TRUMP ADMINISTRATION RELEASES LONG AWAITED INFRASTRUCTURE PLAN

On February 12, 2018, the Trump Administration fulfilled a campaign promise and revealed its long awaited infrastructure plan (the "**Plan**"). The Administration released a preview of the Plan a few weeks ago, and President Trump stated in his State of the Union address that he would propose an infrastructure agenda to "build gleaming new roads, bridges, highways, railways, and waterways across" the U.S. While Congressional leaders have all voiced support for an infrastructure program, reactions leading up to this point have been mixed – both Democrats and Republicans have been critical of the potential source of funding for Trump's Plan. Democrats recently released their own infrastructure plan, which would involve $1 trillion in federal spending. The Administration's Plan includes $200 billion in federal funding over a decade, primarily financed by budget cuts from other federal government programs, and aims to incentivize local and state governments and the private sector to spend over $1 trillion. Additional goals of the Plan include shortening the federal permitting process and developing the infrastructure of rural areas, a key demographic of support for the President. The Administration's proposal will now head to Congress for a lengthy legislative process involving numerous committees.

The Plan Proposes Various Funding and Financing Programs to Improve Infrastructure

The Administration believes that "states and localities are best equipped to understand the infrastructure investment needs of their communities". The various funding and financing programs proposed in the Plan aim to encourage increased

State, local and private investment in infrastructure by attracting new, non-federal revenue streams into infrastructure investments.

Infrastructure Incentives Program

- The Plan would establish an Infrastructure Incentives Program ("**IIP**") targeted at states and localities, which would receive $100 billion, the largest amount of funding under the Plan.
- Federal incentive funds in the form of grants would be capped based on specific criteria and conditioned upon achieving certain milestones within identified time frames.
- The program would provide support for surface transportation, airports, passenger rail, ports and waterways, flood control, water supply, hydropower, water resources, drinking water facilities, wastewater facilities, stormwater facilities and Brownfield and Superfund sites.
- The program would be administered by the U.S. Department of Transportation ("**DOT**"), the US Army Corps of Engineers ("**USACE**") and the Environmental Protection Agency ("**EPA**").

Transformative Projects Program

- The Plan would establish a Transformative Projects Program ("**TPP**"), which would receive $20 billion and would provide federal funding and technical assistance for "bold, innovative and transformative projects that could dramatically improve infrastructure". Funding would be awarded to projects that are "likely to be commercially viable" but that possess "unique technical and risk characteristics that would otherwise deter private sector investment". These projects must be able to generate revenue, provide net public benefits and have a "significant positive impact" for the locality.
- The funding provided would range from 30-80% of eligible project costs depending on the phase of the project, i.e., demonstration, planning, or construction.
- The TPP could cover infrastructure sectors such as transportation, clean water, energy, commercial space and broadband telecommunications.
- The U.S. Department of Commerce would administer the program.

Infrastructure Financing Programs

The Plan would provide $20 billion to state and local governments to increase the opportunity to finance large-scale infrastructure projects by allocating $14 billion to increase the capacity of already existing federal credit programs and $6 billion to broaden the use of Private Activity Bonds ("**PABs**").

- *TIFIA*: The Plan would add additional budget authority to DOT under the Transportation Infrastructure Finance and Innovation Act ("**TIFIA**") as well as expand project eligibility to include non-federal waterways and port and airport infrastructure enhancement and expansion projects.
- *RRIF*: The Plan would add additional budget authority to DOT under the Railroad Rehabilitation and Improvement Financing ("**RRIF**") as well as expand

the program to provide subsidies or incentives for short-line freight rail or passenger rail projects.

- *WIFIA*: The Plan would add additional budget authority to the EPA under the Water Infrastructure Finance and Innovation Act ("**WIFIA**") and institute various reforms to the current legislation, including (i) expanding WIFIA to include non-federal flood mitigation, navigation and water supply projects and federal deauthorized water resource projects; (ii) authorizing brownfield rehabilitation and cleanup of Superfund sites; (iii) reducing required rating agency opinions from two to one for all borrowers; (iv) providing authority to waive the springing lien requirement in certain situations; (v) increasing the base level of administrative funding; (vi) removing the restriction on the ability to reimburse costs incurred prior to loan closing; and (vii) expanding the program to authorize eligibility for credit assistance for water system acquisitions and restructuring.
- *RUS*: The Plan would add additional budget authority to the U.S. Department of Agriculture ("**USDA**") for loan subsidy costs under the Rural Utilities Service ("**RUS**") lending program.
- *PABs*: The Plan would institute various tax reforms and broaden eligibility to use PABs because the Administration believes that allowing privately financed infrastructure projects to benefit from similar tax-exempt financing as publicly financed infrastructure projects will spur private infrastructure investment in public-purpose infrastructure projects.

Other Programs focusing on Rural Areas, Public Land and the Disposition of Federal Real Property

- The Plan would establish the Rural Infrastructure Program, which would receive $50 billion in funding and would provide for significant investment in rural infrastructure by incentivizing states to partner with local and private investors to complete and operate rural infrastructure projects. 80% of funding would be provided to the governor of each state, and the remaining 20% would be reserved for grants.
- The Plan would establish an Interior Maintenance Fund ("**IMF**"), which would be funded by additional receipts generated by expanded mineral and energy development on federal lands and would be used by the U.S. Department of Interior ("**DOI**") to address the maintenance backlog of DOI's extensive transportation infrastructure asset portfolio.
- The Plan includes various reforms that would allow the federal government to more easily dispose of property and infrastructure assets, including (i) accelerated depreciation for the disposition of non-federal assets with a federal interest due to receipt of a grant; (ii) streamlining and improving the federal real property disposal process; and (iii) authorizing federal divestiture of infrastructure assets that would be "more appropriately owned by state, local or private entities". The Plan includes the following examples of assets for potential sale and privatization: two Washington, DC-area airports, the Washington Aqueduct, two DC-area parkways, and transmission assets across the U.S., including the Tennessee Valley Authority, among others.

Development of a Federal Financing Fund

- The Plan would provide $10 billion to create a Federal Capital Financing Fund (the "**Fund**") in order to help reform the process by which federal agencies can acquire real property. The Fund would finance purchases of federally owned civilian real property, and agencies utilizing the Fund would be required to make repayments to the Fund with future appropriations.

Infrastructure Reform: Reduction of "Red Tape" and Federal Oversight

In addition to financing the grants and programs discussed above, the Plan also proposes a number of reforms related to transportation and water infrastructure financing and development, including, e.g., tolling flexibility and the reduction or streamlining of current federal requirements.

- The Plan highlights four areas to improve the infrastructure permitting process:
  - The Plan proposes creating a new, "one agency, one decision" structure for environmental reviews and contains reforms regarding various environmental laws, including the Clean Air Act, the Clean Water Act and the National Environmental Policy Act designed to expedite the process to receive necessary regulatory authorizations.
  - The Plan proposes delegating more decision making to states. In particular, the Plan would streamline and expand existing procedures to entrust environmental review and permitting decisions to states.
  - The Plan proposes authorizing pilot programs to allow agencies to experiment with innovative approaches to address environmental impacts in a more timely and predictable way.
  - The Plan proposes reforms to judicial review standards for environmental reviews in order to avoid protracted litigation by narrowing the scope of judicial review and exempting certain actions or issues from a potential court challenge.

Workforce Development

- In order to ensure that there are enough skilled workers to fill the new infrastructure-related jobs the Administration believes will be created, the Plan proposes the following:
  - expansion of Pell Grant eligibility to high-quality and short-term programs, such as certifications in skilled trades and apprenticeship programs;
  - changes to the Carl D. Perkins Career and Technical Education Program to ensure that secondary and post-secondary students have access to technical education that provides practical knowledge and skills;
  - reforms to the Federal Work Study program in order to better distribute aid to schools and students and improve relevant workplace experience; and
  - requiring states accepting federal funds for infrastructure projects to accept workers with out-of-state licenses to work on projects.

Conclusion

Anyone who has traveled U.S. highways or been through major airports could hardly question the need for a new approach to infrastructure funding in the U.S. However, the Trump Plan probably gores too many political oxen as proposed to be passed by Congress. (For example, reversing the share of federal funding from 80/20 to 20/80). The Plan is, nevertheless, a starting point for a discussion about the inevitable need to shift to more private and local funding sources. For that reason, it presents great potential to reinvigorating the Private Public Partnership ("**P3**") model for infrastructure development.

We will be watching developments closely and will provide you with updates, when appropriate.

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