



March 28, 2017

Last week was a very busy one for Congress and the Trump Administration - SCOTUS confirmation hearings, discussions on both the FY'17 and FY'18 budgets, and, of course, the decision to pull the healthcare reform bill. Many observers are concerned that other Trump legislative priorities, such as the \$1T infrastructure initiative and the tax reform bill that is needed to fund such a plan, may be postponed indefinitely while congressional Republicans regroup and the White House finds its footing again. However, others believe that this is an opportune time for the President to work with Democrats to craft a bi-partisan infrastructure bill that could be a win for all sides.

FY'17 Appropriations

FY'17 began on October 1, 2016 – over six months ago. Congress has not been able to pass any FY'17 federal agency appropriations bills. In the meantime, federal agencies are operating under a temporary Continuing Resolution (CR) which expires on April 28. Under the current CR, all US DOT and other infrastructure programs are funded at FY'16 funding levels. Since Congress will be on recess for two weeks in mid-April they will most likely have to act by April 7 in order to avoid a government shutdown.

Congress has two options. One is to pass a year-long CR which will fund the remainder of FY'17 (through September 30, 2017) at the typically lower FY'16 levels. However, there is a rumored possibility that a year-long CR might include an “anomaly” to fund Highway Trust Fund programs at the higher FY'17 FAST Act authorized levels. There may also be an “anomaly” to provide the \$199M in FY'17 funding for Positive Train Control (PTC) implementation.

Or Congress can pass actual FY'17 appropriations bills which for most programs would provide higher levels of funding than in FY'16. Congressional staff has indicated that a FY'17 THUD (US DOT) appropriations bill has been reconciled and is ready to go, although the funding details have not been made public. It is now up to congressional leaders to decide whether to bring the bill to the floor – likely as part of a “omnibus” package with other agency bills – or simply extend the CR yet again. This decision will likely be made at the highest leadership levels based on national politics and legislative priorities, not on the merits of the individual bills.

However, to further complicate matters, late on Friday, the Trump Administration opted to send recommendations to Congress on cuts they want in FY'17 domestic discretionary programs. This is in addition to the FY'18 budget recommendations the Administration sent to Congress two weeks ago (see below). The Administration's proposed cuts for FY'17 are very, very unlikely to occur since, as noted above, Congress has generally already agreed



on funding levels for FY'17. The Administration recommendations include "reduction options" for only two US DOT programs. First, it proposes to eliminate all FY'17 TIGER funding (FY'16 funding was \$500M).

Second, the Administration recommends providing only \$1.7B for transit Capital Improvement Grants (CIG) which is only enough to fund projects with existing Full Funding Grant Agreements (FFGAs). The CIG program (New Starts, Small Starts, and Core Capacity projects) is authorized in the FAST Act at \$2.3B for FY'17. There are currently 55 projects at some point in the CIG pipeline. Perhaps more disturbing, the Administration proposes "to suspend additional projects from entering the program and believes localities should fund these localized projects". This language appears to say that the Administration will not sign any new FFGAs, including potentially for prominent CIG projects such as the Maryland Purple Line (a P3 project), CALTRAIN electrification (has implications for CAHSR), NJ/NY Gateway (a critical regional project), Indianapolis Red Line, Minneapolis SW line, and Dallas DART.

Despite the funding uncertainty, at this time, FTA staff is urging project sponsors to continue to work to move projects through the CIG pipeline. See more on CIG grants below.

FY'18 Budget and Appropriations -

The FY'18 fiscal year begins on October 1, 2017. The Trump Administration is not expected to release a full FY'18 budget recommendation until early May. In the meantime, two weeks ago it released a so-called "skinny" budget. The budget only references funding levels for a very limited number of programs with a focus on domestic discretionary programs. In the case of US DOT, there is no mention in the "skinny" budget of any so-called "mandatory" programs funded through the Highway Trust Fund, such as highway and transit formula programs, TIFIA, and FASTLANE grants. The assumption is that these programs will be recommended for full funding when the formal budget is released in May.

The "skinny" budget proposes to terminate FY'18 funding for TIGER grants, FTA Capital Improvement Grants (CIG) *except for projects with existing Full Funding Grant Agreements (FFGAs)*, Amtrak's long distance service, and the Essential Air Service (EAS) program for rural airports. The budget also proposes significant cuts to federal agency personnel. Here is a [link](#) to a press release issued by US DOT Secretary Elaine Chao in support of the Administration's budget request.

However, the Administration can only recommend funding levels. It is up to Congress to determine actual funding. TIGER, CIG, Amtrak, and EAS are very popular programs with Congress. While many Republican members will want to support the President, many



others will want to support their own funding priorities and protect popular local projects. House members, in particular, will be mindful that they need to get reelected in 2018.

Many observers have pointed out that there seems to be a disconnect between the recommended funding cuts and President Trump's promise of a \$1T infrastructure bill. However, the Administration has indicated that it wants to cut what it views as inefficient and ineffective programs and use the savings to fund what it considers to be more valuable programs in a subsequent infrastructure proposal. The rationales given by the Administration for the cuts include: state and local governments should manage and fund these programs, the federal government should not be funding or subsidizing projects that don't have regional or national impacts, the private sector could more effectively deliver the programs, and the programs are duplicative of other programs i.e. TIGER and FASTLANE.

Industry associations and stakeholders, project sponsors, state and local elected officials, and supportive members of Congress have begun major lobbying efforts to protect and defend the CIG, TIGER, and Amtrak programs, in particular. [Here is a link](#) to a "Dear Colleague" letter that is being organized in the House by Rep. Earl Blumenauer (D-OR) to urge the appropriators not to cut funding for the CIG program.

FY'17 Discretionary Grants

Before the Obama Administration left office it issued FY'17 Notices of Funding Opportunities (NOFOs) for two discretionary grant programs – Positive Train Control (PTC) and FASTLANE. Applications were received for both programs, but grants were never announced. Until Congress approves funding for the entirety of FY'17, these grants cannot be released. It is generally expected that Congress will include the \$199M authorized for the PTC program in whatever funding it passes for FY'17. It is anticipated that US DOT will announce the grants shortly thereafter because the selection criteria the Obama Administration used was based solely on the statute, only one year of funding was authorized, and the funding is for critical rail safety projects.

The FASTLANE grants also cannot be released until all the FY'17 funding has been appropriated - \$850M was authorized for FY'17 in the FAST Act. FASTLANE grants are aimed at nationally and regionally significant multi-modal freight and highway projects. It is possible that the Trump Administration may opt to "rebrand" the program and establish new selection criteria more in line with its priorities (such as private sector participation) rather than the Obama Administration's priorities. It could opt to reissue the NOFO and request updated project information or even new or revised applications. The President's FY'18 "skinny" budget request does not address FY'18 funding for FASTLANE grants which are authorized in the FAST Act at \$900M. FASTLANE grants are funded from the Highway Trust Fund, not with general funds, and therefore appear to be protected.



US DOT also cannot release FY'17 funding for the popular TIGER grants until a full years funding is in place. Despite the Trump Administration's recommendation to cut all funding for TIGER in both FY'17 and FY'18, we expect Congress to fund the program at approximately the same level as in FY'16 - \$500M. Many key congressional leaders are big fans of the TIGER program since critical projects in their states/districts have previously won TIGER grants. The Obama Administration, which essentially created the TIGER program in the 2009 ARRA economic stimulus act, did not release a NOFO for FY'17 TIGER grants before it left office. It is likely that the Trump Administration, assuming they proceed with a TIGER NOFO, will want to rename this program and refocus the criteria towards its priorities, such as P3 projects, and away from Ladders of Opportunity and other Obama priorities.

Other News

Yesterday, Attorney General Jeff Sessions announced that the Justice Department will begin to implement a recent Trump Administration Executive Order by requiring local and state governments to comply with federal provisions regarding so-called sanctuary cities before those jurisdictions can receive or remain eligible for certain federal grants. He said the department would withhold, and potentially claw back, grants to sanctuary cities and other localities that are not in compliance with federal immigration law. It is unclear at this time if transportation or other infrastructure grant funds would be affected. It is also unclear how the program would be implemented since there is no formal definition of what comprises a sanctuary city and local designations vary greatly.

On March 29, the Senate Commerce Committee will hold a confirmation hearing on the nomination of Jeffrey Rosen to be the US DOT Deputy Secretary. No other US DOT nominations have been announced. Here is a [link](#) to Rosen's bio.

Last week, US DOT/FHWA postponed for a second time the effective dates of two final MAP 21/FAST Act performance management rules - for pavement and bridge condition and for freight movement, congestion mitigation and air quality. The rules, which were finalized in the last days of the Obama Administration, were initially postponed for 60 days (until March 21) under guidance from the Trump White House to freeze pending and new regulatory actions government-wide to allow new department heads to review them. This [FHWA notice](#) postpones the effective date for another 60 days, to May 20. The additional extension also applies to several other US DOT regulations, including rail and safety regulations, finalized by the Obama Administration.

Infrastructure Week – this year Infrastructure Week will be held the week of May 15. Here is a [link](#) to information about the schedule of events in DC and around the country as well as the list of over 184 organizations who are participating in the week's activities.



Washington Update

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Recent publications of interest:

ASCE 2017 Infrastructure Report Card – [link](#)

APTA Industry Footprint – a breakdown of APTA members, including business members e.g. manufacturers and suppliers, by state and congressional districts, which can be used in efforts to educate members of Congress about local economic development impacts and job creation linked to CIG projects - [link](#)

AASHTO Transportation Governance and Finance Report – A 50-State Review of State Legislatures and State DOTs - [link](#); register for the related webinar on April 18 from 2:00 to 3:00pm ET – [link](#)

Amtrak Report on the Economic Benefits of Investment in the (NY/NJ) Gateway Program – [link](#)

ARTBA 2017 Bridge Report – includes a state by state report on deficient bridges - [link](#)

Additional information and materials, including archived Washington Updates, are located on the WSP | Parsons Brinckerhoff *Federal Briefing* website at www.federalbriefing.com .

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