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THE TRUMP INFRASTRUCTURE PLAN: THE FUTURE FOR U.S. INFRASTRUCTURE?

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On Monday, February 12, President Trump delivered to Congress his infrastructure plan, entitled Legislative Outline for Rebuilding Infrastructure in America (the "Plan").[1] The Plan proposes to redress the growing shortfall in infrastructure spending, primarily through using federal money to create incentives for state and private spending. However, there is doubt whether the Plan will work as the White House anticipates and whether the Plan will be accepted by Congress.

The Financial Details

Public spending on infrastructure has been on a steep slide since the Global Financial Crisis of 2008, when the U.S. federal government stepped in to help financially strapped state and local governments. Public spending peaked at 2.2% of inflation-adjusted GDP in 2009; by late last year, it was down to about 1.6%.[2] President Trump repeatedly stated during his presidential campaign that he would reverse this trend.

The Plan is his attempt to fulfil this promise, recognizing the current state of U.S. infrastructure, which requires significant attention, politics aside.[3]

The plan, which the Administration unveiled as a starting point for negotiations with Congress, calls for investing $200 billion in federal funds in infrastructure projects, which is intended to create $1.5 trillion in investments over the next decade.[4] Half of that money comes in the form of incentives for states to establish their own infrastructure projects. However, the federal government would only invest a maximum of 20% in these projects, leaving it to the states to find other sources of revenue, like imposing higher tolls on roads.

The crux of the Plan is to turn the traditional 80-20 federal-state split of financing of major infrastructure inside out, to 20-80. Rather than increasing public spending as promised, the Plan may well fall short of expectations (or at least fail to attract the investment anticipated from the states), considering that many states are not in a position to increase spending on infrastructure, even if they were incentivized heavily — particularly those states already dealing with budget shortfalls. In 2017, 22 states had such shortfalls, according to the Center on Budget and Policy Priorities, including at least ten President Trump carried in the 2016 election.[5]

The Plan anticipates providing the following funding:[6]

1. **Incentive Grants — $100 billion** (half the total) to "encourage increased State, local, and private infrastructure investment by awarding incentives to project sponsors for demonstrating innovative approaches that would generate new revenue streams, prioritize maintenance, modernize procurement practices, and generate a social and economic return on investment.

Incentives would be provided in the form of competitive grants.

As critics have noted, this significant aspect of the Plan relies heavily on both investment by individual states and on public private partnerships.[7]

2. **Rural Formula Funds — $50 billion** is requested for this program, which would increase investment in rural infrastructure, including broadband internet service. Federal funding would be made available to States via "formula distribution"(the "formula" based on rural population and miles of roadway), along with a bonus competition based on State performance.

3. **Transformative Projects — $20 billion** awarded to support "innovative and transformative infrastructure projects"; funding would be awarded on a competitive basis for commercially viable

projects that are capable of "generating revenue" and "provide net public benefits".

4. **Existing Credit Programs — $14 billion.** This, too, is supposed to leverage funding.

5. **Federal Capital Revolving Fund — $10 billion.** Essentially, to purchase properties currently leased.

6. **Private Activity Bonds ("PABs") -- $6 billion**. PABs are tax-exempt bonds issued by or on behalf of local or state government for the purpose of providing special financing benefits for qualified "core public infrastructure" projects. The proposal calls for an expansion of the definition of "core public infrastructure projects", which would not be

subject to volume caps.

'Streamlining' Environmental Review

The Plan states that environmental reviews must be conducted in no more than 21 months. The Plan calls for changes in how the government conducts environmental reviews, including streamlining the National Environmental Policy Act's requirements and potential reforms to the Clean Water and Clean Air acts. The National Environmental Policy Act, or NEPA, mandates that agency decisions that could have an environmental impact on the nation's air, water, or wildlife habitats include a scientific analysis of potential effects. The Plan would require the White House Council on Environmental Quality to issue regulations to "streamline" the NEPA process — for example, ending the requirement for the EPA to conduct a final review of environmental impact statements devised by other agencies.

The Plan would allow for more frequent use of "categorical exclusions" if officials determine the proposed activities have no environmental impact, meaning they are not subjected to federal reviews. It would do this by allowing agencies to essentially borrow "categorical exclusions" used by other agencies without issuing a new rule.

Other proposed changes include requiring federal agencies to conduct concurrent environmental reviews, rather than consecutive reviews, in order to speed up the process, and allowing some revenue from energy development on public lands to pay for capital and maintenance costs of infrastructure built on federal lands. In addition, the Plan anticipates expanding existing procedures to entrust environmental review and permitting decisions to individual States.

Will the Plan Survive?

Analysts have been quick to note that the Plan has an uncertain future, even though Republicans currently control Congress.[8] Essentially, there is little appetite among the more conservative Republicans for even this level of increased spending, while Democrats are unwilling to support a plan they perceive as a "giveaway" to private interests and a dismantling of environmental controls.

Trump himself is quoted as not holding the Plan as a high priority, apparently anticipating that it may fail to find acceptance.[9] The substantial increases in deficit spending, which are frankly acknowledged in the budget just submitted, have hardened conservative Republican sentiment against the Plan to increase spending on infrastructure.[10]

Conclusion

Despite the problems noted in the Plan, which falls far short of the massive increase in investment originally heralded, there remains an enormous need to increase investment in infrastructure in the US. As noted above, the American Society of Civil Engineers ("ASCE") has highlighted this need by grading the current state of US infrastructure as "D+". The ASCE has published a reaction to the Plan, stating it is a "… solid first step in having a real conversation about solutions for the nation's aging infrastructure…"[11] The implication is that the amount on offer is a 'conversation starter' but cannot cover the actual infrastructure deficit — even assuming that state and private investors step up to invest as the Plan predicts.

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[1] https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf

[2] http://www.latimes.com/business/hiltzik/la-fi-hiltzik-trump-infrastructure-20180212-story.html

[3] The American Society of Civil Engineers has graded America as a "D+" in infrastructure in its annual "Infrastructure Report Card", found here: https://www.infrastructurereportcard.org/.

[4] The Infrastructure Plan document claims $1.5 trillion (see Introduction); however, the Budget document claims $1 trillion (see p. 17: "The Administration's infrastructure initiative would address the imbalances between infrastructure investment, ownership, and responsibility and generate $1 trillion in total infrastructure investment through a combination of direct Federal funding and incentivized non-Federal funding.).

[5] https://www.cbpp.org/research/state-budget-and-tax/states-faced-revenue-shortfalls-in-2017-despite-growing-economy

[6] See https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf at p. 18-19.

[7] https://www.nytimes.com/2018/02/12/business/trump-infrastructure-proposal.html

[8] https://www.axios.com/a-trump-fairy-tale-1518385839-5b0839b8-1073-472b-af7b-d8f073e8ca1d.html

[9] http://abcnews.go.com/Politics/wireStory/trump-unveil-15-trillion-infrastructure-plan-53011331

[10]https://www.washingtonpost.com/business/economy/trump-rewrites-gop-playbook-in-his-own-image/2018/02/11/8505873c-0dec-11e8-8890-372e2047c935_story.html?utm_term=.177fc07c342c

[11]Statement of ASCE President Kristina Swallow, February 11, 2018: https://www.infrastructurereportcard.org/civil-engineers-react-to-president-trumps-infrastructure-plan/

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