Trump Infrastructure Plan May Open Opportunities for Projects

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After nearly two decades of widening concern over the declining state of U.S. infrastructure, it was not surprising that infrastructure became a central theme in the 2016 election cycle. Improving our nation's transportation, water and energy infrastructure was one of the few issues to garner strong bipartisan support in the campaign, and President Donald Trump's infrastructure platform was notable in two key ways. First, it focused heavily on private investment, which President Trump sees as a key funding source for domestic infrastructure projects, and second, it set an ambitious target — $1 trillion of new infrastructure investment. If the Trump administration realizes its infrastructure-related objectives in any significant way, there should be a wave of new opportunities for capital providers, contractors and private developers in the infrastructure sector.

Navarro-Ross Tax Credit Proposal

During the campaign, the centerpiece of the administration's infrastructure plan was an aggressive use of tax credits to attract private investment. The most detailed proposal in this area was set forth prior to the election in a white paper authored by Peter Navarro, a business professor at the University of California, Irvine, whom President Trump selected to chair the White House National Trade Council, and Wilbur Ross Jr., a noted private equity investor and President Trump's nominee for secretary of Commerce. The Navarro-Ross plan calls for enacting federal legislation to establish an investment tax credit (ITC) for U.S. infrastructure projects sized at 82 percent of the invested equity. According to the Navarro-Ross analysis, President Trump's proposed $1 trillion infrastructure plan would require $167 billion in equity, which would give rise to approximately $137 billion in tax credits. The plan calls for the tax credits to be offset by increased tax revenues from project construction activities — specifically, through taxes on additional wage income and contractor profits — resulting in revenue neutrality for the federal government.

The Navarro-Ross tax credit proposal has been met with some skepticism as to its viability. Deficit hawks in Congress, many of them Republican, are not convinced that the plan is revenue-neutral. Industry analysts have expressed concern that many of the currently active investors in the infrastructure sector (*e.g.*, pension funds) are tax-exempt entities and would be unable to utilize the credits. Moreover, if Congress lowers corporate tax rates, it is unclear whether there will be sufficient tax capacity to absorb the full amount of the available investment tax credits. Perhaps in response to these critiques, infrastructure advisers to President Trump suggested in the days following his inauguration that the administration's infrastructure proposal may be cut nearly in half, to $550 billion.

There also is a more fundamental question: Are there a sufficient number of infrastructure projects that can benefit from the Navarro-Ross proposal? The ITC-based model, like other nonrecourse project financing structures, relies on an underlying project that generates a stream of revenue sufficient to service the project debt and provide the private investor with a return of and on its capital (supplemented by the benefits it receives from the tax credit). Widespread realization of the Navarro-Ross plan likely would require a significant increase in the use of public-private partnerships (P3s) — or analogous development and procurement models — in the infrastructure sector. While variations on the model exist, P3 transactions typically involve a private investor being granted the right, and undertaking the obligation, to design, build, finance, operate and maintain a public infrastructure project pursuant to a long-term concession arrangement. In return, the private investor receives demand-based revenues (*e.g.*, tolls) or, in some cases, an availability payment from the public authority for performance (regardless of demand). Approximately three dozen significant P3s have been financed in the U.S.

over the last 30 years, including surface transportation, public utility and social infrastructure projects. Major recent P3 projects include the $4 billion rebuild of the central terminal at LaGuardia Airport in New York City, the $3.4 billion Vista Ridge water pipeline project in Texas and the recently announced commercial closing for the $2.3 billion managed toll lanes project on Interstate 66 in northern Virginia.

However, P3 transactions require complex and lengthy planning and structuring efforts and, in many cases, a major shift both in strategic thinking by public sector agencies (which have developed projects without private involvement, for example, via tax-exempt bond financings) and in public sentiment regarding the delivery of essential services (where, as an example, members of the public face new or increased charges that accrue to a private investor). Consequently, P3 projects undergo several years of planning and permitting before the investment community is invited to submit qualifications and proposals. Without significant changes in the way P3 projects are structured and financed, only a handful of well-structured and "shovel ready" P3 projects may reach financial close in any given year. While new federal incentives may spur greater private sector interest in infrastructure, the use and success of P3s ultimately depends on projects that produce predictable revenue streams over the long term. Given the scale and complexity of these projects, implementing P3 procurement models on a large scale nationwide will take time.

Federal Credit Programs in the Trump Era

Infrastructure investors in the U.S. will need to monitor how the specific policies and legislative agenda advances in the coming months support or sideline federal credit programs that provide low-interest-rate financing to infrastructure projects, including P3s. Oversight of the primary credit programs has been consolidated under the Build America Bureau, which was established within the Department of Transportation in 2016 to provide a one-stop shop for federal financing for P3s and other significant transportation projects. The bureau's mandate is to streamline approvals of loans under two credit programs that provide long-term, low-interest-rate loans to surface transportation and rail projects, respectively, and to administer the private activity bond program, through which tax-exempt financing is made available to support P3s. The bureau also will manage the $800 million Fostering Advancements in Shipping and Transportation for the Long-Term Achievement of National Efficiencies (FASTLANE) grant program, established in December 2015 pursuant to the Fixing America's Surface Transportation (FAST) Act.

Investors also should be aware of new opportunities in the U.S. water infrastructure sector. The Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) established a federal credit program administered by the Environmental Protection Agency for eligible water and wastewater infrastructure projects. WIFIA was further amended by the Water Infrastructure Improvements for the Nation Act of 2016, which included $20 million in budget authority ($17 million of which is available for loans and other credit support) to allow the WIFIA program to commence lending operations. This amount, which has been appropriated to the program, represents a credit subsidy cost, similar to a loan loss reserve. The actual credit assistance capacity of the program is expected to exceed $1 billion in credit facilities, with loans for private and public sector borrowers, supporting up to 49 percent of eligible project costs for water infrastructure projects.

Democrats' 'Blueprint to Rebuild America's Infrastructure'

Democrats in Congress, who are advocating for increased public sector spending, have responded to President Trump's plan with their own competing infrastructure proposal. On January 24, 2017, Senate Minority Leader Chuck Schumer, D-N.Y., and several Senate Democratic colleagues released "A Blueprint to Rebuild America's Infrastructure," which matches President Trump's vision of a $1 trillion investment in U.S. infrastructure over a 10-year period. Unlike President Trump's plan, funding under the Democrats' proposal would come entirely from taxpayer dollars at the federal level. The proposal would expand the use of popular federal grant and loan programs, such as Transportation Investment Generating Economic Recovery (TIGER) grants, the Transportation Infrastructure Finance and Innovation Act (TIFIA), Railroad Rehabilitation and Improvement Financing (RRIF) and WIFIA, and would lead to the creation of a national infrastructure bank to promote innovative infrastructure financing solutions. In this regard, the Democrats' plan carries on several Obama administration initiatives that failed to garner approval from the Republican-controlled Congress. The plan also proposes to reform the current system of energy tax incentives by consolidating a number of targeted incentives for renewable and clean energy into broader categories and by making those tax incentives permanent (*i.e.*, not subject to phase-outs).

Conclusion

It is still too early to gauge how the new administration's infrastructure agenda will incorporate specific facets of any prior policy proposal, including the Navarro-Ross plan. Any infrastructure legislation actually passed by Congress will bear the imprint of significant bipartisan negotiations. However, we expect that President Trump and his advisers' emphasis on private investment and more frequent use of P3s will significantly increase opportunities for private sector participants and spur financial innovation in the area of infrastructure project delivery.