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Would Trump's Proposed Federal Capital Revolving Fund Boost Large Federal Infrastructure Projects & Would P3s Have a Role?

Earlier this year, President Trump called for the establishment of a $10 billion revolving fund, which would be used to finance large federal civilian real property projects. Such a fund could help to blunt the impact of the Office of Management and Budget (OMB) [scoring rules] on these projects. (The OMB scoring rules generally require agencies to have sufficient discretionary budget authority to fund the entire amount of a capital project in year one, although exceptions exist for projects funded through the General Services Administration's Federal Buildings Fund that qualify as "operating leases."). In a recent article posted in Covington & Burling's [Inside Government Contracts blog], attorneys Peter Terenzio, Justin Ganderson and Sandy Hoe discuss the significance of the fund and raise a number of important questions.

This proposed funding mechanism, which is known as the Federal Capital Revolving Fund or the Federal Capital Financing Fund, would permit agencies for budgeting purposes to separate certain real property capital investments from their operating expenses, which is similar to what state and local governments do. Agencies would essentially borrow from the revolving fund to pay for the entire cost of acquiring a capital asset and then repay the fund in interest-free, annual installments from their discretionary budgets. This structure would allow agencies to avoid seeing the entire amount of the project scored against their discretionary budgets in the first year.

Although the proposed revolving fund would provide a way for agencies to pay for certain civilian real property projects, Terenzio, Ganderson and Hoe raise a few questions and offer several observations about the fund.

For example, the Covington attorneys note that under the proposed framework, OMB "appears to have positioned itself as a gatekeeper" to the fund, but has "not identified the criteria that would be used to 'review' an agency's potential project" to determine whether it should be able to tap into the fund. And "if the criteria are too restrictive then otherwise meritorious projects could go unfunded."

The White House's proposal also stipulates that, although the fund will be capitalized at the outset through $10 billion in mandatory appropriations, only $2 billion in outlays can be made in any one year. Terenzio, Ganderson and Hoe observe that many federal projects are likely to be far more costly, and this spending cap could cause agencies to develop projects that do not fully meet near- or long-term needs.

Given the apparent annual cap on the fund, Terenzio, Ganderson and Hoe ask whether the revolving fund could be supplemented through an agency's discretionary funding in year one. They argue that such a "hybrid" funding approach "could provide agencies with more flexibility to meet long-term real estate needs and could help facilitate larger projects."

The authors also ask whether private financing could be used to supplement the revolving fund, possibly through the establishment of public-private partnerships, and comment that P3s are "increasingly being considered by state and local governments, and even the federal government, to expand the fiscal base on which these governmental entities provide services to their constituents."

Although there is no guarantee that Congress will implement the revolving fund, Terenzio, Ganderson and Hoe conclude in their article that if Congress fails to do so, "agencies will be forced to continue to address their real property infrastructure needs under the constraints that flow from the current OMB scoring rules."

Finally, when we asked the authors whether there had been any notable developments since they published their article, they commented that OMB Director Mick Mulvaney sent a letter on July 9 to Senator Richard Shelby (R-AL), the chairman of the Senate Committee on Appropriations, to reiterate the importance of the fund and to indicate that the Trump Administration previously "transmitted legislative language on June 12, 2018 and looks forward to working with the Congress to enact the [Federal Capital Revolving Fund] proposal." Mulvaney had sent a letter that included an expression of support for the revolving fund to Representative Rodney Frelinghuysen (R-NJ), the chairman of the U.S. House of Representatives Committee on Appropriations in June 2018.