
Trump Infrastructure Plan Envisions Greater Role For Public-Private Partnerships.

Last week, the White House released an infrastructure "fact sheet"[1] (the "Fact Sheet") that accompanied its proposed Fiscal Year 2018 budget.[2] The Fact Sheet includes an Infrastructure Initiative (the "Initiative") that provides a glimpse into how the Trump administration may approach infrastructure policy. This client alert highlights major aspects of the Initiative with a focus on its potential impact on private investment in the infrastructure sector and, in particular, public-private partnerships or P3s.

Shifting Responsibility to States, Localities and Private Sector

The Initiative—like the budget—establishes the Trump administration's target of $1 trillion in infrastructure investment over 10 years. This goal dates back to the presidential campaign, when it was set forth in an October 2016 white paper[3] by senior policy advisors Wilbur Ross and Peter Navarro, who are currently serving, respectively, as Secretary of Commerce and Director of the White House National Trade Council. That paper envisioned $167 billion of the $1 trillion coming from equity investments made by the private sector, which would be subsidized by an 82 percent tax credit. Although it alluded to possible debt financing options, the paper did not specify the sources for the remaining balance of the investment.

The Initiative and budget provide more insight into the Trump administration's contemplated approach, featuring a similar leveraging structure to the white paper. The budget calls for $200 billion in direct federal outlays over 10 years designed to stimulate a trillion dollars in investment over the same time period, accompanied by cuts to programs such as TIGER and Capital Investment Grants (New Starts) as well as to the budget of the Army Corps of Engineers.[4]

The Fact Sheet indicates a plan to use a limited pool of federal dollars to make targeted investments in high-priority projects and leverage more investment from state and local governments and the private sector. It refers, among its key principles, to appropriate divestment opportunities for the federal government and "self-help" or "independence" of state infrastructure investment efforts. Such reduced federal role would result in a mix of projects that includes those with national importance, those financed largely by state and local governments and those with dedicated revenue streams such as tolls or user fees attractive to private sector investors. How projects not meeting these criteria—for example, smaller projects in rural areas where states and localities lack sufficient funding and which are not revenue generating—would fare is not clear.

Enhanced Role for P3s

The Fact Sheet suggests that the administration will be looking to private investment through public-private partnerships, or P3s, to fund nationally significant projects, and accordingly the Initiative includes several proposals that could create more P3 opportunities. These proposals, which generally focus on the expansion of successful existing programs, indicate a strong interest in leveraging both private dollars and expertise in pursuing infrastructure projects. They include:

- **Expanding TIFIA.** The Initiative supports an expansion of TIFIA eligibility and suggests that increasing the TIFIA credit subsidy to $1 billion annually (it is currently $275–$300 million) could leverage $424 billion in total investment.
- **Funding WIFIA.** As we discussed in our January 2017 client alert, Water Act a "WIIN" for Infrastructure[5], the Water Infrastructure Finance and Innovation Act, modeled on TIFIA, is now funded with $20 million in budget authority. The Initiative adds its support for funding this program.
- **Lifting the cap and expanding eligibility for PABs.** The Initiative calls for removing the $15 billion cap under current law for surface transportation Private Activity Bonds and expanding their eligibility beyond highway and freight transfer facilities to other non-federal public infrastructure.
- **Liberalizing tolling and incentivizing congestion mitigation.** The Initiative renews an Obama administration proposal to lift the restrictions on tolling of interstate highways and supports grant programs to incentivize states to mitigate congestion problems.
- **Encouraging alternative funding methods for Army Corps projects.** The Initiative promotes the Army Corps' ability to participate in projects with non-federally financed components. One prominent flood mitigation project using a split delivery model with the Army Corps and a private developer is the Fargo-Moorhead Area Diversion Project; this project could prove to be a model for similar projects elsewhere.
- **Easing environmental reviews and permitting process.** The Initiative seeks to enhance the environmental review and permitting process, in particular by reducing layers of reviews and transferring responsibility for permitting to state and local officials where possible.

Congressional Process

The proposed budget will inform the budgetary process and represents the administration's opening position at the start of the debate. Senate and House negotiators must each pass a budget resolution and reconcile any differences before October 1, 2017.

Advancing the Initiative's policy programs will likely require a separate bill through the normal legislative process. The last major transportation legislation to be signed into law, the Fixing America's Surface Transportation (FAST) Act of December 2015, was a five-year bill that reauthorized the core programs providing federal transportation funding to the states.

As with similar proposals in past administrations, we would expect a transportation bill proposed by the administration based on the Initiative to face significant challenges. To the extent they are included in a proposed bill, certain elements—in particular the expansion of TIFIA, WIFIA and/or PABs—would, however, likely find support on both sides of the aisle and could facilitate cooperation. We will be monitoring congressional negotiations relating to infrastructure and the budget in the coming weeks and months and will provide updates on key issues for industry stakeholders.

Footnotes

[1] Fact Sheet: 2018 Budget: Infrastructure Initiative (May 23, 2017), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/fact_sheets/2018%20Budget%20Fact%20Sheet_Infrastructure%20Initiative.pdf.
[2] Budget of the US Government, Fiscal Year 2018: A New Foundation for American Greatness (May 23, 2017), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/budget.pdf.
[3] Wilbur Ross and Peter Navarro, Trump Versus Clinton On Infrastructure (October 27, 2016), http://peternavarro.com/sitebuildercontent/sitebuilderfiles/infrastructurereport.pdf.
[4] Budget, supra note 2; America First: A Budget Blueprint to Make America Great Again (March

13, 2017),
https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf.
[5] Paul Epstein, Water Act a “WIIN” for Infrastructure (Jan. 3, 2017),
http://www.shearman.com/en/newsinsights/publications/2017/01/water-act-a-wiin-for-infrastructure.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.