

AASHTO First Take on  
**THE PRESIDENT'S INFRASTRUCTURE PLAN AND  
FY 2019 BUDGET REQUEST TO CONGRESS**

February 13, 2018

The Trump Administration has released the much-anticipated [infrastructure investment proposal](#) entitled “Legislative Outline for Rebuilding Infrastructure in America,” a 55-page overview of recommendations to redefine the federal role in infrastructure provision supported by \$200 billion in direct federal funding. The release of this proposal—as part of the Administration’s [FY 2019 budget request](#) to Congress—is the beginning of a process where Congress will ultimately shape the substance of any resulting legislation for the President to sign. It should be noted that neither the infrastructure proposal nor the FY 2019 budget from the Administration address the looming Highway Trust Fund cash shortfall in FY 2021.

### **THE PRESIDENT'S INFRASTRUCTURE PROPOSAL**

In April 2017, OMB Director Mick Mulvaney [first floated](#) the notion of spending \$200 billion of federal dollars over a ten-year period to backstop \$1 trillion in infrastructure investments (the President raised that figure to a \$1.5 trillion target in the State of the Union address last month). As more details have been released either [formally](#) or [unofficially](#) from the Administration over the past year, the underlying federal funding support proposed by the White House has remained at \$200 billion and is reflected in the Administration’s proposal. The budget does not indicate “pay-fors” specifically to offset the additional Federal spending. The \$1.3 trillion difference between the President’s targeted investment level and direct federal funding is expected to be covered by increases in state, local, and private contributions (e.g., \$100 billion over ten years in “Incentive Grants” leveraging \$400 billion of non-federal funds), and leveraging various federal credit program dollars (e.g., \$1 of federal funding for TIFIA supports about \$15 in loans, which in turn supports 1/3 of total project costs, resulting in a 1:45 ratio).

#### Funding Allocations

The \$200 billion package—covering a ten-year period, or at an average of \$20 billion per year—is split into the following components, of which \$150 billion would fund various discretionary grant and loan programs to support projects selected by the Administration and its Federal agencies:

- \$100 billion for an “Infrastructure Incentives Program”: Led by USDOT, EPA, and the US Army Corps of Engineers, these agencies would receive an unspecific allocation of the \$100 billion. State and local project sponsors of all infrastructure asset classes would compete for grants of no more than 20 percent of the total project cost (with no state receiving more than 10 percent of the \$100 billion). Project sponsors would need to demonstrate their ability to provide for long-term capital and O&M funding of the project through increases in their own tax and user fee revenue base. In addition, through a “look-back” provision, up to five percent of funds under this program can be

used to provide an unspecified range of “credit” for projects in states where revenue increases were enacted prior to February 2018.

- \$50 billion for a “Rural Infrastructure Program”: \$40 billion would be provided as block grants to governors based on an undetermined “rural formula,” incorporating factors such as rural lane miles and rural population, to create a minimum and maximum eligibility “range” for each state. Beyond transportation, other asset classes eligible for funding include broadband, drinking water and wastewater, power and electric, and flood management, among others. The remaining \$10 billion of the rural infrastructure program would be available for “Rural Performance Grants” that states would have to apply for and would require the publication of a “Rural Infrastructure Investment Plan.”
- \$20 billion for a “Transformative Projects Program”: This discretionary grant program, to be run by the Department of Commerce, would provide seed money for riskier projects that offer a “large reward profile” on infrastructure performance, costs, and benefits, but suffer from a lack of viable private sector financing. These dollars would provide a tailored federal share, ranging from 30 percent for “demonstration track,” 50 percent for “project planning track,” and 80 percent for “capital construction track.”
- \$20 billion for “Infrastructure Financing Programs”: The Administration proposed a dramatic increase in federal budget support for various infrastructure credit assistance (i.e., loan) programs, including TIFIA for highways and transit, RRIF for rail, and WIFIA for water resources; the Department of Agriculture’s Rural Utilities Service Lending Programs; and expanding the use of Private Activity Bonds which can facilitate public-private partnerships through issuance of tax-exempt debt. For loan programs, the Administration’s plan would increase subsidy funding available, provide federal subsidy funding where it is currently not available (e.g., RRIF), and expand the eligible pool of projects for such programs. Similar expansion of eligible projects are proposed for Private Activity Bonds, including allowance of continued reliance on tax exempt debt when converting publicly-owned and financed assets to those leased to a private partner. Suggesting the use of such refinancing proceeds for “governmental uses” retains an aspect of [asset recycling](#), where upfront payments for long-term leases of public assets are “recycled” to pay for new infrastructure investments.
- \$10 billion for a “Federal Capital Financing Fund”: This seed money would enable capital budgeting of large federal acquisitions such as new federal buildings, as opposed to having to receive Congressional appropriations for the full purchase price in any given fiscal year, which currently encourages the use of annual lease payments. Related provisions include proposals to dispose of existing federal real property (e.g., Washington Reagan and Dulles airports, George Washington and Baltimore-Washington parkways, Tennessee Valley Authority transmission assets) and funding federal lands infrastructure based on half of the receipts generated from mineral and energy development on public lands (to be capped at \$18 billion).

### Specific Proposed Policy Changes

- Transportation in general
  - Allows States Full Flexibility to Impose Tolls on the Interstate System
  - Extend Streamlined Passenger Facility Charge Process from Non-hub Airports to Small Hub Airports
  - Provide States Flexibility to Commercialize Interstate Rest Areas
  - Provide New Flexibility for Transportation Projects with minimal Federal Share
  - Expand Qualified Credit Assistance and Other Capabilities for State Infrastructure Banks

- Highways
  - Authorize Federal Land Management Agencies to Use Contracting Methods Available to States
  - Raise the Cost Threshold for Major Project Requirements to \$1 Billion
  - Authorize Utility Relocation to Take Place Prior to NEPA Completion
  - Authorize Repayment of Federal Investment to Eliminate Perpetual Application of Federal Requirements
  - Provide Small Highway Projects with Relief for the Same Federal Requirements as Major Projects
- Transit
  - Require Value Capture Financing as Condition of Receipt of Transit Funds for Capital Investment Grants
  - Eliminate Constraints on Use of Public-Private and Public-Public Partnerships in Transit
  - Codify Expedited Project Delivery for Capital Investment Grants Pilot Program
- Rail: Apply FAST Act Streamlining Provisions to Rail Projects and Shorten the Statute of Limitations
- Airports
  - Create More Efficient Federal Aviation Administration Oversight of Non-aviation Development Activities at Airports
  - Reduce Barriers to Alternative Project Delivery for Airports
  - Clarify Authority for Incentive Payments under the Airport Improvement Program
  - Move Oversight of AIP Funds to Post-expenditure Audits
- Water transportation
  - Expand Authority Related to Non-Federal Construction and Operation of Inland Waterways Projects
  - Authorize User Fee Collection and Retention under the WRRDA Section 5014 Pilot Program and Recreation User Fees for Operation and Maintenance of Public Facilities
  - Expand U.S. Army Corps of Engineers' Authority to Engage in Long-term Contracts
  - Deauthorize Certain Federal Civil Works Projects
  - Expand Authority for Acceptance of Contributed and Advanced Funds
  - Amend Water Resources Development Act to Allow for Waiver of Cost Limits

In addition to transportation, policy recommendations are provided for drinking and wastewater, Veterans Affairs facilities, and brownfield/Superfund sites.

#### Infrastructure Permitting Improvement and Judicial Reform

To help speed up delivery of projects in a less costly manner while preserving environmental protections, the Administration proposes the following changes—many of which are consistent with [AASHTO's Inventory](#) of legislative and administrative recommendations from July 2017, including greater assignment of traditional federal authorities to interested states.

- Establish a “One Agency, One Decision” Environmental Review Structure
  - Protect the Environment through a Structure that Establishes Firm Deadlines to Complete Environmental Reviews and Permits
- Reduce Inefficiencies in Environmental Reviews
- Require a Single Environmental Review Document and a Single Record of Decision Coordinated by the Lead Agency

- Clarify that Alternatives Outside of the Scope of an Agency’s Authority or Applicant’s Capability Are Not Feasible Alternatives
- Direct the Council on Environmental Quality to Issue Regulations to Streamline the NEPA Process
- Eliminate Redundancy in EPA Reviews of Environmental Impact Statements under Section 309 of the Clean Air Act
- Focus the Scope of Federal Resource Agency NEPA Analysis on Areas of Special Expertise or Jurisdiction
- Reduce Duplication and Increase Flexibility in Establishing and Using Categorical Exclusions
- More Effectively Address Environmental Impacts by Allowing Design-Build Contractors for Highway Projects to Conduct Final Design Activities before NEPA Is Complete
- Curtail Costs by Allowing for Advance Acquisition and Preservation of Rail Rights-of-Way before NEPA Is Complete
- Enhance Integration of Transportation Planning and NEPA by Removing an Unneeded Concurrence Point for Using Transportation Planning Documents and Decisions in NEPA
- Remove Duplication in the Review Process for Mitigation Banking by Eliminating the Interagency Review Team
  - Authorize All Lead Federal Agencies for Infrastructure Projects to Opt into Highway and Transit Streamlining Procedures
  - Increase Efficiency by Expediting Certain Small Telecommunications Equipment in NEPA and the National Historic Preservation Act
  - Create Incentives for Enhanced Mitigation
  - Authorize Federal Agencies to Accept Funding from Non-Federal Entities to Support Environmental and Permitting Reviews
- Reducing Inefficiencies in Protecting Clean Air
  - Eliminate Confusion by Clarifying that Metropolitan Planning Organizations Need only Conform to the Most Recent National Ambient Air Quality Standard
  - Reduce Uncertainty by Establishing Motor Vehicle Emissions Budgets before Requiring Initial Transportation Conformity Determinations for Newly Designated Areas
- Reducing Inefficiencies in Preserving Publicly Owned Land and Historic Properties
  - Remove Overlapping DOI, USDA, and HUD Reviews from Individual Section 4(f) Evaluations
  - Eliminate Duplicative Reviews of Historic Property Impacts for Transportation Projects
  - Eliminate Redundancy in Conversion Requirements When Land Purchased with Land and Water Conservation Fund Money Is Impacted
  - Reduce Uncertainty by Establishing Reclamation Title Transfer Authorization
  - Reduce Uncertainty by Authorizing the Secretary of the Interior to Review and Approve Permits for Pipelines Crossing Lands Administered by the National Parks Service
- Assignment of Federal Authorities
  - Expand Department of Transportation NEPA Assignment Program to Agencies Other Than FHWA
  - Allow States to Assume FHWA Responsibilities for Approval of Right-of-Way Acquisitions
  - Broaden NEPA Assignment Program to Include Other Determinations
  - Performance-Based Pilot, and Negotiated Mitigation Pilot
- Judicial Reform
  - Limit Injunctive Relief to Exceptional Circumstances
  - Revise Statute of Limitations for Federal Infrastructure Permits or Decisions to 150 Days
  - Provide Certainty in Claims on Currentness of Data in Environmental Reviews and Permits

## Workforce Development

The proposal seeks policy changes to encourage more Americans to participate in the construction industry by increasing access to education and workforce development programs. The Administration seeks to expand Pell grants for non-traditional postsecondary education including shorter-term certifications and apprenticeship programs, reform the Carl D. Perkins Career and Technical Education program, and strengthen ties to the infrastructure workforce for college students. Also recommended is the expanded use of out-of-state skilled tradespersons for infrastructure projects by reforming various state licensing requirements.

## **THE PRESIDENT'S FY 2019 BUDGET REQUEST**

The President's traditional budget request to Congress is the first official step in the budget process for each fiscal year, ultimately resulting in the enactment of full-year appropriations for the [twelve spending areas](#) as overseen by Congress. Congress has not been able to pass each of the twelve packages by October 1 of the fiscal year since 1994 and has instead relied on a series of short-term Continuing Resolutions and omnibus/minibus packages that merge multiple spending bills. In a continuation of this pattern, the current-year appropriations for FY 2018 is yet to be finalized after five Continuing Resolutions, with the current one expiring on March 23; by or before that date, Congress is expected to enact an omnibus appropriations to close out the fiscal year.

In the meantime, a [major budget deal](#) negotiated and enacted just last week created \$143 billion of breathing room above hard budget caps for defense and non-defense spending in FY 2018 and \$153 billion for FY 2019, along with an \$89 billion increase in disaster aid for states hit with hurricanes and wildfire. For two years, this measure enables federal programs to avoid mandatory, across-the-board spending cuts known as sequester; however, once this cap relief expires in FY 2020, addressing the growing difference between the budget caps and actual spending levels at that point will present a major challenge.

A significant element of this two-year budget deal is \$10 billion in infrastructure funding for each of the two years. No details are yet available on how those dollars would be assigned among infrastructure asset classes (e.g., rural water and wastewater, drinking water, rural broadband, energy, innovative capital projects, and surface transportation), and whether these funds will be distributed through formula grants and/or discretionary grants. To reflect this significant and recent change, the OMB provided an [addendum](#) to the President's 2019 Budget Proposal, though for USDOT it only specifies \$300 million in new funding for the Maritime Administration's School Ship Replacement Program while maintaining various program cuts. A brief synopsis of the Administration's requested amounts for various USDOT programs for FY 2019 are listed below:

- Fully funds the Highway Trust Fund programs at FAST Act level, which is \$56.6 billion in obligation limitation.
- Assumes a major HTF "cliff" after FAST Act expiration in September 2020, resulting in an estimated 40 percent cut in highway obligations in FY 2021, and zeroing out of transit obligations from FY 2021 to FY 2023. This would result in \$122 billion outlays reduction from FY 2021 to FY 2028 which would for budget scoring purposes reduce the federal deficit by the same amount.
- Proposes no new rescission of highway contract authority formula balances held by states.
- Eliminates TIGER grants, and limits FTA Capital Investment Grants (e.g., New Starts) to meeting existing commitments and extending no new full-fund grant agreements.

- Eliminates funding for various rail grants authorized by the FAST Act, including FRA State of Good Repair partnership grants to states
- Amtrak funding is significantly reduced, including seeking state contribution for one-half of long-distance route subsidies.
- The Airport Improvement Program is funded at a flat \$3.35 billion, and funding for the Essential Air Service program is reduced to \$93 million, with program changes to limit eligibility.