Analysis of the Trump Administration's Infrastructure Package and FY 2019 U.S. Department of Transportation Budget Proposal

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Trump Infrastructure Package

The White House Feb. 12 released the detailed infrastructure package that President Donald Trump promised throughout his first year in office. It arrived the same day the administration issued its FY2019 budget.

The introduction of the 55-page "*Legislative Outline for Rebuilding Infrastructure in America*", says: "To help build a better future for all Americans, I ask the Congress to act soon on an infrastructure bill that will: stimulate at least $1.5 trillion in new investment over the next 10 years, shorten the process for approving projects to 2 years or less, address unmet rural infrastructure needs, empower State and local authorities, and train the American workforce of the future." The president adds, "My administration is committed to working with the Congress to enact a law that will enable America's builders to construct new, modern, and efficient infrastructure throughout our beautiful land."

The plan details differ little from what Trump administration officials have discussed for months. The main focus is largely on incentivizing state and local governments and private sector entities to use their money to capture some of the $200 billion the administration proposes to spend. The plan also reforms and speeds the construction project approval process at the federal level and increases workforce capacity to carry out the jobs that may be needed and created because of this investment.

As expected, the Trump administration's infrastructure package does not address the looming Highway Trust Fund (HTF) solvency problem. Beginning in FY 2021, the HTF will need roughly $18 billion per year, on average, to avoid severe cuts in the amount of annual investment levels of the federal highway and transit programs during subsequent years. In fact, the proposal only raises the HTF in passing and without addressing the looming fiscal crisis. Moreover, the package does not include a way to pay for the $200 billion in federal resources the president is recommending.

Here is a breakdown of how the package intends to leverage the federal dollars to produce as much as $1.5 trillion in total investment:

• **Infrastructure Incentives Program** (*$100 billion*), a competitive grant program for projects including major investments by states, localities, and the private sector. It would be administered by the U.S. Department of Transportation (DOT), U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers. The plan does not say how much would be allocated to each agency. As part of the selection process, the plan does weight heavily towards how much new, non-federal revenue can be brought to the table for a project. The federal share is capped at 20 percent per project, and no state can receive more than 10 percent of the $100 billion.

• **Rural Infrastructure Program** (*$50 billion*) that aims to improve the condition of infrastructure, enhance regional connectivity and access to markets and employment opportunities and spur economic growth outside cities.   Eligible projects would include transportation, broadband, water, power and electric infrastructure. In this program, 80 percent of the funding would be distributed by a formula based on population of less than 50,000, and lane mileage. The remaining 20 percent would be distributed via a performance grant program for states that submit a comprehensive infrastructure investment plan. Tribal and U.S. territorial areas would also be eligible for funding under this program.

• **Transformative Projects Program** (*$20 billion*) would provide federal funding for, "bold, innovative, and transformative infrastructure projects that could dramatically improve infrastructure" but are, for various reasons, considered too risky for private sector investment. The U.S. Department of Commerce would oversee this program, with consultation as needed from other departments, and eligibility would include all previously mentioned uses of infrastructure as well as "commercial space". Up to 50 percent of planning costs and 80 percent of construction costs could come from this program.

• **Infrastructure Financing Programs** (*$20 billion*) would allocate an additional $14 billion for the expansion of existing federal credit programs, including the Transportation Infrastructure Finance and Innovation Act (TIFIA), Railroad Rehabilitation and Improvement Financing (RRIF) program and Water Infrastructure Finance and Innovation Act (WIFIA). This additional funding would allow the administration to further diversify the portfolios for these programs. Specifically, port and airport infrastructure projects would be eligible for TIFIA credit assistance, which is currently limited to highway, bridge, transit and certain intermodal projects. The RRIF program would be amended with incentives for short-line freight and passenger rail projects.

Another $6 billion would be used to broaden eligibility for tax exempt Private Activity Bonds (PABs). This financing tool has been an option for certain highway and freight facility projects since 2005, subject to an overall cap of $15 billion. The proposal would remove this cap (as well as similar state volume caps) to strengthen the certainty of PABs' future availability. The administration would also enable PABs to be used for reconstruction projects, longer-term private leases and concession arrangements, and a number of new non-transportation infrastructure categories.

• **Federal Capital Financing Fund** (*$10 billion*) to help federal agencies purchase real property and pay for it over a 15-year period rather than the current requirement that this be done within one year. The fund would help finance these purchases and the relevant department would repay the fund in 15 installments via annual appropriations. The aim is to save money in the long run by hopefully avoiding some cost-prohibitive leases.

Transportation Financing and Contracting

The administration's proposal would enable states to toll existing Interstate facilities, and use tool revenues to benefit certain surface transportation infrastructure projects beyond the scope of the tolled facility itself. Similarly, states would be able to commercialize rest areas on Interstate highways, provided they "reinvest" the proceeds in the same corridor.

The administration also seeks to eliminate normal federal-aid requirements for highway and transit projects where federal dollars are "de minimis" and for smaller projects largely out of the federal-aid highway right-of-way. A state would also have the option to repay a project's federal share to the HTF and terminate the need to comply with federal requirements in its maintenance and operations. In the same vein, "federalization" requirements for projects funded by state infrastructure banks would be reduced. The proposal would also raise the threshold for "major" highway projects from $500 million to $1 billion, in order to decrease the number of these larger projects subject to additional supervision and administrative requirements by the Federal Highway Administration (FHWA).

Other provisions:

- Enable federal land management agencies (such as FHWA's Federal Lands Highway Division) to use a wider variety of alternative contracting and project delivery methods.
- Expand existing pilot programs intended to encourage public-private partnerships (P3s) and partnerships between public agencies for transit capital projects, and enable the privatization of airports.
- Authorize utility relocation for highway and transit projects to take place prior to completion of the National Environmental Policy Act (NEPA) process.
- Require the use of "value capture financing" as a prerequisite for certain transit capital grants. As an example, private entities benefiting from a transit project may be asked to share in its cost through a tax, fee, assessment or other arrangement.
- Establish an Interior Maintenance Fund that would allow the U.S. Department of the Interior to keep half of the revenues collected from new energy and mineral exploration in order to address the deferred infrastructure maintenance backlog – including roadways – within the inventories of the National Park Service and the U.S. Fish and Wildlife Service.
- Allow the disposition of federal real property, making it easier to sell federal government-owned assets that may better be managed or owned by states, localities or the private sector.

Project Approval Process

President Trump's infrastructure proposal would make significant changes to the environmental review and approval process for transportation construction projects. The proposal builds on his August 2017 executive order on reforming the permitting process by setting a two year time limit for environmental reviews. Specifically, the lead agency on any project would have 21 months to complete an environmental review and then additional permitting requirements from other agencies would have to be completed three months thereafter. A number of reforms to NEPA are also made, including limiting the range of alternatives to options which are feasible and eliminating duplication of agency review efforts. The plan would also revoke EPA's authority to review NEPA decisions made by other agencies.

The proposal also calls for changes to major environmental laws impacting transportation construction. Specifically, the plan would remove EPA from the wetlands permitting process (making the U.S. Army Corps of Engineers solely responsible for such permits) and eliminate EPA's ability to retroactively veto Clean Water Act permits. Additionally, the Clean Air Act's transportation conformity process would be altered by requiring that it apply only to the most recent set of National Ambient Air Quality Standards (NAAQS). This would eliminate the problem of counties struggling to meet old standards when new ones are introduced. The plan would also eliminate duplicative regulatory requirements for historic sites and parklands.

NEPA delegation – such as that currently done by FHWA - would also be expanded to other agencies under the proposal. Additionally, the program would be broadened to include delegation of regulatory responsibilities outside of NEPA, including Clean Air Act transportation conformity decisions, flood plain determinations and noise policies. Also, changes would be made to the way in which courts review challenges to transportation projects. Under the plan, courts would only be able to halt transportation projects for legal challenges in "exceptional circumstances." In addition, federal agencies are directed to establish guidelines on the timeliness of data used in environmental permitting decisions. Once these guidelines have been established, courts will not be able to entertain challenges to agency data based on whether or not the information is current.

Workforce Development

Because of an anticipated increase in construction and other employment resulting from infrastructure legislation, as well as related economic growth, the administration proposes numerous improvements and reforms to federal education and training programs. These include:

- Expand Pell Grant eligibility to individuals seeking a vocational certification or credential, often through a short-term educational or apprenticeship program.
- Reform the Perkins Career and Technical Education program with the objective of improving access to high-quality technical education in secondary and post-secondary institutions. This would include directing a larger share of Perkins funding to high schools, in part to "fast track" interested high school graduates to infrastructure-related jobs.

- Grow the eligibility for the Federal Work Study program among students pursuing career and technical education, particularly low-income and low-skilled students seeking quick entry or reentry to the workforce.
- Require states accepting federal dollars for infrastructure projects to allow participation by workers with skilled trade licenses from other states.

Trump Administration's FY 2019 U.S. Department of Transportation Budget Proposal

Conventional Washington wisdom says that any administration's budget request is usually "dead on arrival." That may be especially true this year. Congress and the administration agreed Feb. 9 on overall discretionary funding levels for both defense and non-defense spending for FY 2018 and FY 2019. The deal by congressional leaders and the president increased spending by more than $300 billion over FY 2017 funding levels, a portion of which will undoubtedly go towards transportation programs. The question is which programs?

The budget deal combined with the Trump administration's infrastructure package release make the transportation sections of the FY2019 budget somewhat subdued. However, the president's budget is helpful in that it demonstrate the areas the administration feels should be emphasized and those that may be reduced or eliminated. Congress controls the "power of the purse," however, and will make most of the funding decisions, despite the administration's request.

Below is a summary of the president's budget request for transportation programs in FY 2019:

Summary Table - FY 2019 Budget for Transportation Investment

(millions of dollars)

Program	FY 2016	FY 2017	FY 2018	FY 2019
Airport Improvement Program	$3,350.0	$3,350.0	$3,350.0	$3,350.0
Highway Program				
Obligation Limitation	$42,361.0	$43,266.1	$44,234.2	$45,268.6
Exempt Contract Authority	$739.0	$739.0	$739.0	$739.0
Total Budget Authority	$43,100.0	$44,005.1	$44,973.2	$46,007.6
Public Transportation Program				
Transit Formula Grants	$10,400.0	$10,800.0	$10,500.0	$9,900.0
Capital Investment Grants/New Starts	$2,177.0	$1,743.0	$2,406.0	$1,000.0
Highway Safety Programs				
NHTSA	$723.0	$832.0	$846.0	$762.0
FMCSA	$580.0	$644.0	$658.0	$666.0

Federal Highway Program

For FY 2019, the administration's budget for highways conforms to the amount enacted in the FAST Act, as it did for FY 2018. The budget recommends $46.001 billion in new contract authority, up from $44.924 in FY 2018, and an obligation limit of $45.269 billion, up from $44.234 in FY 2018. Both FY 2019 figures represent an increase of 2.3 percent over FY 2018. In addition, $739 million of contract authority could be obligated above the limitation, bringing total obligation authority for the year to $46.007 billion. This represents a significant change from the FY 2018 budget, when the administration recommended freezing highway program funding for FY 2019 at the FY 2018 level.

Nonetheless, the long-term outlook for the highway program remains highly uncertain. At current funding levels, outlays from the highway account exceed projected revenues by about $8-$9 billion per year. The balance in the highway account will be dissipated by the end of FY 2021. In response, the administration's budget includes the following adjustments:

- First, the administration's budget assumes a freeze on new contract authority and obligations at $43.969 billion per year through FY 2028. By contrast, the FAST Act provides for annual growth of just above 2 percent, or close to $1 billion, annually. A freeze thus means the obligation limitation in FY 2028 would be about $10 billion less than continuation of the FAST Act.

- Even more critical, however, is the forecast that outlays for highways will have to be cut from $47 billion in FY 2021 to $36 billion in FY 2022 and beyond. In essence, rather than raise new revenues, the administration is proposing to limit payments to states and contractors from the Highway Trust Fund after FY 2021 to no more than projected HTF revenues under current tax rates. To fill the $11 billion gap, states would have to use their own funds, stop construction work on some projects, or slow down reimbursements to contractors.

Public Transportation Program

The Mass Transit Account of the Highway Trust Fund is the source of funding for the Transit Formula Grants program, which includes money for a wide variety of transit needs, including operations and maintenance of urban transit facilities, bus purchase and repair, repairs to fixed guideway transit systems, transit programs in rural areas, and transit for seniors and persons with disabilities, among others. For FY 2019, the Trump administration proposes to provide $9.90 billion for the Transit Formula Grant program, down from $10.5 billion in FY 2018. Longer term, like the highway program, the Highway Trust Fund can continue to pay for the transit program only for another couple years before revenue constraints force a cut. Following FY 2021, the administration's budget proposes a reduction in outlays for the transit formula program from $10.1 billion to $6.3 billion in FY 2023 and beyond. Absent new revenues, this would mean significant program cuts or a greater burden on state and local governments to fund mass transit needs.

Only a small fraction of Formula Grant funds, however, are used for construction of transit facilities. Most funding for major transit project construction goes through the Capital Investment Grants/New Starts program. In recent years, this program has been funded from the general fund and requires an annual appropriation. For FY 2019, the administration's budget recommends cutting new money for this program to $1 billion, down from $2.4 billion in FY 2018, and using the funds only to continue construction activity on ongoing transit projects. There would be no federal funding for new transit projects. Longer-term, the budget projects funding for Capital Investment Grants to remain at the $1 billion level through FY 2028.

Highway Trust Fund

A $70 billion infusion of general funds into the Highway Trust Fund under the 2015 FAST Act will, according to the FY 2019 budget, keep the trust fund solvent through FY 2021. After that, however, the trust fund will not be able to maintain existing funding for highway and transit improvements without new revenues, either in the form of another general fund transfer or an increase in highway user fee revenues.

Unfortunately, this critical issue is not addressed in either the FY 2019 budget or the Administration's Rebuilding Infrastructure in American plan. According to the FY 2019 budget, the federal motor fuel and truck taxes will generate no more than $42 to $44 billion per year in revenues into the Highway Trust Fund for the foreseeable future. At the same time, annual outlays of $55 to $58 billion per year from the trust fund would be required just to maintain existing levels of investment in the federal highway, transit and highway safety programs. As a result, the balance in the highway trust fund would be depleted by the end of FY 2021, as the following table shows.

Highway Trust Fund Outlook

(billions of dollars)

Fiscal Year	2016	2017	2018	2019	2020	2021	2022
Start of Year Balance	$11.9	$69.2	$56.3	$43.6	$29.9	$15.5	$1.0
User fee revenues	$41.8	$41.9	$42.8	$43.1	$43.7	$44.0	$44.2
General fund transfers	$70.0						
Outlays:	$54.5	$54.8	$55.5	$56.8	$58.0	$58.5	$45.2
Highways	*$43.6*	*$43.9*	*$44.2*	*$45.2*			
Transit	*$9.5*	*$9.5*	*$9.8*	*$10.0*			
NHTSA, FMCSA & other	*$1.4*	*$1.4*	*$1.5*	*$1.6*			
End of Year Balance	$69.2	$56.3	$43.6	$29.9	$15.5	$1.0	$0.0

The administration's response to this bleak Highway Trust Fund forecast is two-fold:

- After FY 2021, limit outlays for the federal highway, transit and transit safety programs to Highway Trust Fund revenues. As the table shows, this means cutting outlays by about $13 billion.
- Shift responsibility for investing in transportation infrastructure to state and local governments, as well as the private sector.

Aviation Programs

The Trump administration once again is advocating for the privatization of the nation's air traffic control system. House Transportation & Infrastructure Committee Chairman Bill Shuster (R-Pa.) passed legislation out of his committee in 2017, but it did not advance beyond that stage and has generated substantial opposition from Republicans in the House and Senate. Under the administration's approach, the aviation passenger ticket taxes would be reduced and the new entity would impose new user fees to support the system.

The budget proposes continuing Airport Improvement Program (AIP) funding at $3.35 billion—the level at which it has been since FY 2012. The AIP is the federal capital construction program that airports use to build and maintain runways, taxiways and other critical infrastructure.

Other Transportation Programs

The Trump administration FY 2019 budget also calls for:

- No funding for the National Infrastructure Investments program, or TIGER Program, which was initiated by the Obama administration and provides grants from the federal general fund for a variety of transportation projects—highway-related activities are the historically largest recipient of the program. Congress provided $500 million in FY 2017.
- A $962 million cut in Amtrak funding over FAST Act authorized FY 2019 levels, a 57 percent reduction, and cuts to several other smaller rail programs.
- $1.25 billion, or 21 percent, cut to the Army Corps of Engineers budget from what was enacted in FY 2017. These programs, among other things, support port and water infrastructure activities.

What's Next?

Now that the Trump administration's infrastructure plan is public, the real work begins in the halls of Congress. The authorizing committees will likely hold hearings on the administration's plan in the coming weeks and will, hopefully, begin crafting legislative language to move promptly through the House and Senate.

The president's detractors, including the media, are likely to focus on what's missing from the plan. Some of that criticism is justified, given the absence of a HTF user fee solution. However, ARTBA will continue pressuring Congress and leadership on both sides of the aisle, in particular, to move an infrastructure package forward that includes a HTF revenue solution as its foundation.

President Trump's plan is like the starter's gun at an Olympic speed skating race. In order for a package to be completed before Congress begins to focus full time on the November midterm election, we need to work hard to make sure this package moves at a record-breaking pace.

ARTBA will keep its members apprised of these developments and provide alerts on contacting your members of Congress at critical points in the process.