3000 MW above the capacity at the beginning of 2021.

Sec. 90406: Green Energy Publicly Traded Partnerships (§ 7704)

- The provision expands the definition of qualified income for publically traded partnerships to include income from green and renewable energy.
- The definition would now include income from energy eligible for the production tax credit, the investment tax credit, and fuel from certain carbon sequestration or gasification projects.

Subtitle B—Renewable Fuels

Overview: This subtitle extends the biodiesel tax credit, the alternative fuel credits and second generation biofuel incentives. The biodiesel tax credit and alternative fuel credits expire in 2025. The second generation biofuel incentive is extended through 2025 and includes the special allowance for deprivation through 2025.

Sec. 90401: Biodiesel and Renewable Diesel

- This provision allows for biodiesel and biodiesel mixtures to extend their income and excise tax credits at \$1.00 per gallon through 2022 and then phase down. The credit expires at the end of 2025.

Sec. 90412: Extension of Excise Tax Credits Relating to Alternative Fuels

- This provision allows for alternative fuels and alternative fuel mixtures to extend their tax credits at \$0.50 per gallon through 2022 and then phase down. The credit expires at the end of 2025.

Sec. 90413: Extension of Second Generation Biofuel Incentives

- This provision extends the second generation biofuel income tax credit through 2025. It also extends the 50% allowance for depreciation of property placed in service by the end of 2025.

Subtitle C—Green Energy and Efficiency Incentives for Individuals

Overview: This subtitle revamps I.R.C. § 25C to include advances in energy efficiency, increases the percentage of credits for energy efficiency improvements, and extends the credit to the end of 2025. The credits under I.R.C. § 25D are also expanded through 2025,

include a phase-down, and expand the definition to include battery storage technology and energy efficient biomass fuel property. The I.R.C. § 179D deduction for energy efficient commercial buildings deduction is updated to increase the deduction and modify the provision to meet ASHRAE standards. The subtitle updates the qualifications and extends the I.R.C. § 45L new energy efficient home credit. Finally, the income exclusion for conservation subsidies is updated under section I.R.C. § 136.

Sec. 90421: Extension, Increase, and Modifications of Nonbusiness Energy Property Credit

- This provision extends the I.R.C. § 25C nonbusiness energy property credit for properties put in service through 2025.
- For property placed in service by 2021 the credit for installing qualified energy efficiency improvements is increased to 15%, the lifetime cap on credits allowed is increased from \$500 to \$1,200, the standards to reflect advance in energy efficiency are updated, and the credit covering the cost of home energy audits is increased to a maximum of \$150.

Sec. 90422: Residential Energy Efficient Property

- This provision extends the credit for the cost of qualified residential energy efficient property expenditures under I.R.C. § 25D through the end of 2025 and then phases down.
- It also expands the definition of eligible property to include energy efficient biomass fuel property and battery storage technology. Biomass stoves are removed from I.R.C. § 25C to prevent double dipping.

Sec. 90423: Energy Efficient Commercial Buildings Deduction

- This provision extends the I.R.C. § 179D energy efficient commercial buildings deduction through 2025. The deduction is also increased from \$1.80 to \$3.00 per square foot in 2021, changes the maximum from a lifetime cap to a three year cap, and updates eligibility requirements to ensure the property reduces associated energy costs to meet the ASHRAE standards.

Sec. 90424: Extension, Increase, and Modifications of New Energy Efficient Home Credit

- This provision extends the I.R.C. § 45L new energy efficient home credit through 2025, expands the maximum of the credit to \$2,500, and updates the credit to reflect the 2018 International Energy Conservation Code standards.
- It also replaces eligibility requirements with Energy Star Labeled Homes program.

Sec. 90425: Modifications to Income Exclusion for Conservation Subsidies

- This provision modifies the income exclusion for conservation subsidies to disallow from gross income water conservation, storm water and waste water management subsidies provided by public utilities, state or local governments or storm water management providers.

Subtitle D—Greening the Fleet and Alternative Vehicles

Overview: This subtitle expands the qualified plug-in vehicle credit to vehicle sales of 600,000 electric vehicles with a phasedown following. The subtitle also extends the two-wheeled and three-wheeled plug-in electric vehicle credit through 2025. The subtitle introduces a new credit for buyers of used electric vehicles with gross income restrictions. It also introduces a new credit for zero-emission heavy vehicles with a cap of \$100,000 per credit and certain vehicle restrictions. This subtitle extends the credit for purchase of a qualified fuel cell motor vehicle through 2025. The credit for alternative refueling property is extended and expanded to include infrastructure expenses. Finally, the subtitle modifies the employer-provided fringe for bicycle commuting.

Sec. 90431: Modification of Limitations on New Qualified Plug-In Electric Drive Motor Vehicle Credit

- This provision is modified to include a new transition for vehicle sales between 200,000 and 600,000 electric vehicles, but the credit is reduced by \$500.
- The new phase-out period begins at 600,000 vehicles, when the credit is reduced by 50%. The provision also extends the two-wheeled and three-wheeled plug-in electric vehicle credit through 2025.

Sec. 90432: Credit for Previously-Owned Qualified Plug-In Electric Drive Motor Vehicles

- This provision introduces a new credit under I.R.C. § 25E for buyers of used plug-in electric cars from enactment through 2025.
- The base credit is \$1,250, with additional incentives for battery capacity, and is capped at the lesser of a \$2,500 credit or 30% of the sale price. The credit requires certain eligibility requirements, gross income limitations and a gross income phase-out.

Sec. 90433: Credit for Zero-Emission Heavy Vehicles and Zero-Emission Buses

- This provision creates a credit for manufacturers of zero-emission heavy vehicles on the date of enactment through 2025. It allows manufacturers to claim a 10% credit of the sales price, capped at \$100,000.
- The vehicles must be produced in the US, weigh more than 14,000 pounds, not include an internal combustion engine, and use an electric motor.

Sec. 90434: Qualified Fuel Cell Motor Vehicles

- This provision extends the credit for the purchase of a qualified fuel cell motor vehicle through 2025.

Sec. 90435: Alternative Fuel Refueling Property Credit

- This provision extends the alternative refueling property credit under I.R.C. § 30C through 2025. In 2021, the provision expands to allow a 20% credit for expenses over \$100,000.
- Qualifications for the credit include that the property must be intended for the general public and accept credit cards as a form of payment or be intended for the exclusive use by the government or commercial fleets.

Sec. 90436: Modification of Employer-Provided Fringe Benefits for Bicycle Commuting

- This provision modifies the employer-provided fringe benefit for bicycle commuting under I.R.C. § 132.
- Updates include: (i) a repeal of the suspension of the exclusion between 2020 and 2025; (ii) the addition of bike sharing to the definition of bicycle for the purposes of the exclusion; and (iii) a modification of the limitation on the exclusion to provide for a monthly limitation (e.g., 20% of the parking fringe benefit amount).

Subtitle E—Investment in the Green Workforce

Overview: The provisions extend the I.R.C. § 48C advanced energy project credit and allocate an additional \$2.5 billion per calendar year for years 2021 through and including 2025. In addition to retaining original selection criteria, the provisions direct the Secretary of Energy to prioritize certain facilities that manufacture products related to green energy production, storage or transmission. Moreover, the provisions provide up to a 10% credit for labor costs incurred related to installing certain mechanical insulation property.

Sec. 90441: Extension of the Advanced Energy Project Credit

- The provision allocates an additional \$2.5 billion per year to the I.R.C. § 48C qualified advanced energy property credit for calendar years 2021 through 2025.
- In addition to the original selection criteria, including that the project be placed in service within four years, the provision directs the Secretary of Energy to prioritize projects that provide laborers and mechanics with prevailing wages and have the greatest potential for commercial deployment. The section also directs the Secretary to prioritize projects that establish manufacturing facilities for:
 - solar, wind and geothermal or other renewable sources;
 - fuel cells, microturbines or energy storage systems for electric motor vehicles;
 - electric grids for the transmission and storage of renewable energy;
 - carbon capture and sequester technology;
 - refined or blended renewable fuels;
 - qualified plug-in electric motor vehicles or components of such vehicles; and
 - the reduction of greenhouse gas emissions.

Sec. 90442: Labor Costs of Installing Mechanical Insulation Property

- The provision provides up to a 10% credit for the labor costs of installing mechanical insulation property into a mechanical insulation system that was placed into service within one year of the installation.
- “Mechanical insulation property” consists of insulation materials, facings and accessories.
- Taxpayers cannot take a deduction for the portion of the labor costs that are allowable as deductions under I.R.C. § 45U(a). If the I.R.C. § 45U(a) credit exceeds the amount of allowable deductions for such labor costs, the excess amount should be reduced from the capital account.
- The provision becomes effective Dec. 31, 2020 and does not apply to mechanical insulation labor costs paid or incurred after Dec. 31, 2025.

Subtitle F—Environmental Justice

Overview: The provisions establish a refundable tax credit for institutions of higher education that have “environmental justice programs.” To be eligible for the credit, the programs should improve the health and economic condition of individuals in areas comprised of low-income or disproportionately ethnic or racial minorities. The programs would aim to reduce the impact of “environmental stressors,” which refer to areas with air, water, soil or food contamination or changes in weather conditions relative to the area’s historical norm.

Sec. 90451: Qualified Environmental Justice Program Credit

- The provision establishes a refundable tax credit for “qualified environmental justice programs” at higher educational institutions designed to improve the health and economic outcomes in areas of low-income or with a disproportionate population of racial minorities by addressing “environmental stressors.”
- Programs would be evaluated on the extent of participation from Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs), the expected health or economic effects, and the “creation or significant expansion” of environmental justice programs.
- The base credit is 20%, but HBCUs and MSIs could be eligible for 30%.
- The provision allocates \$1 billion for each year from 2021 through 2025.

Subtitle G—Treasury Report on Data From the Greenhouse Gas Reporting Program

Overview: The provisions direct the Treasury Secretary to issue a report to Congress on the usefulness of data from the Greenhouse Gas Reporting program. The report, which must be provided within 180 days of enactment of the legislation, shall address the challenges associated with using data to determine the amount of greenhouse gas emitted by taxpayers.

Sec. 90461: Report on Greenhouse Gas Reporting Program

- Within 180 days after enactment, the Treasury Secretary shall issue a report on the utility of the data from the Greenhouse Gas Reporting Program.
- This report will outline administrative and other difficulties associated with determining the amount of greenhouse gas emissions from each taxpayer to facilitate the development of a tax for such emissions.

Title VI—Housing

Subtitle A—Low-Income Housing Tax Credit Improvements

Overview: This subtitle increases federal investments in low-income housing through a major expansion of the Low-Income Housing Tax Credit (LIHTC) by creating targeted housing incentives to build homes in rural and tribal communities and for very low-income households at risk of homelessness. The bill also makes several changes the LIHTC program to make it easier for projects to claim the credit and provides relief to taxpayers that have low-income projects that have been impacted by COVID-19. It also creates a new tax credit to incentivize connecting residents of a low-income housing building with supportive services. This includes health services, coordination of tenant benefits, job training, financial counseling, resident engagement services, or services the principal purpose of which is to help tenants retain permanent housing.

Sec. 90601: Extension of Period for Rehabilitation Expenditures

- Under current law, minimum rehabilitation expenditures must be made within a 24-month period.
- This provision amends I.R.C. § 42(e)(3)(A) by extending the window to make expenditures to 36 months for rehabilitation projects receiving a LIHTC allocation after Dec. 31, 2016 and before Jan. 1, 2022.

Sec. 90602: Extension of Basis Expenditure Deadline

- This provision amends I.R.C. § 42(h)(1)(E) by extending the deadline to expend 10% of basis for low-income housing projects undergoing development from one year to two years after the date of the LIHTC allocation.

- This provision applies to projects receiving their allocation after Dec. 31, 2016 and before Jan. 1, 2022.

Sec. 90603: Tax-Exempt Bond Financing Requirement

- Under current law, to qualify for an allocation of the 4% LIHTC, at least 50% of the project's development costs must be funded by tax-exempt bonds during construction.
- This provision amends I.R.C. § 42(h)(4)(B) by reducing the threshold from 50% to 25%, for buildings placed in service in taxable years beginning after Dec. 31, 2019 and ending before Jan. 1, 2022.

Sec. 90604: Minimum Credit Rate

- Establishes new I.R.C. § 42(b)(3) that would require a permanent minimum 4% credit rate for low-income housing projects using tax-exempt bonds to finance project development.
- Currently there is only a minimum credit rate of 9% for non-federally subsidized new buildings.
- This provision applies to buildings receiving allocations or determinations and placed in service after Dec. 31, 2019.

Sec. 90605: Increase in State Allocations.

- Under current law, the state housing credit ceiling is equal to the sum of: (i) the unused state housing credit ceiling of the state for the preceding calendar year; and (ii) the greater of \$1.75 multiplied by the state population or \$2 million.
- This provision amends I.R.C. § 42(h)(3)(C) to increase the population multiplier from \$1.75 per capita to \$4.56 per capita. The state credit ceiling minimum is also increased from \$2 million to \$5.2 million.
- This provision is effective Jan. 1, 2021.

Sec. 90606: Increase in Credit for Certain Projects Designated to Serve Extremely Low-Income Households

- This provision amends I.R.C. § 42(d)(5) by increasing the credit amount for projects designated to serve extremely low-income households. Any building in which at least 20% of residential units are rent-restricted and designated for occupancy by tenants with household income which does not exceed the greater of:
 - 30% of area median gross income; or
 - 100% of an amount equal to the federal poverty line (FPL).
- Adds I.R.C. § 42(h)(3)(C)(v) that will provide an allocation in addition to the existing state annual LIHTC allocation. This provision provides a separate 10% allocation in addition to the state's annual LIHTC allocation, reserved for projects intended to serve extremely low-income households, as defined by the changes made to I.R.C. § 42(d)(5).

Sec. 90607: Inclusion of Indian Areas as Difficult Development Areas for Purposes of Certain Buildings

- This provision amends I.R.C. § 42(d)(5)(B)(iii)(I) to include Indian areas as difficult development areas.
- By including Indian areas, qualified projects in this category will be eligible for a 130% basis addition—a 30% basis boost.
- The term Indian area is defined by § 4(11) of the *Native American Housing Assistance and Self Determination Act of 1996*.
- The provision is effective for buildings placed in service after Dec. 31, 2019.

Sec. 90608: Inclusion of Rural Areas as Difficult Development Areas

- This provision amends I.R.C. § 42(d)(5)(B)(iii)(I) to include rural areas as difficult development areas.
- By including rural areas, qualified projects in this category will be eligible for a 130% basis addition—a 30% basis boost.
- A rural area is defined as a non-metropolitan areas or areas defined in § 520 of the *Housing Act of 1949*.
- The provision is effective for buildings placed in service after Dec. 31, 2019.

Sec. 90609: Increase in Credit for Bond Financed Projects Designated by Housing Credit Agency

- Under current law, I.R.C. § 42(d)(5)(B)(v) allows a state housing credit agency to designate a building as located in a difficult development area if the building requires an increased credit to be financially feasible as part of a qualified low-income housing project.
- This provision amends I.R.C. § 42(d)(5)(B)(v) by striking language that prohibits projects financed with tax-exempt bonds to be treated as located in difficult development areas by the state housing agency and therefore receive an increase in credit.
- Under this provision, such projects are now eligible for the 30% basis boost pursuant to I.R.C. § 42(d)(5)(B).

Sec. 90610: Repeal of Qualified Contract Option

- Under current law, LIHTC property owners who want to exit the LIHTC program may do so at any time after the 14th year of the 15-year compliance period using the Qualified Contract process. The State Housing Finance Agency must find a Qualified Buyer to operate the property as a LIHTC property. If the housing agency cannot find a Qualified Buyer, the property is no longer required to comply with affordability requirements.
- This provision amends I.R.C. § 42(h)(6)(E)(i)(II) by terminating the Qualified Contract option for buildings that receive their credit allocation or determination on or after Jan. 1, 2020.
- This provision also amends I.R.C. § 42(h)(6)(F) and makes changes to the formula for the Qualified Contracts option related to existing buildings to use the fair market price, taking into account rent restrictions on low-income units. Under current law, the provision used a three-part formula, in addition to fair-market value for low-income units.

Sec. 90611: Prohibition of Local Approval and Contribution Requirements

- This provision amends I.R.C. § 42(m)(1) to prohibit housing credit agencies from considering local contributions as part of the selection criteria under a qualified allocation plan.
- Specifically, it prohibits consideration of: (i) any support or opposition with respect to the project from local or elected officials; or (ii) any local government contribution to the project, except to the extent such contribution is taken into account as part of a broader consideration of the project's ability to leverage outside funding sources, and is not prioritized over any other source of outside funding.

Sec. 90612: Adjustment of Credit to Provide Relief during COVID-19 Outbreak

- This provision allows a taxpayer who is the owner of an eligible low-income building to elect to receive 150% of the credit which would otherwise be allocated to the building for the taxable year.
- The term eligible low-income building means a qualified low-income building with respect to which (i) the first year in the credit period ends on or after July 1, 2020 and before July 1, 2022; and (ii) construction or leasing delays have occurred after Jan. 31, 2020. In the event the building owner elects this provision, the aggregate credit of the subsequent taxable years are reduced on a pro rata basis.

Sec. 90613: Credit for Low-Income Housing Supportive Services

- This provision creates new I.R.C. § 42A—a 25% credit for contributions to a qualified supportive housing reserve fund exclusively for providing supportive services to building tenants.
- Total eligible contributions to a building's fund are limited to the product of \$120,000 and the number of low-income units which are occupied at the end of the first year of the credit period.
- The term "qualified supportive housing reserve fund" means, with respect to any qualified low-income building, a separate fund reserved exclusively for payment for qualified supportive services provided to tenants of the building pursuant to an extended supportive services commitment.
- Supportive services are defined as services provided by the owner of the building to tenants including health services, coordination of tenant benefits, job training, financial counseling, resident engagement services, or services the principal purpose of which is to help tenants retain permanent housing, or such other services as defined by the Treasury Secretary.
- Participation or usage of the services cannot be required for tenants and must be provided at no cost.
- There must be an extended low-income supportive services commitment between the building and the housing credit agency, which requires the funds only be used for appropriate uses within the extended use period of the building, appropriate documentation, a designated service coordinator, and maintenance of appropriate certification for the services provided.
- This credit applies to buildings placed in service beginning on or after Jan. 1, 2020.

Subtitle B—Neighborhood Homes Credit

Overview: The provision would establish a tax credit designed to encourage taxpayers to rehabilitate homes in distressed communities. The credit would cover the gap between the improvement costs and the sales price. Allowable development costs include demolition, construction, environmental remediation and substantial rehabilitation. Eligible areas would be determined by the median gross income, poverty rate and median value of homes.

Sec. 90621: Neighborhood Homes Credit

- The credit amount is up to 35% of the lesser of the development cost or 80% of the national median sale price for new homes.
- “Substantial rehabilitation” means projects that involve development costs that are at least \$20,000 or 20% of the cost to acquire buildings and land.
- In the case of an “affordable sale,” the credit shall be equal to the excess of the qualified development cost incurred by the seller over the sales price. A sale between related persons would not be considered an affordable sale.
- For cases concerning taxpayers other than the owner, the credit shall be equal to the excess of the development cost over the payment received for the rehabilitation.
- Homeowners that sell within five years must repay some of the gains.

[Title VII—Highway Trust Fund and Related Taxes](#)

Overview: The provisions would extend expenditure authority for the Highway Trust Fund (HTF) in addition to other funds, extend certain highway-related taxes, and transfer funds to the Highway Trust Fund.

Sec. 90801: Extension of Highway Trust Fund Expenditure Authority

- The provision would extend the following through Oct. 1, 2025:
 - the expenditure authority for the Highway Trust Fund;
 - the Sports Fish Restoration and Boating Trust Fund; and
 - the Leaking Underground Storage Tank Trust Fund.

Sec. 90802: Extension of Highway-Related Taxes

- The following would be extended:
 - Taxes on diesel fuel and special motor fuels and certain alcohol fuels would be extended from Sept. 30, 2022 to Sept. 30, 2027.
 - Retail sales taxes on certain truck and semitrailer chassis and bodies would be extended from Oct. 1, 2022 to Oct. 1, 2027.
 - Taxes on the use of certain heavy vehicles would be extended from Oct. 1, 2023 to Oct. 1, 2028.
 - Taxes on tires and taxable fuel would be extended from Oct. 1, 2022 to Oct. 1, 2027.

Sec. 90803: Additional Transfers to Highway Trust Fund

- The provision allocates an additional \$106.7 billion to the Highway Account and \$38.6 billion to the Mass Transit Account in the Highway Trust Fund

Authors:

Russell W. Sullivan
Shareholder
rsullivan@bhfs.com
202.383.4423

Harold Hancock
Shareholder
hhancock@bhfs.com
202.383.4422

Gregory M. Janssen
Associate
gjanssen@bhfs.com
303.223.1288

Michael P. Marn
Policy Assistant
mmarn@bhfs.com
202.652.2355

Rosemary Becchi
Strategic Advisor and Counsel
rbecchi@bhfs.com
202.383.4421

Lori Harju
Policy Director
lharju@bhfs.com
202.747.0519

Anne C. Starke
Policy Advisor and Associate
astarke@bhfs.com
202.872.5297

Annmarie Conboy-DePasquale
Policy Assistant
aconboy-depasquale@bhfs.com
202.216.4865

Charlie A. Iovino
Senior Policy Advisor and Counsel
ciovino@bhfs.com
202.383.4424

Radha Mohan
Policy Advisor and Associate
rmohan@bhfs.com
202.383.4425

Daniel Joseph
Policy Advisor
djoseph@bhfs.com
202.216.4864

This document is intended to provide you with general information regarding the Moving Forward Act. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.