President Trump Releases Legislative Outline for Infrastructure Plan

Highlights for Counties

On February 12, 2018, the Trump Administration introduced long-awaited "expanded principles" outlining a vision for a new 10-year, $1.5 trillion federal infrastructure package. These principles, titled "Legislative Outline for Rebuilding Infrastructure in America," expand upon the "Infrastructure Initiative" white paper that accompanied President Trump's FY 2018 budget back in February of 2017. The administration has stated that this document is open to revisions by Congress as they look to craft legislation based off the administration's principles.

In the proposal, President Trump states:

> *"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."*

As counties own 46 percent of the nation's roads, 38 percent of the nation's bridges and are involved in over one-third of the nation's airports and transit systems, increased attention from the White House is a welcome development. **Counties invest over $122 billion each year in construction, maintenance and rehabilitation of the nation's infrastructure network, but cannot address the substantial project backlog without a strong partnership with and assistance from the federal government.**

The White House's infrastructure plan is comprised mainly of several new initiatives, modifications to existing programs and regulatory reform. Overall, the plan calls for $200 billion in new federal spending, with the goal of leveraging those dollars to yield a total of $1.5 trillion in new spending and financing for infrastructure projects across the country. New spending under the plan would be broken down according to the chart below:

Program	New Funding Provided	Percentage of New Funding
Incentives Program	$100 Billion	50 percent
Rural Infrastructure	$50 Billion	25 percent
Transformative Programs	$20 Billion	10 percent
Expansion of Existing Loan Programs	$20 Billion	10 percent
Federal Capital Financing Fund	$10 Billion	5 percent

The Plan Would Create New Grant Programs and Federal Funding Opportunities, but Require Local and State Governments to Provide Additional Funding

- **The plan would allocate $100 billion towards grants for infrastructure improvements.** The first and largest financial component of the plan is a new "Incentives Program," which would provide funding support to a wide-range of assets, including the following governmental public infrastructure: surface transportation and airports, passenger rail, ports and waterways, flood control, water supply, hydropower, water resources, drinking water facilities, wastewater facilities, storm water facilities, and Brownfields and Superfund sites.

  Of note for counties, this new grant money does come with restrictions. Specifically, the plan states "an incentive grant could not exceed 20 percent of new revenue," therefore requiring state and local governments to increase their share of a project's cost. This would call for a fundamental change in traditional funding models existing in current surface transportation and infrastructure authorizations, which include federal government contribution levels up to 80 percent.

  Applications for funding will be evaluated on objective criteria, with priority largely based on how much non-federal revenue an applicant can secure for the project, **with priority given to those who can provide more funds**, along with other financial, technological and innovation considerations. While county governments would be able to apply for these funds directly, the local funding requirement will limit the number of counties that are able to secure funding, as they may not meet the criteria required to be considered.

  Additionally, this funding will have a "look-back period," designed to allow projects already in motion the opportunity to take part in this new program. As this is a competitive grant program, no single state can be eligible for more than 10 percent, or $10 billion.

- **The plan allocates $50 billion for rural infrastructure projects:** The second component of this package comes in the form of two new grant programs for rural infrastructure, one competitive and one formula-based. Both grants would be administered by state governors, with wide discretion granted to those governors as to where funding would go. Unlike the incentives program referenced above, **local governments would *not* be eligible to apply directly to the federal government for this program**. This fund would be available to "rural areas of populations less than 50,000 residents," and could be used for various projects, including transportation, broadband, water resources, stormwater and wastewater infrastructure, and power and electric facilities.

  The formula component of the rural infrastructure section would be, according to the document, calculated based on rural lane miles and rural population adjusted to reflect policy objectives. For the performance grants section, states would be required to meet certain requirements, including publishing a rural infrastructure investment plan within 180 days of receiving funds and meeting certain financial benchmarks. The rural component also has a set aside for tribal infrastructure, though no specific dollar amount is listed.

- **The plan allocates $20 billion for "transformative" projects:** The third component of the plan covers "transformative projects." Transformative projects would be designed to be "bold, innovative and transformative" projects that could dramatically improve infrastructure. $20 billion has been designated for investment in these projects, with funding allocated to cover as much as 80 percent of a project's cost for demonstration, planning and capital construction. This program, which would not restrict state or local governments from applying, would be administered by the U.S. Department of Commerce.

The Plan Would Expand and Modify a Number of Existing Financing Programs

In addition to the grant element of the plan, there are numerous financing measures outlined in the package. According to the document, existing lending programs, typically utilized for infrastructure finance, have been enhanced to improve state and local government's ability to apply for these funds. These changes, spread across four programs, would receive new funding totaling $14 billion.

- **The plan would expand the Transportation Infrastructure Finance and Innovation lending program (TIFIA):** Under the president's plan, additional budget authority would be made available to USDOT for subsidy costs under TIFIA. Additionally, TIFIA could be used for airport, waterway and port projects, new areas of infrastructure previously not available through this widely used infrastructure mechanism. Counties utilize the TIFIA loan program for infrastructure projects, taking advantage of loans with favorable interest rates.

- **The plan would expand the Water Infrastructure Finance and Innovation lending program (WIFIA):** Under the president's proposal, additional budget authority would be made available to the U.S. Environmental Protection Agency (EPA) and the current lending limit ($3.2 billion) would be removed. Additionally, the program eligibility would be expanded from "community water systems" to "water systems," allowing drinking water providers to be able to apply for WIFIA loans. Furthermore, WIFIA would also be able to be applied towards water system acquisitions and restructuring. Brownfields site rehabilitation would also be eligible to utilize the WIFIA program under this plan.

- **The plan would expand the Railroad Rehabilitation and Improvement lending program (RRIF):** Previously ineligible, short-line freight and passenger rail can now apply for RRIF loans. RRIF loans are currently underused and expanding this program could allow for new investments within the rail sector.

- **The plan would expand the U.S. Department of Agriculture Rural Utilities Service lending program (RUS):** Although the plan does not provide specifics, it would increase budget authority for the lending program. RUS administers programs that provide much-needed infrastructure or infrastructure improvements to rural communities.

- **The plan would also provide $6 billion to expand the scope of projects eligible for Private Activity Bonds (PABs)**: Under this part of their finance portion, new categories would be eligible for this financing instrument, including new construction of hydroelectric power facilities, flood control and stormwater facilities, many of which are owned by counties, as well as rural broadband facilities. **Brownfields and Superfund sites may also utilize PABs under the plan to cover environmental remediation costs.**

- **The plan calls for the elimination of the Alternative Minimum Tax on PABs, as well as removing volume caps on PABs currently imposed on states.**

- **The plan includes new provisions for tax-exempt municipal bonds:** Change-of-use provisions within the plan would allow for greater flexibility when private dollars are part of a project and bond proposal. The administration hopes that this will attract greater private sector investment.

- **Other financing recommendations include the expansion of state infrastructure banks and allowing small-hub airports to utilize the Passenger Facilities Charge (PFC) more easily.** PFC's, a fee (currently $4.50) included on each leg of an airline ticket, are utilized by county-owned airports to fund airport construction projects.

- **The plan would create a new Capital Financing Fund:** The plan addresses an accounting and funding issue that pertains to the federal government purchasing real property. Currently, the federal government must have an entire amount of purchase price appropriated and scored before a transaction could take place. To remedy this, a "revolving fund to finance purchases of federally owned civilian real property" would be established. $10 billion has been allocated for this fund, which would require repayment over 15 annual payments by discretionary appropriations from Congress.

The Plan Focuses Heavily on Regulatory Streamlining and Reform and Transfers Additional Regulatory Responsibility to States

In addition to the funding and financing components mentioned above, the president's infrastructure plan focuses on regulatory reform. This is important to counties as regulatory hurdles and bureaucratic red-tape can increase project costs exponentially while causing major delays in project completion. Some of these reforms will originate at the federal level and some will be delegated to States.

- **The administration plans to introduce a "one agency, one decision" environmental review structure under which a lead federal agency would assume authority to greenlight permitting processes**: The president's plan calls for this to occur working collaboratively – not sequentially – with all other pertinent agencies to reach one decision before signing off. The plan calls for this process to take no longer than 21 months, with actual permits issued within 3 months after. This would equal the two-year maximum time for permit processes, reflecting a goal of the administration to shrink that timeline from what can sometimes be ten and even 20 years long.

- **The plan will require a single environmental review document and a single record of decision (ROD) coordinated by the lead agency:** This would result in having one ROD for each project, rather than having numerous ROD's on any given project. Additionally, National Environmental Policy Act (NEPA) reviews would not need to be completed before undertaking certain tasks, such as the installation of certain small cells and wi-fi infrastructure. Rail right-of-way executions would also be permitted before relevant NEPA reviews are conducted under the plan.

- **The plan calls reduced duplication and increased flexibility in establishing and using categorical exclusions (CE):** These exclusions are important to counties as they allow for quicker completion of projects by having certain NEPA requirements waived for smaller scale projects. NACo championed CE provisions in both MAP-21 and FAST Act reauthorization bills for federal surface transportation projects.

- **The plan directs the Council on Economic Quality (CEQ) to issue new regulations designed to streamline the NEPA process**: NACo has met with CEQ numerous times over the past year, recognizing the footprint the White House would have in environmental streamlining. This plan solidifies CEQ as a leading agency tasked with crafting the administration's regulatory plan.

- **The plan seeks to streamline regulations for highways:** Most notably, the plan states its desire to authorize utility relocation to take place prior to NEPA review completion. Other assistance is provided by reclassifying the threshold for large projects to $1 billion, allowing for smaller projects to navigate the regulatory landscape more quickly.

- **The plan requests reforms to certain parts of the Clean Air Act and Federal Power Act:** These reforms are offered with the goal of reducing inefficiencies, duplication, and uncertainty across regulatory efforts. The plan's goal is also to steer U.S. Army Corp of Engineer projects away from EPA and NEPA regulations, redirecting them to the Secretary of the Army. Further, certain regulatory and environmental review responsibilities are delegated to the states under the plan.

- **The plan sets to expand the current USDOT program of NEPA delegation and to include all sub-agencies:** Currently, memorandums of understanding only exist between six states, a number this plan would like to see increased. While the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) are the only superagencies participating in this, the plan calls for all DOT sub agencies to participate as well.

- **The plan instructs FHWA to delegate certain responsibilities for approving right-of-way acquisitions to states.** Counties could benefit from this as it removes a sometimes duplicative process that causes delays and increased costs waiting for federal approvals.

- **The plan also calls for USDOT to assign to states the responsibility to assume "project-level transportation conformity determinations regarding flood plain protections and noise policies as part of the NEPA assignment program"**: These actions would hasten project implementation and delivery. Counties could be beneficiaries to such a reform, eliminating a time barrier in the review process. Less time waiting equals financial savings for projects.

Other Provisions to Incentivize and Remove Barriers to Infrastructure Development

In addition to the funding components of the plan, the Trump Administration also offered guidance on reforms to various modes of transport and infrastructure:

- **The transit portion of the plan seeks to improve conditions to attract private-sector investment in mass transit:** The plan will require value capturing financing as a requirement to obtain Capital Investment Grants from the federal government. Value Capture is the process of retaining some percentage of the value provided in every transaction. While this can assist local governments in the rehabilitating existing transit components, this could potentially make it more difficult to obtain funds to build new infrastructure.

- **The plan aims to streamline FAST Act provisions that restrict the time frame for legal claims for rail projects:** The law currently allows for two years to bring forth litigation, while the administration's plan would shrink that timetable to 150 days. This would be done in hopes of expediting rail project delivery and involve all rail projects regardless of lead federal agency.

- **The plan provides guidance on reforms within the Airport Improvement Program (AIP) to permit additional financial incentive payments:** This new guidance would increase work efficiency and reduce project completion times. The AIP is vital to county owned airports' ability to make critical safety improvements to their airport facilities.

- **The plan addresses regulatory requirements for water programs, inland waterways and water infrastructure resources:** These changes are geared toward streamlining regulatory requirements and increasing flexibility, expanding funding streams, and allowing for longer-term contracts with the U.S. Army Corps of Engineers.

- **The proposal aims to address Brownfields and Superfund reforms by amending the Small Business Liability Relief and Brownfields Revitalization Act to include a fund to facilitate new investment into Superfund cleanup and reuse.** The plan does not state whether Brownfields and Superfund relief funds would be one or two separate programs.

- **The proposal would provide regulatory relief for counties:** These reforms would provide liability relief for state and local governments that acquire brownfields through involuntary means (i.e. tax delinquency, bankruptcy, abandonment, etc.), assume ownership of these properties and help fund and expedite clean-up and redevelopment efforts and create flexibility in funding and streamline the approval process. This would allow more brownfields to be redeveloped in a cost-effective and effective way.

- **Pilot programs are also introduced within this plan**: All designed to expedite the environmental review process and allow for quicker project completion., a performance based pilot as well as a negotiated mitigation pilot are listed as areas for testing within the plan. The performance based pilot would aim to replace "environmental impacts" with "environmental performance measures." The negotiated Mitigation Pilot would "experiment with negotiation of mitigation as an alternative decision-making process in lieu of NEPA.

- **The plan calls for Judicial reform dealing with the statute of limitations of permits needed to fulfil NEPA requirements:** Reforms are designed to provide injunctive relief as well as address current issues arising from statute of limitation expiration of infrastructure permits and how they pertain to certain NEPA requirements. These delays are known to cause substantial delays, costing billions of dollars across the country.

- **Tolling restrictions are relaxed:** The plan allows states flexibility in what toll-generated revenue can be utilized for as well as allowing existing lanes to be tolled, which is currently prohibited under law.

- **The plan allows for the ability of states to commercialize interstate rest areas:** This would, under the plan, allow for additional revenue generation by either operating, privatizing or contracting commercial activities at rest stops.

- **The plan calls for the elimination of duplicative reviews of historic property impacts for transportation projects:** Currently, two provisions, one the National Historic Preservation Act and another in the FAST Act, inadvertently require essentially the same historic impact review to occur twice. The President's plan eliminates the FAST Act language creating the redundancy.

- **The plan calls for a new fund for public lands infrastructure:** The proposed plan calls for the creation of an Interior Maintenance Fund for infrastructure development on public lands, allowing half of additional receipts generated by expanded federal energy development to be deposited into the fund. This would help the U.S. Department of the Interior (DOI) to address its deferred maintenance backlog, especially at national parks. Such receipts would be deposited into the fund until the cumulative amount deposited had reached $18 billion. The plan would also allow funds arising from the sale of government buildings to go towards infrastructure.

- **The plan would reform Pell Grant eligibility:** The plan's reforms are centered around existing financial assistance mechanisms from current federal programs to promote career and technical training. Pell Grant eligibility would be expanded, with the administration stating the plan "would allow individuals to use Pell Grants to pay for short-term programs that lead to a credential or certification in an in-demand field."

- **The plan would also expand career and technical education training:** This is designed to address workforce needs in an ever-changing, more technologically advanced workplace. The plan would direct funding to high schools to promote and expand apprenticeships, work-based learning, and dual-enrollment; support evidence-based STEM and other Career Technical Education (CTE) offerings related to in-demand industry sectors; allow states to pool funds to support partnerships between local businesses and community stakeholders, and authorize funding for programs that prepare high school graduates for jobs rebuilding America's infrastructure. Finally, this section of the plan aims to empower workers by reforming licensing requirements for out-of-state workers seeking jobs on an infrastructure project.

As Congress begins to write legislation building upon the principles document the President has issued, counties look forward to working with our federal partners to ensure any infrastructure package preserves the federal-state-local partnership.