

Legislative Outline for Rebuilding Infrastructure in America

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

I have enclosed with this message my Administration's framework for rebuilding infrastructure in America. Our Nation's infrastructure is in an unacceptable state of disrepair, which damages our country's competitiveness and our citizens' quality of life. For too long, lawmakers have invested in infrastructure inefficiently, ignored critical needs, and allowed it to deteriorate. As a result, the United States has fallen further and further behind other countries. It is time to give Americans the working, modern infrastructure they deserve.

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.

To develop the infrastructure framework I am transmitting today, my Administration engaged with Governors, mayors, Federal agencies, State and local agencies, Members of Congress, industry, and most importantly, the American people who depend on upgraded infrastructure. The product of these efforts is a roadmap for the Congress to draft and pass the most comprehensive infrastructure bill in our Nation's history. My Administration's plan addresses more than traditional infrastructure -- like roads, bridges, and airports -- but addresses other needs like drinking and wastewater systems, waterways, water resources, energy, rural infrastructure, public lands, veterans' hospitals, and Brownfield and Superfund sites. The reforms set forth in my plan will strengthen the economy, make our country more competitive, reduce the costs of goods and services for American families, and enable Americans to build their lives on top of the best infrastructure in the world.

My Administration is committed to working with the Congress to enact a law that will enable America's builders to construct new, modern, and efficient infrastructure throughout our beautiful land.

THE WHITE HOUSE,

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PART 1—FUNDING AND FINANCING INFRASTRUCTURE IMPROVEMENTS

I. INFRASTRUCTURE INCENTIVES PROGRAM

States and localities are best equipped to understand the infrastructure investments needs of their communities. The infrastructure incentives program, described below, would encourage increased State, local, and private investment in infrastructure. This program would provide for targeted Federal investments, encourage innovation, streamline project delivery, and help transform the way infrastructure is designed, built, and maintained.

Under this program, States and localities would receive incentives in the form of grants. Project sponsors selected for award would execute an agreement with express progress milestones. Federal incentive funds would be conditioned upon achieving the milestones within identified time frames.

A. Establishment of the Incentives Program

This provision would establish the Incentives Program to maximize investment in infrastructure. The purposes of this program would include—

- attracting significant new, non-Federal revenue streams dedicated to infrastructure investments;
- creating significant leverage of Federal infrastructure investments;
- assuring long-term performance of capital infrastructure investments;
- modernizing infrastructure project delivery practices;
- increasing economic growth;
- spurring the development and use of new and rapidly evolving infrastructure technology to improve cost and improve performance; and
- ensuring Federal grant recipients are accountable for achieving specific, measurable milestones.

B. Applicability

The Incentives Program would provide support to wide-ranging classes of assets, including the following governmental infrastructure: surface transportation and airports, passenger rail, ports and waterways, flood control, water supply, hydropower, water resources, drinking water facilities, wastewater facilities, stormwater facilities, and Brownfield and Superfund sites.

C. Funding

- $100 billion would be made available for the Incentives Program. The funds would be divided in specific amounts to be administered by the United States Department of Transportation (DOT), United States Army Corps of Engineers (USACE), and Environmental Protection Agency (EPA).

- Other Federal agencies seeking to incentivize eligible projects within their areas of jurisdiction could petition DOT, USACE, or EPA to transfer Incentives Program funds to be used consistent with the requirements under the program.
- A percentage of the Incentives Program funds would be set aside for temporary administrative expenses necessary to administer the program.

D. Applications and Evaluation Criteria

- Each lead Federal agency would solicit applications as soon as practicable after enactment of the Incentives Program and every six months thereafter.
- Each lead Federal agency would determine the content, format, and timing of applications and would make incentive awards. Applications also would include information on each of the evaluation criteria.
- The evaluation criteria would be—
  - the dollar value of the project or program of projects (weighted at 10 percent);
  - evidence supporting how the applicant will secure and commit new, non-Federal revenue to create sustainable, long-term funding for infrastructure investments (weighted at 50 percent);
  - evidence supporting how the applicant will secure and commit new, non-Federal revenue for operations, maintenance and rehabilitation (weighted at 20 percent);
  - updates to procurement policies and project delivery approaches to improve efficiency in project delivery and operations (weighted at 10 percent);
  - plans to incorporate new and evolving technologies (weighted at 5 percent); and
  - evidence supporting how the project will spur economic and social returns on investment (weighted at 5 percent).
- Each lead Federal agency would calculate each application score by multiplying the weighted score from the evaluation criteria by the percentage of non-Federal revenues (out of total revenues) that would be used to fund the project or program of projects.
- To ensure that applicants could receive credit for actions that occurred prior to the enactment of the Incentives Program that align with the desired outcomes of the program, the Incentives Program would include a look-back period. The look-back period would be defined as the time preceding the project sponsor's completed application during which the new revenue generation was implemented. Subsequent applications in later years would add such additional time to the time after enactment of the program. The look-back period would be three years before the date of application to the program, and the determination would be made based on the implementation date (or take effect date) of the new revenue source. In evaluating applications, the project sponsor's new revenue application score would be multiplied by a relevant multiplier to determine scoring as illustrated below:

Years Passed	New Revenue Credit Score Multiplier
>3	X percent
2-3	X percent
1-2	X percent
0-1	X percent
After February 2018	100 percent

- The lead Federal agency would have sole discretion to provide credit for previous revenue generation. The agency could request additional information from a project sponsor to clarify how the revenue source has met expectations and revise forecasts to reflect actual performance. The amount of funds dedicated to the look-back would not exceed 5 percent of the total amount for the Incentives Program.

E. Incentive Grant Awards

- An incentive grant could not exceed 20 percent of new revenue.
- Any individual State could not receive more than 10 percent of the total amount available under the Incentives Program.
- The lead Federal agency and the grant recipient would enter into an infrastructure incentives agreement setting forth progress milestones toward obtaining increased revenue that the recipient would achieve prior to receiving the grant award, which could include advance grant disbursements.
- Any agreement with incomplete milestones after two years would be voided, except upon determination by the lead Federal agency that good cause exists to renew the agreement for an additional period not to exceed one year. Any funds available from a voided agreement could be re-allocated through a new application process.

II. RURAL INFRASTRUCTURE PROGRAM

The Rural Infrastructure Program, described, below would provide for significant investment in rural infrastructure to address long-unmet needs. This investment is needed to spur prosperous rural economies, facilitate freight movement, improve access to reliable and affordable transportation options and enhance health and safety for residents and businesses. Under this program, States would be incentivized to partner with local and private investments for completion and operation of rural infrastructure projects.

A. Establishment of Rural Infrastructure Program

This provision would establish a Rural Infrastructure Program to—

- improve the condition and capability of rural infrastructure through capital improvements and outcomes-driven planning efforts that enhance private

sector productivity, modernize existing infrastructure systems, and prioritize projects essential for efficiency and safety;
- expand access to markets, customers, and employment opportunities with projects that sustain and grow business revenue and personal income for rural Americans;
- enhance regional connectivity through public and private interregional and interstate rural projects and initiatives that reduce costs for sustaining safe, quality rural communities; and
- increase rural economic growth and competitiveness by closing local infrastructure gaps in development-ready areas to attract manufacturing and economic growth to rural America.

B. Applicability

- Eligible asset classes under the Rural Infrastructure Program would include:
  - Transportation: roads, bridges, public transit, rail, airports, and maritime and inland waterway ports.
  - Broadband (and other high-speed data and communication conduits).
  - Water and Waste: drinking water, wastewater, stormwater, land revitalization and Brownfields.
  - Power and Electric: governmental generation, transmission and distribution facilities.
  - Water Resources: flood risk management, water supply, and waterways.
- This program only would apply to the specified asset classes and to other infrastructure assets directly attributable to, and essential to, the operation of those assets.

C. Funding

- $50 billion would be made available to the Rural Infrastructure Program for capital investments in rural infrastructure investments.
- 80 percent of the funds under the Rural Infrastructure Program would be provided to the governor of each State via formula distribution. The governors, in consultation with a designated Federal agency and State directors of rural development, would have discretion to choose individual investments to respond to the unique rural needs of their States.
- 20 percent of the funds under the Rural Infrastructure Program would be reserved for rural performance grants within eligible asset classes and according to specified criteria.
- Funds made available to States under this program would be distributed as block grants to be used for infrastructure projects in rural areas with populations of less than 50,000.
- A portion of the Rural Infrastructure Program funds would be set aside for Tribal infrastructure and territorial infrastructure, with the remainder available for States.

D. Distribution of Rural Infrastructure Program Formula Funds

- The statute would create a "rural formula," calculated based on rural lane miles and rural population adjusted to reflect policy objectives. Each State would receive no less than a specified statutory minimum and no more than a specified statutory maximum of the Rural Infrastructure Program formula funds, automatically.

E. Applications and Evaluation Criteria for Rural Performance Grants

- In addition to receiving formula funds under the Rural Infrastructure Program, States also could apply for rural performance grants and would be encouraged to do so within two years after enactment. Rural performance grants would be available for up to ten years after enactment or until funds were expended. In order to qualify for rural performance grants, a State would be required to:
  - Publish a comprehensive rural infrastructure investment plan (RIIP) within 180 days of receiving rural formula funds. The RIIP would demonstrate how the State's intended rural projects align with the evaluation criteria in the infrastructure incentives program, including State, local and private sector investment in eligible projects.
  - Demonstrate the quality of any investments planned with rural performance funds.
  - Demonstrate performance in leveraging formula distributions with Federal credit programs and rewarding rural interstate projects through the infrastructure incentives program.
  - Demonstrate the State's performance in utilization of Rural Infrastructure Program formula funds, consistent with the RIIP based on stated general criteria.
- For specific sectors, a State also would demonstrate other criteria the administering agency determines appropriate consistent with this program, including increased broadband availability and investment.

F. Tribal Infrastructure

- The Rural Infrastructure Program also would ensure investment in Tribal infrastructure by providing dedicated funding to the Secretary of Transportation for distribution through the Tribal Transportation Program and to the Secretary of Interior for distribution through grants or awards to Tribes determined by a process created in consultation with Tribes.

G. Territorial Infrastructure

- The Rural Infrastructure Program also would provide dedicated funding to address infrastructure needs of U.S. Territories.

III. TRANSFORMATIVE PROJECTS PROGRAM

The Transformative Projects Program, described below, would provide Federal funding and technical assistance for bold, innovative, and transformative infrastructure projects that could dramatically improve infrastructure. Funding under this program would be awarded on a competitive basis to projects that are likely to be commercially viable, but that possess unique technical and risk characteristics that otherwise deter private sector investment. The Transformative Projects Program would support projects that, with Federal support, are capable of generating revenue, would provide net public benefits, and would have a significant positive impact on the Nation, a region, State, or metropolitan area.

A. Establishment of Transformative Projects Program

This provision would establish a program to advance transformative projects. The purposes of the Transformative Projects Program would include—

- significantly improving performance, from the perspective of availability, safety, reliability, frequency, and service speed;
- substantially reducing user costs for services;
- introducing new types of services; and
- improving services based on other related metrics.

B. Applicability

- The Transformative Projects Program would fundamentally transform the way infrastructure is delivered or operated. They would be ambitious, exploratory, and ground-breaking project ideas that have significantly more risk than standard infrastructure projects, but offer a much larger reward profile.
- Infrastructure sectors covered by this program could include, but would not be limited to, the transportation, clean water, drinking water, energy, commercial space, and broadband sectors.

C. Funding

- $20 billion would be made available for the Transformative Projects Program.
- The Department of Commerce (DOC) would serve as the Chair for the purposes of program administration and could request other relevant Federal agency employees to serve on a temporary assignment to assist in the administration of this program.
- A percentage of the Transformative Projects Program funds would be set aside for temporary administrative expenses necessary to administer the program, including technical assistance.

D. Funding Tracks

- Funding under this program would be available under three tracks, each of which would be designed to support a distinct phase of the project life cycle:

demonstration, project planning, and capital construction. Applicants could apply for funding under all three tracks or under individual tracks.

- To optimize the return on taxpayer investment, funding under this program could be used for—
  - up to 30 percent of eligible costs under the demonstration track;
  - up to 50 percent of eligible costs under the project planning track; and
  - up to 80 percent of eligible costs under the capital construction track.

E. Technical Assistance

- An applicant could seek technical assistance from the Federal Government in addition to the funding tracks, or could seek technical assistance alone under the Transformative Projects Program.

F. Applications and Evaluation Criteria

- The DOC would administer the Transformative Projects Program with an interagency selection committee composed of representatives of relevant Federal agencies. The Secretary of Commerce would serve as the chair of the committee. Given the multidisciplinary nature of the Transformative Projects Program, interagency evaluation panels comprised of individuals from the applicable Federal agencies would review and evaluate all applications.

G. Partnership Agreement and Project Milestones

- Applicants selected for award under the Transformative Projects Program would enter into a partnership agreement with the Federal Government, which would specify the terms and conditions of the award, major milestones, and other key metrics to assess performance.

H. Value Sharing Structure for Capital Construction Track

- As a condition of receiving any financial assistance for a construction project under the capital construction track, an applicant would be required to include in its partnership agreement a value share agreement with the Federal Government. The terms of the value share agreement would vary by project based on the characteristics of the specific project and its projected revenue profile. Each agreement would provide the terms for the Federal Government to share in any project value.

I. Performance Monitoring and Oversight

- Given the innovation and substantial Federal support projects would receive under this program, the recipients would be required to publish performance information upon achieving milestones and upon project completion. The lead

Federal agencies also would conduct regular audits to ensure that funds were used for eligible costs.

IV. INFRASTRUCTURE FINANCING PROGRAMS

The below infrastructure financing proposals would dedicate $20 billion of the overall amount to advance major, complex infrastructure projects by increasing the capacity of existing Federal credit programs to fund investments and by broadening the use of Private Activity Bonds (PABs).

Of the appropriated funds, $14 billion would be made available for the expansion of existing credit programs to address a broader range of infrastructure needs, giving State and local governments increased opportunity to finance large-scale infrastructure projects under terms that are more advantageous than in the financial market. All funds remaining in credit programs ten years after enactment would be diverted to the Federal capital financing fund, to allow for efficient acquisition of real property.

The budgetary cost for the expansion of PABs would be $6 billion. These provisions would provide tools and mechanisms for market participants to invest in public infrastructure.

A. Expand Transportation Infrastructure Finance and Innovation Act (TIFIA) Funding and Broaden Program Eligibility

- Additional budget authority would be made available to DOT for subsidy costs under TIFIA. Specific funds set aside from the appropriated subsidy would be appropriated to DOT, notwithstanding Section 2001 of the Fixing America's Surface Transportation Act of 2015, and would remain available until end of Fiscal Year 2028.
- ***Support airport and non-Federal waterways and ports financing options.*** TIFIA currently limits project eligibility to those that are eligible for Federal assistance through existing surface transportation programs (highway projects and transit capital projects). Port and airport infrastructure enhancement and expansion projects across the United States do not have access to the credit assistance that is available via TIFIA for other types of transportation infrastructure projects, making it more difficult for project sponsors to pursue alternative project delivery for airports and to implement critical airport infrastructure improvements. Amending the project eligibility in the TIFIA statute to enable TIFIA to offer loans and other credit assistance to non-Federal waterways and ports and airport projects (such as renovated or new passenger terminals, runways, and related facilities) would incentivize project delivery for airports and ports and would accelerate overall improvements in airport and seaport infrastructure.

B. Expand Railroad Rehabilitation and Improvement Financing (RRIF) and Broaden Program Eligibility

- Additional budget authority would be made available to DOT for subsidy costs under RRIF. Specific funds set aside from the appropriated subsidy would be appropriated to DOT, notwithstanding Section 2001 of the Fixing America's Surface Transportation Act of 2015, and would remain available until end of Fiscal Year 2028.
- ***Subsidize RRIF for short-line freight and passenger rail.*** The current RRIF law does not provide specific subsidies or incentives for either short-line freight rail or passenger rail projects. A subsidy is not currently provided to cover the cost of the RRIF credit risk premium, so the project sponsor is always required to pay that amount at the time of the loan disbursement. The cost of the credit risk premium is often cited as one of the reasons that project sponsors, including those in the short-line freight rail and passenger rail sectors, are reluctant to pursue RRIF financing. Amending the law (45 U.S.C. 822) to provide a subsidy to cover the RRIF credit risk premium for short-line freight and passenger rail project sponsors would incentivize more project sponsors to pursue RRIF credit assistance for projects. This, in turn, would leverage more State and local funds for rail infrastructure development.

C. Expand Water Infrastructure Finance and Innovation Act (WIFIA) Funding and Broaden Program Eligibility

- Additional budget authority would be made available to EPA for subsidy costs under WIFIA, and the current lending limit of $3.2 billion would be removed. Specific funds set aside from the appropriated subsidy would be appropriated to the EPA, notwithstanding Section 5033 of the Water Infrastructure Finance and Innovation Act of 2014, and would remain available until end of Fiscal Year 2028.
- This proposal includes the following additional reforms to WIFIA:
  - ***Expand EPA's WIFIA authorization to include non-Federal flood mitigation, navigation and water supply.*** Currently, WIFIA is authorized for almost all types of water projects. While EPA has drought mitigation and stormwater mitigation authorities, it lacks authority for flood mitigation, hurricane and storm damage reduction, navigation, environmental restoration, and restoration of aquatic ecosystems (which has principally been within USACE's jurisdiction). This creates an unnecessary and arbitrary carve-out of integrated water projects to which EPA is unable to provide loans because those types of projects are not authorized by EPA, only by USACE. Amending the law (33 U.S.C. 3905) to include flood mitigation, navigation and water supply would allow EPA to service the full water cycle and provide one streamlined and integrated lending process to project sponsors.
  - ***Eliminate requirement under WIFIA for borrowers to be community water systems.*** Currently, a public authority that sells water directly to another water provider is not a community water system and is not eligible for WIFIA funding unless specific statutory authority is provided. Without explicit statutory eligibility, this type of public authority (e.g., a desalination

plant) is unable to receive WIFIA funding. Removing the restriction that requires borrowers to be "community water systems" instead of just "water systems" (33 U.S.C. 3905) would allow drinking water providers and other public authorities to participate in WIFIA and the Drinking Water State Revolving Fund (DWSRF) programs.

- ***Authorize Brownfield rehabilitation and cleanup of Superfund sites under WIFIA.*** Currently, only specific water sector projects are authorized under WIFIA. Brownfield and Superfund programs do not have access to a Federal lending program that requires large upfront funding and repayment based on later development. Broadening eligibility under WIFIA (33 U.S.C. 3905) to include remediation of water quality contamination by non-liable parties at Brownfield and Superfund sites would enable greater use of the program to address water quality issues. A separate account would be appropriate for individual eligibilities and ranking metrics because new revenues would be more speculative and would lower the leveragability ratio for all WIFIA loans.
- ***Reduce rating agency opinions from two to one for all borrowers.*** Current law requires borrowers to provide two opinion letters from rating agencies for WIFIA loans. Opinion letters can be expensive and time intensive for borrowers to obtain. Reducing from the number of required rating agency final opinions for borrowers (33 U.S.C. 3907) to allow for one opinion letter instead of two would reduce WIFIA borrowing costs for borrowers. At the same time, retaining agency authority to request two letters from a borrower under WIFIA would ensure continued protection of Federal interests and would minimize default risk when a project warrants a second letter.
- ***Provide EPA authority to waive the springing lien in certain lending situations.*** Currently, loans under WIFIA must have a springing lien in place. This is a problem when a project sponsor has outstanding senior debt obligations. Without a waiver to the springing lien requirement, the sponsor has to use more expensive debt, and WIFIA has less security in the special purpose vehicle. Amending the law (33 U.S.C. 3908(b)) to allow for a waiver of the WIFIA springing lien in certain instances similar to the TIFIA statute (23 U.S.C. 603(b)) (i.e., where a project has an A category rating, where the pledge is not dependent on project revenue, or where the borrower is a public sector borrower) would allow for the most efficient capital structure for agencies with existing senior debt.
- ***Increase the base level of administrative funding authorized to ensure EPA has sufficient funding to operate the WIFIA program.*** The current authorized administrative funds level for EPA was determined when WIFIA was a pilot program and may not be sufficient to cover both administrative costs and the fronting of underwriting costs, especially with our proposed expansion of WIFIA. Authorizing an administrative set-aside (33 U.S.C. 3912(b)) to an amount in line with similar programs would more accurately reflect the costs required to administer the WIFIA program and would allow for hiring appropriate staff for the oversight efforts associated with a larger portfolio.

- ***Remove the restriction on the ability to reimburse costs incurred prior to loan closing under WIFIA.*** A recent amendment to WIFIA restricts the WIFIA program's ability to reimburse costs incurred prior to loan closing. This amendment, part of the Water Infrastructure Improvements for the Nation Act (WIIN Act), attempts to ensure that costs incurred prior to loan closing may be considered eligible project costs. However, the WIIN amendment only allows non-WIFIA funds to reimburse the costs. Revising the law (33 U.S.C. 3908(b)) to provide that costs incurred prior to loan closing are eligible costs that can be covered by the WIFIA loan would prevent the borrower from having to raise significant sums of money prior to loan closing.
- ***Expand the WIFIA program to authorize eligibility for credit assistance for water system acquisitions and restructurings.*** Currently, projects only are allowed to access WIFIA for acquisitions of water systems prior to substantial completion, similar to TIFIA. This prevents WIFIA funds from being used for acquisition of water systems after they are completed, or substantially completed. Expanding WIFIA authorization (33 U.S.C. 3905) to allow for acquisitions and restructurings would enable WIFIA as a mechanism for consolidation in the water industry.
- ***Expand WIFIA authorization to include Federal deauthorized water resource projects.*** Currently, WIFIA is authorized for non-Federal water resource projects unless they are deemed Federal projects. Once deemed Federal, a project is no longer eligible for WIFIA borrowing, even if no Federal funding is used. This hinders the ability to incentivize non-Federal involvement for USACE projects. Authorizing USACE to defederalize water resource projects upon transfer of title and ownership from the Federal Government to a willing and capable non-Federal entity would enable WIFIA to be used for these projects.

D. Expand Department of Agriculture Rural Utilities Service (RUS) Lending Programs Funding

- Additional budget authority would be made available to the USDA for loan subsidy costs under RUS lending programs. Specific funds set aside from the appropriated subsidy would be made available to the USDA, notwithstanding applicable sections of the Agriculture Act of 2014, and would remain available until end of Fiscal Year 2028.

E. Create Flexibility and Broaden Eligibility to Facilitate use of Private Activity Bonds (PABs)

- These provisions would create flexibility and broaden eligibility to facilitate use of PABs to leverage financing for public-purpose infrastructure projects. These provisions also would allow for greater Federal leverage and therefore more efficient infrastructure improvements.

- ***Require public attributes for public infrastructure projects.*** In extending tax exemptions to private enterprises, tax benefits could go to purely private enterprises, which would not be beneficial to the public or a sound use of public tax benefits. Requiring public infrastructure projects to have the following public attributes would ensure the public nature of eligible infrastructure—
    - either State or local governmental ownership or private ownership under arrangements in which rates charged for services or use of projects are subject to State or local governmental regulatory or contractual control or approval; and
    - availability of projects for general public use (e.g., public roads) or provision of services to the general public (e.g., water service).

  For purposes of the governmental ownership alternative under the public attributes requirement, a new safe harbor would treat a project as governmentally owned when a State or local governmental unit leases the project to a private business provided that—
    - the term of the private lease is no longer than 95 percent (rather than 80 percent under the existing safe harbor) of the reasonably expected economic life of the project;
    - the private lessee irrevocably agrees not to take depreciation or investment tax credit with respect to the project; and
    - the private lessee has no option to purchase the project other than at fair market value.
- ***Broaden eligibility of PABs.*** Current law includes a limited list of exempt facilities eligible to be financed with tax-exempt bonds. Additionally, different categories of exempt facilities are subject to varying requirements, which restricts the usefulness of PABs. This limits the potential financing tools that can be used to facilitate performance-based infrastructure, both for a wide variety of transportation projects and other public-purpose infrastructure projects. The revised parameters would allow longer-term private leases and concession arrangements for projects financed with PABs. Amending the law (26 U.S.C. 142) to allow broader categories of public-purpose infrastructure, including reconstruction projects, to take advantage of PABs would encourage more private investment in projects that benefit the public. Allowing privately financed infrastructure projects to benefit from similar tax-exempt financing as publicly financed infrastructure projects would increase infrastructure investment. This proposal would expand and modify eligible exempt facilities for PABs to include the following public infrastructure projects.
    - Existing categories:
        - airports (existing category);
        - docks, wharves, maritime and inland waterway ports, and waterway infrastructure, including dredging and navigation improvements (expanded existing category);
        - mass commuting facilities (existing category);
        - facilities for the furnishing of water (existing category);
        - sewage facilities (existing category);
        - solid waste disposal facilities (existing category);

- Modified categories:
    - qualified surface transportation facilities, including roads, bridges, tunnels, passenger railroads, surface freight transfer facilities, and other facilities that are eligible for Federal credit assistance under title 23 or 49 (i.e., qualified projects under TIFIA) (existing category with modified description);
    - hydroelectric power generating facilities (expanded existing category beyond environmental enhancements to include new construction);
    - flood control and stormwater facilities (new category);
    - rural broadband service facilities (new category); and
    - environmental remediation costs on Brownfield and Superfund sites (new category).
- ***Eliminate the Alternative Minimum Tax preference on PABs.*** One reason why PABs have been underutilized is due to the punitive market interest rate effect of the Alternative Minimum Tax (AMT) tax preference on PABs, which adds an estimated 30-40 basis points (0.30-0.40 percent) yield premium to the borrowing rate for PABs compared to traditional governmental municipal bonds due to the more limited demand. This creates inconsistent premiums for service providers and disincentives for borrowers to use this financing mechanisms. Eliminating the AMT preference on PABs would lower borrowing costs and increase the utilization of PABs.
- ***Remove State volume caps and transportation volume caps on PABs for public purpose infrastructure projects and expand eligibility to ports and airports.*** Clean water and drinking water projects currently are subject to State volume caps for PABs, based on population. In recent years, as little as 1-1.5 percent of all exempt bonds were issued to water and wastewater projects. Exceptions from the volume cap currently are provided for other governmentally owned facilities such as airports, ports, housing, high-speed intercity rail, and solid waste disposal sites. Additionally, many performance-based infrastructure projects for transportation facilities described in 26 U.S.C. 142(m) have taken advantage of PABs, which allow private sector developers to benefit from similar tax-exempt subsidies provided to public sector borrowers. The law establishes a nationwide volume cap of $15 billion for these projects, to be allocated by the Secretary of Transportation.
    - These caps create uncertainty as to the availability of PABs in the future, as projects require long lead times for development, and no additional PABs may be issued for this type of facility once the cap has been exhausted.
    - Amending 26 U.S.C. 146 to remove the population-based volume cap applicable to PABs for public purpose infrastructure projects of the types covered by this proposal that have the requisite public attributes would level the playing field between public and private service providers.
    - Amending 26 U.S.C. 142(m) to eliminate the nationwide cap would provide certainty that PABs would be available to a project sponsor as it developed and evaluated a project's financial strategy. This provision would apply only if a State volume cap did not already apply.

- ***Provide change-of-use provisions to preserve the tax-exempt status of governmental bonds.*** Currently, when a public project is purchased by a private service provider, the tax-exempt status is eliminated when the private use limits on government bonds are exceeded. This creates a structural barrier to the private sector acquiring projects because that cost premium must be funded at closing. Adding change-of-use curative provisions (26 U.S.C. 150) to protect the tax-exempt status of governmental bonds in transactions involving private business use of projects financed with governmental bonds that otherwise would violate private business use limits on those bonds (e.g., private leases) would eliminate this private sector barrier. One curative action would allow alternative business use of the public project in a manner that would qualify as an infrastructure project eligible for a new issuance of PABs under the proposal. Another curative action would allow recycling of an amount equal to the total present value of a private lease of any project financed with governmental bonds into expenditures for governmental use within two years of the lease.
- ***Provide change-of-use cures for private leasing of projects to ensure preservation of tax exemption for infrastructure projects.*** Currently, Treasury regulations allow certain change-of-use remedial actions to preserve the tax exemption for the tax-exempt governmental bonds upon a violation of private business use restrictions. Existing remedial actions include: defeasance of the outstanding bonds, "recycling" amounts received to qualifying government uses within two years, or alternative use of a project in a way that would qualify for tax-exempt bonds (including PABs) if retested at the time of use. These change-of-use cures do not include private leasing as a remedial action that would preserve tax-exempt status of the bonds. Therefore, the private sector market participants are not able to access the tax-exempt debt market for public infrastructure. Providing for tailored change-of-use remedial actions that preserve the tax exemption status upon private leasing of projects subject to outstanding tax-exempt government bonds or allowing "recycling" the total present value of the private lease payments into public and governmental uses within two years would ensure the assets retain the tax-exempt status of the associated debt obligations.

V. PUBLIC LANDS INFRASTRUCTURE

The below public lands provisions would enable the additional revenues generated from energy development on public lands to pay for capital and maintenance needs of public lands infrastructure. The Department of the Interior (DOI) manages an extensive infrastructure asset portfolio. The infrastructure managed by the DOI includes approximately 100,000 miles of roads as well as dams, bridges, and irrigation and power infrastructure. Taking care of this significant asset portfolio is a persistent challenge. The National Park Service (NPS) has a deferred maintenance backlog of $11.3 billion, half of which is for roads, bridges and tunnels, and the U.S. Fish and Wildlife Service also has a deferred maintenance backlog of $1.2 billion. To address this infrastructure need, this provision would establish a new infrastructure fund in the U.S. Treasury entitled the Interior Maintenance Fund (Fund) comprised of

additional revenues from the amounts due and payable to the United States from mineral and energy development on Federal lands and waters.

A. Establish Interior Maintenance Fund

- Currently, receipts generated from mineral and energy development on public lands are not available for capital and maintenance of public infrastructure.
- This limitation perpetuates the deferred maintenance backlog for public lands infrastructure.
- Allowing half of additional receipts generated by expanded Federal energy development to be deposited into the Fund would help the DOI address this backlog. Such receipts would be deposited into the Fund until the cumulative amount deposited had reached $18 billion.
- The receipts deposited in the Fund would be made available to the Secretary of the Interior, without fiscal year limitation, to address the deferred maintenance and capital needs for infrastructure in national parks and wildlife refuges.
- The DOI would use its capital asset management systems to prioritize projects, monitor implementation, and measure results.

VI. DISPOSITION OF FEDERAL REAL PROPERTY

The below provisions would establish authority to allow for the disposal of Federal assets to improve the allocation of economic resources in infrastructure investment.

A. Codify Accelerated Depreciation for the Disposition of Non-Federal Assets with a Federal Interest Due to Grant Receipt

- Currently, it is unclear which disposition actions utilities and municipalities may have undertaken with assets funded by Federal construction grants and earmarks. Prior to Executive Order 12803—Infrastructure Privatization (1992) —the federally funded share of any disposed asset was to be returned to Treasury.
- This lack of clarity results in project sponsors not understanding their responsibilities and benefits when disposing of federally funded assets and some sponsors choosing not to dispose of assets due to incorrect assumptions.
- Codifying Executive Order 12803 would allow accelerated depreciation for the disposition of non-Federal assets and application of those rules to any dispositions undertaken since issuance of the Executive Order. Directing the agencies to provide guidance on implementation also would provide clarity for utilities and municipalities when divesting or privatizing assets.

B. Streamline and Improve the Federal Real Property Disposal Process

- The current statutory disposal process for real property is governed primarily by title 40 of the United States Code, with many requirements that are burdensome and delay sale or disposal of federally owned assets.

- The Federal real property civilian inventory is comprised of facilities with an average age of 47 years, many of which are inefficient and outdated. Today, agencies require more flexible work environments; however, the Government largely is unable to tap into the value of the portfolio due to the current statutory limitations.
- Amending the statute to allow agencies to move property to market more quickly and retain the gross proceeds of sale would allow the Government to be more nimble and lower costs.
    - ***Allow the Government to take assets no longer needed by any Federal agency directly to market.*** Currently, title 40 of the United States Code requires agencies to screen a potential disposal for at least 12 public benefit conveyance requirements. State and local governments and certain non-profit institutions may acquire surplus real property at discounts of up to 100 percent for various types of public use. This process can take years to complete. Allowing the Government to take assets no longer needed by any Federal agency directly to market would allow any interested party to purchase assets at fair market value without any preferences or right of first refusal.
    - ***Retain proceeds for reinvestment in agency real property requirements.*** Under current law, most agencies lack retention of proceeds authority, and nearly all agencies with retention authority require an appropriation to access the funds. This creates a disincentive to agency disposition action and prevents reinvestment in mission-critical Federal facilities. Amending the statute to allow retention of proceeds and expenditure without future authorization or appropriation would allow agencies to take immediate action reinvesting in critical real property assets, reconfiguring space to improve utilization and lower costs, and disposing of additional unneeded assets. This provision also would allow proceeds to be retained without fiscal year limitation.
    - ***Expand the allowable uses of the General Services Administration (GSA) Disposal Fund.*** Current authority limits GSA assistance to other Federal agencies for those activities that occur after a report of excess (which highlights unneeded real property). GSA does not have authority to help agencies on activities that prepare for the report of excess, which inhibits the agencies' ability to dispose of assets. Additionally, agencies do not always complete these activities because agencies must fund them from their limited resources. Expanding authority to allow GSA to support activities that occur prior to the report of excess, including identifying, preparing, and divesting properties prior to the report of excess, would reduce the Federal footprint and allow more efficient asset management. Under this provision, the same account properties would remain, allowing GSA to recover costs from the gross proceeds prior to agency retention.
    - ***Eliminate the requirement to transfer funds above the identified threshold to the Land and Water Conservation Fund.*** Current non-GSA property disposal under title 40 requires a transfer to the Land and Water Conservation Fund. Eliminating the requirement to transfer funds above the identified

threshold to the Land and Water Conservation Fund would maximize the funds available to support disposition actions.

C. Authorize Federal Divestiture of Assets that Would Be Better Managed by State, Local, or Private Entities

- The Federal Government owns and operates certain infrastructure that would be more appropriately owned by State, local, or private entities.
- For example, the vast majority of the Nation's electricity needs are met through for-profit investor-owned utilities. Federal ownership of these assets can result in sub-optimal investment decisions and create risk for taxpayers.
- Providing Federal agencies authority to divest of Federal assets where the agencies can demonstrate an increase in value from the sale would optimize the taxpayer value for Federal assets. To utilize this authority, an agency would delineate how proceeds would be spent and identify appropriate conditions under which sales would be made. An agency also would conduct a study or analysis to show the increase in value from divestiture. Examples of assets for potential divestiture include—
  - Southwestern Power Administration's transmission assets;
  - Western Area Power Administration's transmission assets;
  - Ronald Reagan Washington National and Dulles International Airports;
  - George Washington and Baltimore Washington Parkways;
  - Tennessee Valley Authority transmission assets;
  - Bonneville Power Administration's transmission assets; and
  - Washington Aqueduct.

VII. FEDERAL CAPITAL FINANCING FUND

Before an agency can purchase real property, it must receive an appropriation for the full purchase price. The full appropriation scores in that year against the discretionary caps and against the maximum funding (the 302(b) allocation) that the Appropriations Subcommittee can provide. This is problematic for large-dollar, irregular acquisitions because they must compete with agency operating and programmatic expenses for the limited resources available. The below provisions would create a funding mechanism to address this issue.

A. Create Federal Capital Financing Fund

- Too often, tight spending limits mean that purchases are not funded, and agencies must resort to signing long-term leases. These are always more expensive to taxpayers over the long run because Treasury can always borrow at the lowest rate. Because rent is obligated one year at a time, the lease payments can fit within an agency's budget without disrupting other needs. In contrast, private firms and State and local governments budget for purchases of real property in separate capital budgets so that real property purchases do not compete with annual operating needs. Their system allows proposed purchases

to be compared to each other and ranked such that the ones with the highest return on investment are funded within the total capital budget.

- This provision would create a funding mechanism that is similar to a capital budget but operates within the traditional rules used for the Federal budget by establishing a mandatory revolving fund to finance purchases of federally owned civilian real property. Of the total appropriation, $10 billion would be made available to capitalize the revolving fund. Upon approval in an Appropriations Act, the revolving fund would transfer money to agencies to finance large-dollar real property purchases. Purchasing agencies would then be required to repay the fund in 15 equal annual amounts using discretionary appropriations.
- As a result, purchases of real property assets would no longer compete with annual operating and programmatic expenses for the limited funding available under tight discretionary caps. Instead, agencies would pay for real property over time as the property were utilized. The repayments would be made from future appropriations, which would provide an incentive to select projects with the highest return on investment, including future cost avoidance. The repayments also would replenish the revolving fund so that real property could continually be replaced as needed.

PART 2—ADDITIONAL PROVISIONS FOR INFRASTRUCTURE IMPROVEMENTS

I. TRANSPORTATION

These provisions would incentivize and remove barriers to the development and improvement of transportation infrastructure in our Nation. These provisions would encourage and incentivize alternative project delivery, including State, tribal, local and private investment, in transportation; streamline Federal procedures for delivering transportation projects; and decrease barriers and reduce unnecessary Federal oversight to facilitate timely delivery of projects. This renewed investment in transportation would strengthen our economy, enhance our competitiveness in world trade, create jobs and increase wages for our workers, and reduce the costs of goods and services for our families.

A. Financing

1. *Provide States Tolling Flexibility*

- ***Provide States flexibility to toll on Interstates and reinvest toll revenues in infrastructure.*** Currently, Federal law allows tolling Interstates in limited circumstances. Tolling restrictions foreclose what might otherwise serve as a major source of revenue for infrastructure investment. Providing States flexibility to toll existing Interstates would generate additional revenues for States to invest in surface transportation infrastructure. Current requirements that States must reinvest toll revenues in infrastructure would continue to apply.

- ***Reconcile the grandfathered restrictions on use of highway toll revenues with current law.*** Toll facilities that received Federal approval under the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA) may use toll revenues only for the construction, reconstruction, operation, and debt service of the toll facility itself. Current law, however, allows other toll facilities to use toll revenues (in addition to the costs noted above) on other title 23 projects. The tighter restrictions, specific to the STURRA toll facilities, prevent some States from devoting existing toll revenues to other critical highway projects. Adjusting the STURRA "use of revenues" provisions to align with current toll authorities would free these resources and allow other critical highway projects to go forward.

2. *Extend Streamlined Passenger Facility Charge Process from Non-hub Airports to Small Hub Airports*

- Current law (49 U.S.C. 40117) outlines the application process to impose passenger facility charges (PFCs), as well as the approval process and pilot program for alternative procedures. Small, medium, and large hub airports must provide extensive documentation in PFC applications to demonstrate the eligibility, justification, objective, project costs, significant contribution (large and medium hubs) and other requirements. The streamlined non-hub process requires reduced information, primarily relating to project descriptions and costs.
- Current law creates an unreasonable burden on small hub airports filing PFC applications.
- Extending the streamlined PFC process to small hub airports would allow these airports to more readily fund needed development as well as reduce delays and unnecessary requirements in the PFC process.

3. *Provide States Flexibility to Commercialize Interstate Rest Areas*

- Federal law prohibits most commercial activity within the Interstate right-of-way, including at Interstate rest areas.
- This limits infrastructure investment opportunities and the ability to generate revenues to operate and maintain Interstates.
- Amending the law (23 U.S.C. 111) to provide States flexibility to commercialize Interstate rest areas, and requiring the revenues to be reinvested in the corridor in which they are generated, would support new infrastructure investment. States would not be permitted to charge fees for essential services such as water or access to restrooms.

4. *Provide New Flexibility for Transportation Projects with De Minimis Federal Share*

- Under current law, even when a State or private sector entity provides the majority of the funding for a project, it still must seek review and approval under the laws of any Federal agency with jurisdiction.

- The additional procedures, costs and time delays associated with Federal requirements discourage infrastructure investments by State and local entities and private investors. Federal requirements also contribute to unnecessary delays in delivering needed projects even when the Federal interest is small.
- Amending titles 23 and 49 to provide targeted flexibility pertaining to the application of Federal requirements where the project funding is primarily non-Federal and the Federal share is minimal would increase investments in infrastructure and reduce project delays and costs.

5. *Expand Qualified Credit Assistance and Other Capabilities for State Infrastructure Banks*

- State infrastructure banks (SIBs) currently are underutilized.
- This underutilization can inhibit State and local governments from best directing Federal funds to infrastructure projects.
- Providing incentives to use SIBs, such as reducing federalization requirements on funds lent to SIBs that are deployed locally, could encourage the use of SIBs. Expanding the legal capabilities of SIBs, in addition to direct appropriations, would allow SIBs to take responsibility for infrastructure funding in an effective manner that may not be possible for the Federal Government, particularly for rural projects or projects of smaller total cost.

B. Highways

1. *Authorize Federal Land Management Agencies to Use Contracting Methods Available to States*

- Current law authorizes State departments of transportation (State DOTs) and local governments to use a range of commonly used project delivery methods (e.g., electronic bidding, bridge bundling, project bundling, construction manager-general contractor), but does not authorize Federal Land Management Agencies (FLMAs) to use these same methods—even when the FLMAs are delivering projects with title 23 funds.
- This constrains FLMAs' procurement options, which in some cases increases the cost or timeline for delivering Federal lands highway projects.
- Expanding to FLMAs all title 23 contracting methods (for projects funded with title 23 funds) would enable more efficient delivery of these projects.

2. *Raise the Cost Threshold for Major Project Requirements to $1 Billion*

- Current law (23 U.S.C. 106(h)) defines a major project as any project that receives Federal financial assistance and has an estimated total project cost of $500 million or more. Financial plans and project management plans must be submitted to the Federal Highway Administration (FHWA) for all major projects.

- For projects that are routinely managed by FHWA and State DOTs, these requirements do very little to ensure the success of the project. Instead, the requirements create an administrative burden that wastes resources and delays project delivery.
- Amending the law to raise the threshold for major projects from $500 million to $1 billion would remove unnecessary oversight requirements from smaller, less complex projects that are routinely managed by FHWA and State DOTs.

3. *Authorize Utility Relocation to Take Place Prior to NEPA Completion*

- Current law requires any utility relocation to occur after completion of the NEPA review process. Utility relocation is similarly restricted for transit projects.
- Most projects with pre-construction activities include utility relocation, which typically is a long lead item that cannot start until NEPA is completed. This contributes to construction delays and cost escalation.
- Amending the law to allow utility relocation to take place prior to NEPA completion would streamline the building process, reduce overall construction time, and lower costs. Under this proposal, appropriate limitations would be included to ensure the integrity of the NEPA process, such as making the reimbursement of costs incurred dependent on the selection of an alternative that requires the utilities to be relocated. Relocation costs only would be reimbursed if a project were completed.

4. *Authorize Repayment of Federal Investment to Eliminate Perpetual Application of Federal Requirements*

- Projects that use of Federal-aid highway funds for the construction of a highway or bridge are constrained by Federal requirements. Many of these requirements continue to apply to the facility after the project is complete. These requirements include restrictions on tolling; requirements pertaining to the location of a commercial plaza within the right-of-way of an Interstate highway; restrictions on Interstate access; and compliance with size and weight standards, highway beautification standards, and high occupancy vehicle lane operation standards.
- These perpetual Federal requirements can inhibit a State's ability to obtain value from the facility and have flexibility with respect to its future operations and maintenance. In the past, whenever a State wished to be released from the application of these requirements, Congress enacted a specific statutory provision that permitted the State to refund the Federal investment in that facility. Upon repayment of Federal funds, the State was relieved of compliance with the Federal requirements that attached to the facility.
- Amending the law to provide general authority for States to repay the Federal investment in a facility would provide States with the ability to obtain value from their assets and flexibility in how their highways and bridges are operated and maintained. The repayment of Federal funds invested in a facility would be

the actual amount of Federal investment, unadjusted for inflation. Any funds repaid in this manner would be credited to the Highway Trust Fund, and the State would receive an equal amount of funding (available for obligation) under the Surface Transportation Block Grant Program.

5. *Provide Small Highway Projects with Relief for the Same Federal Requirements as Major Projects*

- Currently, some smaller scale projects (e.g., those typically eligible for transportation alternatives) funded under the Surface Transportation Block Grant Program must be treated as major highway projects, even if they are not located within the right-of-way of a Federal-aid highway (23 U.S.C. 133).
- This means that smaller, simpler projects that could be implemented and open to the public quickly often are delayed by lengthy procurement procedures and Federal requirements that are more appropriate for larger, more complex projects.
- Amending this requirement for smaller projects that predominantly are outside the Federal-aid highway right-of-way would eliminate Federal procurement requirements for these infrastructure projects. This would allow States to use their own procedures to implement these projects.

C. Transit

1. *Require Value Capture Financing as Condition of Receipt of Transit Funds for Capital Investment Grants*

- Federal programs for transit capital projects do not require value capture financing. Current law includes a broad definition of "value capture" to mean "recovering the increased property value to property located near public transportation resulting from investments in public transportation." (49 U.S.C. 5302(24)). Value capture can include joint development, land value taxes, tax increment financing, special assessment districts, transportation utility fees, development impact fees, negotiated extractions, transit oriented development, and air rights.
- Failure of transit authorities to use value capture financing reduces funds available for transit capital projects.
- Amending the law to include value capture financing as a prerequisite for Section 5309 Capital Investment (Discretionary) Grants, excluding Small Starts projects, would increase resources available for transit capital projects and decrease dependence on Federal grant programs for continued development.

2. *Eliminate Constraints on Use of Public-Private and Public-Public Partnerships in Transit*

- Current law (49 U.S.C. Chapter 53 and its implementing regulations) impedes the greater use of public-private and public-public partnerships in transit capital projects.
- These constraints reduce the funds available for transit capital projects.
- Eliminating these constraints would encourage greater investment in transit capital projects.

3. *Codify Expedited Project Delivery for Capital Investment Grants Pilot Program*

- Currently, the Federal Transit Administration's (FTA) framework for public-private partnerships is a non-codified pilot program limiting the number of projects eligible to participate and capping the Federal share at 25 percent (Section 3005(b) of the FAST Act). The program also requires participants to utilize existing union staff.
- The current pilot program is structured to offer participants a more streamlined approach to the full-funding grant agreement approval process and broader authority to proceed with construction. These attributes are appealing to potential concessionaires and State and local jurisdictions. However, the constraints placed on the program undermine the goals of expediting project delivery.
- Codifying the pilot program, ensuring it is allowable for all Capital Investment Grant projects and not just on a pilot basis, and increasing the Federal share to 50 percent would attract increased private investment and further expedite project delivery.

D. Rail

1. *Apply FAST Act Streamlining Provisions to Rail Projects and Shorten the Statute of Limitations*

- The FAST Act directed DOT to review all previously enacted highway permit reforms and project streamlining procedures under title 23 and to apply them to railroad projects under jurisdiction of the DOT.
- This created a discrepancy between a two-year statute of limitations for rail projects and a 150-day statute of limitations for transit and highway projects. In addition, this created a discrepancy between railroad projects administered by DOT and many large railroad projects administered by agencies other than the DOT (e.g., USACE and the United States Coast Guard) which are not subject to the FAST Act streamlining provisions under title 23.
- Amending the law to clarify that all rail projects, regardless of lead Federal agency, can take advantage of FAST Act streamlining provisions would help expedite rail project delivery. Amending the statute of limitations from two years to 150 days for rail projects would make the time frame for legal challenges on rail projects consistent with those for transit and highway projects.

E. Airports

1. *Create More Efficient Federal Aviation Administration Oversight of Non-aviation Development Activities at Airports*

- The Federal Aviation Administration (FAA) has conducted long-standing reviews of projects other than critical airfield infrastructure (including terminals, access and service roads, hangars, and other types of facilities) (based on statutory requirements set forth in 49 U.S.C. Chapter 471, particularly Sections 47102-47113 and Section 50101).
- This burdens FAA to review projects other than critical airfield infrastructure, and as a result, slows project delivery.
- Amending the law (49 U.S.C. 47107) to limit FAA approval and oversight of non-aviation development activities at airports would create more efficient FAA oversight of critical airfield infrastructure.

2. *Reduce Barriers to Alternative Project Delivery for Airports*

- Current law (49 U.S.C. 47134) provides that, under an existing pilot program, 65 percent of carriers at an airport must approve privatization to privatize an airport. The current pilot program is limited to only 10 airports, including only one large hub airport.
- The pilot program allows individual air carriers to overturn an airport's desire to privatize, blocking private investments in airports.
- Removing the limitation on the number and size of airports that can participate in the pilot program and decreasing the percentage of airlines needed to approve privatization from 65 percent to a majority vote would reduce barriers to alternative project delivery for airports and provide more flexibility for carriers to approve privatization.

3. *Clarify Authority for Incentive Payments under the Airport Improvement Program*

- Currently, the Airport Improvement Program (AIP) does not allow incentive payments for accelerated construction.
- This adds time to AIP projects, since they cannot pay for accelerated completion.
- Clarifying the authority under the AIP (49 U.S.C. 47110) to permit additional financial incentives, along with profit margin, for contractors would increase work efficiency and reduce project completion times.

4. *Move Oversight of AIP Funds to Post-expenditure Audits*

- Current law (49 U.S.C. 47104-47106) requires FAA to review and approve grant applications under the AIP.

- This oversight sometimes causes delays in sponsors receiving funds assigned to their airports.
- Revising the statutory requirements for AIP to shift FAA oversight from grant applications to post-expenditure audits would expedite conveyance of funds to sponsors.

II. WATER INFRASTRUCTURE

The below water infrastructure provisions would incentivize the development of effective and efficient water infrastructure, outcome-based procurement, and full life-cycle asset management to improve water infrastructure. These changes would provide greater flexibilities for USACE and its non-Federal partners to use available Federal and non-Federal funds, generate new revenues and retain certain revenues in support of project requirements, make greater use of contributed funds, and allow for innovative use of contracting tools.

A. Financing

1. *Authorize Clean Water Revolving Fund for Privately Owned Public-purpose Treatment Works*

- Current law allows the DWSRF to lend to private owners. However, the Clean Water State Revolving Fund (CWSRF) is generally restricted to publicly owned wastewater projects.
- Privately owned public-purpose treatment works are not eligible for CWSRF funding at the Federal level.
- Authorizing the CWSRF (33 U.S.C. 1383) to provide financial assistance to publicly owned and privately owned public-purpose treatment works would make more funding available for treatment works.

2. *Provide New Flexibility for Water Projects with De Minimis Federal Share*

- Under current law, even when a State or private sector entity provides the majority of the funding for a project, a project must still obtain review and approval under the laws of any Federal agency with jurisdiction.
- The additional procedures, costs, and time delays associated with Federal requirements discourage infrastructure investments by State and local entities and private investors. These legal restrictions also contribute to delays in delivering needed projects even when the Federal interest is small.
- Amending the law to provide targeted flexibility pertaining to the application of Federal requirements where the project funding is primarily non-Federal and the Federal share is minimal would increase investments in water infrastructure and reduce project delays and costs.

B. Water Programs

1. *Provide EPA Infrastructure Programs with "SEP-15" Authorizing Language*

- Currently, the EPA Administrator has limited authority to test and experiment within its programs.
- This limits the EPA's ability to explore new approaches that might increase project management flexibility, increase innovation, improve efficiency, assure timely project implementation, and develop new revenue streams.
- Providing the EPA Administrator authority (similar to 23 U.S.C. 502) to encourage tests and experimentation in the water projects development process to permit the Administrator to explore alternative and innovative approaches to the overall project development process and to develop more effective approaches to project planning, project development, finance, design, construction, maintenance, and operations.

2. *Apply Identical Regulatory Requirements to Privately Owned Public-purpose Treatment Works and Publicly Owned Treatment Works*

- Currently, different requirements may apply to privately versus publicly owned treatment works.
- This creates an unnecessary market distortion that puts private treatment works under more stringent and costly regulatory requirements than public sector equivalents, despite both serving public communities.
- Modifying the Clean Water Act to ensure identical requirements apply to privately owned public-purpose treatment works and privately owned treatment works would provide a level playing field for all service providers.

C. Inland Waterways

1. *Expand Authority Related to Non-Federal Construction and Operation of Inland Waterways Projects*

- Currently, Congress individually authorizes inland waterways projects to be constructed, maintained and operated by USACE. Only USACE is authorized to use funds appropriated from the Inland Waterways Trust Fund (IWTF) or from the General Fund (GF) of the Treasury for construction, repair, rehabilitation, maintenance, and operation of inland waterways projects. Fuel taxes paid by commercial users of the inland waterway system contribute to the IWTF, which pays for 50 percent of construction and major rehabilitation on the system, with the rest coming from the General Fund; once completed, project maintenance and operations are entirely paid for from the General Fund.
- This means that only USACE can perform construction and operations, even if there is a less costly alternative. In addition, this constrains projects to USACE operational capacity limits, which has resulted in a backlog of projects and deferred maintenance, lower operational effectiveness, and increased down time of waterway assets.

- Authorizing the Secretary of the Army to execute agreements with non-Federal public or private entities to use IWTF and GF funds for construction, repair, rehabilitation, maintenance and operation activities, and the ability to enter into third party contracts, concessions, and operating agreements, would enable greater innovation and efficiency by allowing non-Federal entities a greater role in performing work on these projects.

D. Water Infrastructure Resources

1. *Authorize User Fee Collection and Retention under the WRRDA Section 5014 Pilot Program and Recreation User Fees for Operation and Maintenance of Public Facilities*

- Currently, neither the Federal Government nor non-Federal service providers have authority to impose user fees under the water infrastructure pilot program authorized under Section 5014 of the Water Resources Reform and Development Act (WRRDA) of 2014. When user fees are permitted, they are sent to Treasury once collected, not returned to operate and maintain the site from which they were generated.
- Without a dedicated revenue source, innovative partnerships are nearly impossible to execute because third parties would be subject to appropriation risk. This risk makes transactions uneconomical and highly unlikely to close. Aging infrastructure at USACE-managed recreation sites is in need of significant repair and rehabilitation, and annual USACE appropriations have not been sufficient to address long-term operation and maintenance needs and safety concerns.
- Authorizing the Federal Government and third party service providers to impose and retain fees under WRRDA to use or defray costs associated with carrying out a project would enable effective infrastructure partnerships. This proposal would limit application to no more than ten projects and would specify that the respective non-Federal interests indemnify and hold the Federal Government harmless as a result of non-Federal actions, including that the Federal Government assumes no responsibility for costs of said non-Federal actions. Amending the law (16 U.S.C. 460d-3) to provide USACE the authority to retain recreation user fees generated at USACE-managed recreation sites and facilities would enable USACE to address the backlog of infrastructure, public safety and visitor use management needs at sites where user fees are collected.

2. *Expand U.S. Army Corps of Engineers' Authority to Engage in Long-term Contracts*

- Current law generally restricts the award of multi-year contracts to a period of no more than five years.
- Infrastructure asset contracts typically are much longer than five years, and therefore the cost and risk associated with five-year contracts creates a cost and resource prohibitive barrier to successful transactions.

- Extending the contract period to allow the Secretary of the Army to enter into contracts for a period up to 50 years would enable USACE to enter into long-term contracts that encompass the full life-cycle management of infrastructure assets in the program (Section 5014 of WRRDA). This amendment would specify that the respective non-Federal interests indemnify and hold the Federal Government harmless as a result of non-Federal actions, including that the Federal Government assumes no responsibility for costs of said non-Federal actions.

3. *Authorize Commercial Operation and Maintenance Activities at Hydropower Facilities*

- Current law defines operation and maintenance activities at hydropower facilities undertaken by Civil Works personnel as of the date of enactment of the Water Resources Development Act of 1990 as inherently governmental and not commercial activities. (Section 314 of the Water Resources Development Act of 1990; 33 U.S.C. 2321).
- This designation creates unnecessary bureaucracy and restricts open competition that leads to excess costs for operations that can easily be done at a lower cost and more efficiently.
- Amending the law to restore the authority of the Secretary of the Army to determine whether operation and maintenance functions at hydropower facilities on USACE projects are commercial activities and appropriate for performance by non-Federal entities would increase the opportunity for open competition and lead to more efficient operations and maintenance.

4. *Deauthorize Certain Federal Civil Works Projects*

- Currently, all USACE projects remain authorized in perpetuity. This includes completed projects that are under USACE control but are approaching the end of their service life, as well as projects that were built by USACE but are operated and maintained by non-Federal entities. Extensive regulatory and statutory compliance provisions apply to non-Federal sponsors associated with USACE projects, including Section 14 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 408, commonly referred to as "Section 408").
- These provisions can make local alterations to federally constructed projects expensive and difficult, as even simple modifications to a Federal project by an applicant trigger a Section 408 review, which increases the costs to both the Government and the applicant.
- Amending the law to establish a streamlined deauthorization process that allows for those USACE projects approaching the end of their service life and for those projects operated and maintained by non-Federal interests that do not require Federal oversight would release Federal and non-Federal resources to be used for other purposes.

5. *Expand Authority for Acceptance of Contributed and Advanced Funds*

- A non-Federal sponsor can provide non-Federal funds to the Federal Government through contributed and advanced funds, to advance investments in infrastructure. However, under current law, the process to accept contributed and advanced funds is protracted and limited by several factors.
- Projects therefore suffer years of delay, unable to take full benefit of a willing sponsor to provide non-Federal funds.
- Amending the law (33 U.S.C. 701h) to expand authority for the acceptance of contributed funds even if no Federal funds have been appropriated for the authorized project, changing individual notifications to an annual reporting requirement, and expanding applicability of advanced funds authority to all authorized water resources development studies and projects would increase non-Federal spending and expedite project execution.

6. *Amend Water Resources Development Act to Allow for Waiver of Cost Limits*

- Current law provides a maximum total cost for congressionally authorized projects.
- Projects that exceed the cost limitation (Section 902 of the Water Resources Development Act of 1986) require authorization by Congress to raise the maximum total project cost, which can add significant delays in delivering infrastructure projects.
- Amending the law to allow the maximum total cost limitation to be waived upon the recommendation of the Secretary of the Army would provide flexibility to avoid delays in delivering infrastructure projects.

III. VETERANS AFFAIRS

The following provisions would provide flexibility to the Department of Veterans Affairs (VA) to use the value of its existing assets to provide our Nation's veterans the state-of-the-art facilities they deserve. The VA has a nationwide physical footprint that includes aging facilities. While the physical assets owned by the VA are growing outdated, the underlying property values continue to increase.

A. Provide VA Real Property Flexibilities

- ***Authorize VA to retain proceeds from sales of properties and exchange existing facilities for construction of new facilities.*** Under current law, the VA cannot retain the proceeds from sales of its properties, nor can the VA exchange its existing facilities for the construction of new facilities. This hinders the VA's ability to make needed capital improvements, including new construction and renovations. Authorizing the VA to retain proceeds from sales of its properties and exchange its existing facilities or land for new construction would provide the VA flexibility to better fulfill its mission, including making capital improvements for new construction and renovations and for funding lease or service costs in a facility.

- ***Authorize pilot program for VA to exchange land or facilities for lease of space in multi-tenant facilities.*** Congress should create a pilot program, for up to five projects, to allow the VA to exchange existing VA land or facilities for a lease of space in a resulting private facility built on the former VA land. The VA-occupied space would be built to the same commercial standards as the remainder of the facility and could be in a stand-alone building or part of another building. The private sector financing could not be based on the full faith and credit of the U.S. Government or guaranteed U.S. Government tenancy. The lease term after credits would be a maximum of seven years, and any future lease or extension after the initial term also would be limited to seven years. The lease and service rates during the credit timeframe and any subsequent lease term would be at market or less. The explicit dollar amount of termination (e.g., one year of rent payments) would be required to be included in the agreement, and VA would budget rent and termination in accordance with OMB Circular A-11. The lease would be structured to assure that VA had exit privileges, and that VA would have an exclusive right, but not the obligation, to renew or extend the term of the lease.
- ***Increase the threshold above which VA is require to obtain congressional authorization for leases.*** Current law requires VA to obtain congressional authorization for any lease above $1 million in annual costs. This differs from the GSA prospectus threshold established under title 40 of the United States Code. The GSA prospectus currently carries a threshold of $3.095 million and is reevaluated periodically. These differing thresholds require the VA to seek authorization for more leases. Increasing the authorization threshold for VA major medical leases (38 U.S.C. 8104) from the current threshold of $1 million in annual costs to the current GSA prospectus threshold which is $3.095 million and updated periodically would reduce the number of VA authorizations and align the authorization levels across the two programs.

IV. LAND REVITALIZATION (BROWNFIELD/SUPERFUND REFORM)

The below provisions would expand funding eligibility for revitalization projects and establish tools to manage and address legal and financial risks. These provisions would incentivize the development and dissemination of strong infrastructure risk mitigation and asset management standards to accelerate the desired transformational shifts for the public good—increases in revenue generation, risk allocation to the parties best equipped to mitigate concerns, and greater attention to maintenance and innovative design.

A. Create a Superfund Revolving Loan Fund and Grant Program and Authorize National Priorities List Sites to be Eligible for Brownfield Grants

- Currently, the Brownfield program has a revolving loan/grant fund, but under CERCLA Sections 101(39)(B) and 101(41)(C), Superfund sites are not eligible for the program. National Priorities List (NPL) sites currently are not eligible for Brownfield grants.

- Therefore, low interest loan funds are not available to clean up Superfund sites and because NPL sites cannot access Brownfield grants, they cannot fund any development unrelated to the response action.
- Amending the Small Business Liability Relief and Brownfields Revitalization Act to include a Superfund revolving fund would facilitate new investment into Superfund cleanup and reuse and would provide non-liable third parties a low interest source of funds to perform removals, remedial design, remedial action and long-term stewardship. Amending the law (CERCLA Section 101(40)) to allow NPL sites or portions thereof to be eligible for Brownfield grants at EPA's discretion would make funds available to eligible entities to conduct assessments, complete cleanups, and implement remedy enhancements to accommodate development and perform long-term stewardship. This proposal would include areas of the NPL site that are not related to the response action; areas that can be parceled out from the NPL response action; areas where the NPL response action is complete but the site has not been delisted yet; or areas where the NPL response action is complete but the facility is still subject to orders or consent decrees under CERCLA. This would be a new Brownfields grant program targeted to Superfund sites.

B. Provide Liability Relief for States and Municipalities Acquiring Contaminated Property through Actions as Sovereign Governments

- Currently, State and local governments may be exempt from CERCLA liability as an "owner or operator" if they acquire ownership or control of contaminated property involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances under which the State or local government involuntarily acquires title by virtue of its function as a sovereign government.
- However, confusion exists regarding the meaning of "a unit of State or local government," "involuntary acquisition," and "acquires title by virtue of its function as sovereign," which inhibits State and local governments from becoming full partners in the cleanup and reuse of Superfund sites.
- Clarifying and expanding the current liability exemption (CERCLA Section 101(20)(D)) to afford State and local governments an exemption from liability for all property acquisitions undertaken by virtue of their sovereign function would encourage these entities to become full partners in the cleanup and reuse of Superfund sites. Additionally, these changes would allow more State and local governments to be eligible for grants and to acquire property without fear of liability. Such relief from liability would be conditioned upon State and local governments not contributing to the contamination and meeting the obligations imposed on Bona Fide Prospective Purchasers (BFPPs) in Section 101(40)(C)-(G), including exercising appropriate care with respect to releases of hazardous substances at the facility.

C. Provide EPA Express Settlement Authority to Enter into Administrative Agreements

- Currently, CERCLA does not provide express authority for EPA to enter into certain administrative settlement agreements to clean up and reuse sites. EPA does not have express authority to settle with BFPPs or other third parties who may be subject to a statutory defense or exemption or to settle administratively with a potentially responsible party who is willing to perform remedial action. CERCLA (Section 122(a)) provides the President with authority to enter into an agreement with any person to perform a response action when the President determines the action will be done properly. CERCLA further requires that when EPA enters into a settlement for a remedial action with a potentially responsible party, the settlement must be approved by the Attorney General and entered into the United States District Court as a consent decree.
- CERCLA limitations hinder the cleanup and reuse of Superfund sites and contribute to delays in cleanups due to negotiations.
- Amending the law to provide EPA with express settlement authority to enter into administrative agreements with BFPPs and other statutorily protected parties and to enter into administrative agreements with any party to perform remedial action in appropriate circumstances (e.g., partial, early remedial action) would promote and expedite the cleanup and reuse of Superfund sites.

D. Integrate Cleanup, Infrastructure and Long-term Stewardship Needs by Creating Flexibility in Funding and Execution Requirements

- CERCLA and appropriations laws restrict EPA's ability to creatively integrate cleanup, rebuilding infrastructure, and long-term stewardship. Additionally, EPA is subject to a number of restrictions on its ability incorporate infrastructure needs into cleanup design and implementation, particularly with respect to coordinating funding of such activities.
- These restrictions prevent EPA from incorporating infrastructure needs into cleanup design and implementation.
- Removing these restrictions for infrastructure projects that could easily be integrated with the cleanup work and funded by a third party, would enable EPA to better incorporate infrastructure needs (e.g., pipelines, power lines) into cleanup design and implementation and would promote site reuse.

PART 3—INFRASTRUCTURE PERMITTING IMPROVEMENT

I. FEDERAL ROLE

The below provisions would protect the environment while at the same time delivering projects in a less costly and more time effective manner by:

- creating a new, expedited structure for environmental reviews;
- delegating more decision-making to States and enhancing coordination between State and Federal reviews; and
- authorizing pilot programs through which agencies may experiment with innovative approaches to environmental reviews while enhancing environmental protections.

A. Establishing a "One Agency, One Decision" Environmental Review Structure

1. *Protect the Environment through a Structure that Establishes Firm Deadlines to Complete Environmental Reviews and Permits*

- Under current law, project sponsors of infrastructure projects must navigate environmental reviews under the National Environmental Policy Act (NEPA) and permitting processes with multiple Federal agencies with separate decision-making authority and often counter-viewpoints. These many hoops affect the ability of project sponsors to construct projects in a timely and cost effective manner.
- This creates inefficiencies in project environmental protection, review and permitting decisions, which delays infrastructure investments, increases project costs, generates uncertainty, and prevents the American people from receiving the benefits of improved infrastructure and environmental protections in a timely manner.
- This proposal would establish a firm deadline of 21 months for lead agencies to complete their environmental reviews through the issuance of a Finding of No Significant Impact (FONSI) or Record of Decision (ROD), as appropriate.
- Additionally, the proposal would establish a firm deadline of 3 months after the lead agency's FONSI or ROD for Federal agencies to make decisions with respect to the necessary permits. (This 3-month deadline also would apply to any permits issued by State agencies under Federal law pursuant to delegations of authority from a Federal oversight agency where such permits are a prerequisite to the completion of a Federal agency's ability to issue a permit.) Appropriate enforcement mechanisms would be established to ensure that permit decisions are issued.

B. Reducing Inefficiencies in Environmental Reviews

1. *Require a Single Environmental Review Document and a Single Record of Decision Coordinated by the Lead Agency*

- Currently, Federal NEPA reviews are conducted by the Federal agencies with jurisdiction over the same project. Agencies are encouraged, but not required, to prepare joint analyses. Requiring joint analyses can reduce the potential for delay caused by separate analyses.
- When not coordinated, these reviews can be duplicative and difficult for a project sponsor to navigate. Decisions are not issued in the same time frame and frequently are spread out over long periods of time. This additional time can add months, or even years, to the environmental review process, with little benefit to the environment.
- Requiring the lead Federal agency under NEPA to develop a single Federal environmental review document to be utilized by all agencies, and a single ROD to be signed by the lead Federal agency and all cooperating agencies, would reduce duplication and create a more efficient, timely review process.

2. *Clarify that Alternatives Outside of the Scope of an Agency's Authority or Applicant's Capability Are Not Feasible Alternatives*

- The heart of the NEPA process is the evaluation of alternatives. The development, analysis, and weighing of alternatives serves to ensure that Federal officials make informed decisions.
- However, an agency should not be required to consider alternatives that are outside its authority or outside the capability of the applicant. Such alternatives are not feasible and do not need to be considered in an environmental review.
- Clarifying that alternatives outside the scope of an agency's authority or an applicant's capability are not feasible alternatives for purposes of NEPA would allow agencies and applicants to focus their resources and analyses on those alternatives that are actually legally, technically, and economically feasible.

3. *Direct the Council on Environmental Quality to Issue Regulations to Streamline the NEPA Process*

- Council on Environmental Quality (CEQ) regulations and guidance provide an important basis for the implementation of NEPA. The environmental review process under NEPA as it exists today is lengthy, inefficient, and costly.
- CEQ's regulations were issued in 1978, before the advent of the Internet, and have been subject to only one revision since then.
- Requiring CEQ to revise its regulations to streamline NEPA would reduce the time and costs associated with the NEPA process and would increase efficiency, predictability, and transparency in environmental reviews.

4. *Eliminate Redundancy in EPA Reviews of Environmental Impact Statements under Section 309 of the Clean Air Act*

- Currently, Section 309 of the Clean Air Act requires that EPA review and publish comments on most Environmental Impact Statements (EISs) (42 U.S.C. 4332).

Under this authority, EPA publishes comments on draft and final EISs. EPA also provides a rating for EISs. In addition to its responsibility under Section 309, EPA has a separate regulatory responsibility to review and comment on EISs on matters within its jurisdiction and typically would be included as a cooperating agency for areas within its technical expertise.

- The extra review under Section 309 adds a step to the environmental review process that can cause delays without increasing protection to the environment. Issues are sometimes raised late in the process or go beyond the bounds of EPA's subject matter expertise. Lead Federal agencies must take time to respond to EPA's additional comments in the Section 309 review, even if the comments are outside of EPA's special expertise. This review is no longer necessary, given that Federal agencies have gained significant NEPA experience since this law was enacted and because EPA has other authority to review and comment on matters within its jurisdiction.
- Eliminating EPA's additional review and assessment of EISs would remove duplication and make the environmental review process more efficient. This change would not eliminate EPA's regulatory responsibilities to comment during the development of EISs on matters within EPA's jurisdiction or EPA's responsibilities to collect and publish EISs. It also would not prevent EPA from providing technical assistance to the lead or other cooperating agencies upon request.

5. *Focus the Scope of Federal Resource Agency NEPA Analysis on Areas of Special Expertise or Jurisdiction*

- Currently, disagreements often occur regarding the proper scope of NEPA review, particularly a resource agency's review for a large or complex project. Federal agencies sometimes provide comments or raise objections to issues beyond the scope of their areas of special expertise or jurisdiction.
- These objections and comments create confusion for the public and result in untimely decisions and additional workload.
- Focusing Federal resource agencies' authority to comment on portions of the NEPA analysis that are relevant to their areas of special expertise or jurisdiction would maximize the effectiveness of agency reviews and streamline project delivery.

6. *Reduce Duplication and Increase Flexibility in Establishing and Using Categorical Exclusions*

- Currently, each Federal agency establishes its own categorical exclusions (CEs) by developing a record to substantiate that an activity would not result in significant environmental impacts. All categorical exclusions that a Federal agency proposes to establish or change are reviewed and approved by CEQ.
- Even when a CE has been substantiated by a Federal agency and approved by CEQ, it may not be used by another Federal agency without a separate substantiation and approval process to incorporate the CE into the other

Federal agency's NEPA procedures. A Federal agency also may not change its internal documentation requirements related to CEs, such as moving a "documented" CE to the "undocumented" list, even if experience shows that documentation is no longer needed.

- Authorizing any Federal agency to use a CE that has been established by another Federal agency and identifying documented CEs that can be moved to an agency's undocumented CE list without undergoing the CE substantiation and approval process would reduce duplication and unnecessary environmental analysis for actions that do not create a significant environmental impact. Each agency would track and catalogue its use of another agency's CEs under this provision.

7. *More Effectively Address Environmental Impacts by Allowing Design-Build Contractors for Highway Projects to Conduct Final Design Activities before NEPA Is Complete*

- Under current law, a design-build contractor for a Federal-aid highway project is not authorized to commence final design activities until after the conclusion of the NEPA process (23 U.S.C. 112(b)(3)).
- This restriction diminishes the flexibility afforded with the design-build procurement method, because States are not permitted to allow designers to proceed with final design activities with their own funds under the traditional design-bid-build method.
- Allowing design-build contractors to conduct final design activities would facilitate better environmental reviews in conjunction with the design of projects and would facilitate more efficient and more effective efforts to address environmental impacts. The lead Federal agency would continue to conduct an independent review of the environmental documents and prohibit the agency from taking any action that would prevent the objective consideration of alternatives.

8. *Curtail Costs by Allowing for Advance Acquisition and Preservation of Rail Rights-of-Way before NEPA Is Complete*

- Currently, real property generally cannot be acquired for rail rights-of-way prior to the completion of the NEPA environmental review process.
- While project sponsors might have an opportunity to purchase better and less expensive rights-of-way in advance, the lack of clear statutory direction impedes preservation of rail rights-of-way in advance of project approval.
- Allowing the advance property acquisition and preservation of rail corridors for rail projects would help control costs and improve project delivery. Right-of-way purchase still would be eligible for Federal funding only if used for a project selected through the NEPA process. The risk of bias in the evaluation of alternatives under these circumstances would be minimal, because project sponsors would be able to recoup the value of property if a different alternative ultimately was selected.

9. *Enhance Integration of Transportation Planning and NEPA by Removing an Unneeded Concurrence Point for Using Transportation Planning Documents and Decisions in NEPA*

- Under current law, lead Federal agencies have been encouraged to adopt or incorporate by reference relevant documents and decisions into their NEPA documents. This includes documents from the transportation planning process. The transportation planning process includes robust study and public engagement to develop transportation plans for metropolitan areas. In the Moving Ahead for Progress in the 21st Century Act (MAP-21), Congress formalized the practice of incorporating transportation planning documents but added a new requirement that cooperating agencies had to concur (23 U.S.C. 168(d)).
- Concurrence for incorporating transportation planning documents and decisions was not previously required and is not required for the adoption of other documentation. The transportation planning documents already undergo review and consideration by agencies and the public during plan development. The additional concurrence point adds an unnecessary step that impedes efficient environmental review and the integration of the planning and environmental review process. It also can result in substantial duplication of work, if a cooperating agency does not concur in the incorporation of documentation from planning.
- Eliminating the requirement for concurrence by a cooperating agency would reduce duplication and delay, and would facilitate the integration of the NEPA process with the transportation planning process.

10. *Remove Duplication in the Review Process for Mitigation Banking by Eliminating the Interagency Review Team*

- The 2008 Mitigation Rule that USACE and EPA jointly promulgated includes specified timelines for various tasks associated with the approval and oversight of mitigation banks. The Mitigation Rule provides an opportunity for public and agency review and comment on mitigation banks during the approval process. In addition to this review, the Mitigation Rule requires a second review by an interagency review team, consisting of reviewing agencies, Tribal nations, and the mitigation banking sponsor.
- Approval timelines often are extended beyond those specified in the Mitigation Rule, due to protracted consultation among the interagency review team. The final approval of a mitigation bank often is delayed because of the time it takes to resolve disagreements among the entities participating in the second review.
- Removing the second review would enhance the efficiency of the mitigation bank approval time frames. The members of the interagency review team would still have an opportunity to review and comment through the public participation process required in the Mitigation Rule.

11. *Authorize All Lead Federal Agencies for Infrastructure Projects to Opt into Highway and Transit Streamlining Procedures*

- Highway and transit projects currently have specific statutory authority that promotes efficiencies in the environmental review process for their projects (23 U.S.C. 139). This authority promotes efficiency without changing any substantive environmental laws.
- However, these benefits are limited because they do not apply to other types of infrastructure projects.
- Amending the current law to allow other lead Federal agencies to opt into these provisions could make environmental reviews on other infrastructure projects more efficient. This option would not apply to projects that are eligible under FAST 41 because they already have separate streamlining provisions.

12. *Increase Efficiency by Expediting Certain Small Telecommunications Equipment in NEPA and the National Historic Preservation Act*

- Current law requires that wireless deployers comply with both NEPA and the National Historic Preservation Act (NHPA) for small cells and Wi-Fi attachments in the same way that they obtain permits for large towers.
- Small cells and Wi-Fi attachments do not have an environmental footprint, nor do they disturb the environment or historic property. However, despite this lack of impact, small cells and Wi-Fi attachments typically go through the same level of analysis and review under NEPA and the NHPA, which needlessly adds both delays and costs to the process.
- Amending the law to expedite small cells and Wi-Fi attachments in NEPA and the NHPA would eliminate unnecessary reviews without adversely affecting the environment.

13. *Create Incentives for Enhanced Mitigation*

- Current environmental laws focus primarily on adverse environmental impacts of infrastructure projects, without also recognizing their potential environmental benefits.
- Opportunities for enhancing mitigation or environmentally friendly designs often are lost, because they delay project development without providing any benefit to the project sponsor.
- Establishing procedures that expedite environmental or permitting reviews for projects that enhance the environment through mitigation, design, or other means would provide incentives for project sponsors to propose more environmentally beneficial projects. This would streamline the environmental and permitting review process for those projects that demonstrate an improvement to the environment.

14. *Modify the Federal Power Act and Other Laws to Prohibit the Ability of Federal Agencies to Intervene in FERC Proceedings*

- Under current FERC policy and regulations, agencies that participate as cooperating agencies in FERC's preparation of NEPA documents cannot also intervene in the FERC licensing proceeding. The rationale for FERC's policy is that cooperating agency staff will necessarily engage in off-the-record communications with FERC staff concerning the merits of issues in the proceeding. If the agency is subsequently allowed to become an intervenor in the licensing proceeding, the agency would then have access to information that is not available to other parties, in violation of the prohibition on ex parte communications in both FERC's rules and in the Administrative Procedure Act.
- FERC's rules force Federal agencies to choose either to waive their right to intervene in the proceeding or their right to participate, upon request, as a cooperating agency in FERC's preparation of an environmental document. By choosing not to participate as a cooperating agency, FERC loses the benefit of the agency's technical expertise on important environmental issues, thus inhibiting the identification and resolution of key issues early in the NEPA process.
- Modifying the Federal Power Act and other laws to require Federal agencies, upon request, to participate as a cooperating agency to a FERC NEPA review would ensure that agencies fully participate in the preparation of FERC NEPA documents. Agency participation as a cooperating agency, however, would not impede that agency's ability to file comments to the FERC docket for the relevant proceeding nor impede the agency's ability to defend any requested conditions in court.

15. *Authorize Federal Agencies to Accept Funding from Non-Federal Entities to Support Environmental and Permitting Reviews*

- Currently, some legal authority exists for project proponents to contribute funds to Federal agencies to support such reviews and decisions. This includes authority for public entities to support Federal agencies, State agencies, and Indian tribes participating in environmental planning and review processes for transportation projects (49 U.S.C. 307), as well as authority for USACE to accept funds from non-Federal public entities to provide priority review of permit applications (33 U.S.C. 2352). However, there is no universal authority to accept funding from non-Federal entities for infrastructure projects.
- This limits the ability of Federal agencies to obtain additional resources to help with the permitting and review process, thus causing further delays in project development.
- Amending the law to provide broader authority for Federal agencies to accept funds from non-Federal entities to support review of permit applications and other environmental documents would provide additional resources to streamline project delivery and would help defray the costs of the environmental review. This provision would include appropriate controls for potential conflicts of interest and would maintain the Federal agency's responsibility to conduct its review independently.

C. Protecting Clean Water with Greater Efficiency

1. *Eliminate Redundancy, Duplication, and Inconsistency in the Application of Clean Water Provisions*

These provisions would make the following reforms to create greater efficiencies in the application of clean water provisions:

a. Authorize Federal agencies to select and use nationwide permits without additional USACE review. Currently, Federal agencies are required to submit permit applications to USACE for some projects that meet nationwide permit (NWP) requirements, including general and regional conditions. Federal agencies employ staff who are environmental experts and review these projects before submitting the application to determine whether they meet the criteria for the applicable NWP. Eliminating the additional USACE review and allowing Federal agencies to move forward on NWP projects, subject to permit conditions, would streamline the process and allow USACE to focus on projects that do not qualify for NWPs, which have greater environmental impacts. USACE would retain the right to reinitiate its review for any agency that it finds has incorrectly determined that NWP criteria were met.

b. Consolidate authority to make jurisdictional determinations for 404 permits. Under current interpretation of the Clean Water Act, the EPA Administrator, not the Secretary of the Army, has final authority to construe the jurisdictional term "navigable waters" under Section 404 of the Clean Water Act. USACE has decades of experience and expertise in jurisdictional matters, providing the public approximately 59,000 written jurisdictional determinations per year. Establishing the Secretary of the Army's authority to make jurisdictional determinations under the Clean Water Act would eliminate duplication of work and streamline permit decisions. EPA and USACE would continue to coordinate on rulemaking to ensure consistency in the definition of "waters of the U.S." under the Clean Water Act and to reconcile differences in determinations under other sections of the Clean Water Act.

c. Eliminate duplicative oversight by removing EPA's authority to veto a 404 permit under Section 404(c). The Secretary of the Army, acting through the Chief of Engineers, has authority to grant permits for the discharge of dredged or fill material under Section 404 of the Clean Water Act. EPA can exercise veto authority prior to, during, and after permit decisions. The threat of the veto creates significant uncertainty and delays permit decisions, because project proponents and USACE address perceived concerns to avoid elevation or veto. Removing EPA's authority to veto a 404 permit would make the permitting process more efficient and predictable.

d. Allow use of one NEPA document for both Section 404 and Section 408 actions. Section 408 authorizes the Secretary of the Army to grant permission for the

alteration, occupation, or use of a USACE civil works project if the activity will not be injurious to the public interest and will not impair the usefulness of the project (33 U.S.C. 408). To make this determination, Section 408 requires a very similar environmental review to the review required for a Section 404 permit. For actions where both Sections 404 and 408 apply, two independent environmental reviews are required, creating unnecessary duplication of work and delays in issuing permitting decisions.

e. Eliminate duplication in environmental documentation for authorized USACE projects pursued by non-Federal interests. Under current law, if a non-Federal entity intends to implement an authorized USACE civil works project without an executed project partnership agreement, the non-Federal entity would need a permit from the Department of the Army prior to construction (33 U.S.C. 403 and 33 U.S.C. 1344). To authorize the same civil works project, the USACE also would prepare an environmental review and compliance document. Allowing the non-Federal interest to use the completed USACE environmental compliance documentation and decision (e.g., ROD or FONSI) as the environmental review for the Federal permit decision would reduce duplication without removing environmental protections.

2. *Clarify Time Frames and Reduce Delays for Section 401 Certification Decisions*

- Current law requires receipt of a State Water Quality Certification (Section 401 Certification) prior to USACE issuing a Department of the Army (DA) permit (Section 404 and Section 10) decision. Under current law, a State is given a period not to exceed one year to issue its Water Quality Certification, or the requirement is waived.
- In spite of the statutory time frame, States increasingly do not issue permits within the applicable time frames, or they require applicants to re-file prior to the one-year lapse, which produces a loop of repeated lack of issuance and re-filing.
- Amending the Clean Water Act to change the time period for issuance of a State 401 Certification by addressing the time periods for making a completeness determination and the time for a State decision would reduce this delay.

3. *Stabilize Utility Investments by Lengthening the Term of a National Pollutant Discharge Elimination System Permit and Providing for Automatic Renewals*

- Currently, the Clean Water Act places a five-year limitation on the term of permits granted.
- This limitation serves as a disincentive to public and private investments in investor-owned and publicly owned utilities when major investments typically are financed over 20 to 30 years. Moreover, administrative resources in granting permit renewals can significantly impact the timeliness of permit renewal requests.

- Lengthening the permit time limit from five years to fifteen years and providing for automatic renewals of such permits, if the water quality needs do not require more stringent permit limits, would bring more stability to such investments.

D. Reducing Inefficiencies in the Magnuson Stevens Act

1. *Require Timelines to be Met under the Magnuson Stevens Act or Allow Agency to Proceed with Action*

- The Magnuson Stevens Act allows for both an abbreviated consultation process (National Marine Fisheries Service (NMFS) must respond within 30 days) and an expanded consultation process (NMFS must respond within 60 days) when evaluating effects to Essential Fish Habitat.
- Even with these relatively short time frames, consultations tend to take much longer to complete, and thus impact the delivery of infrastructure projects.
- Requiring NMFS to respond to all consultations within 30 days in all cases (unless a 30-day request for extension is received from NMFS and approved by the action agency) would improve time frames and eliminate delays. If no response were received from NMFS within the required time frame, the action agency could then move to final agency action.

E. Reducing Inefficiencies in Protecting Clean Air

1. *Eliminate Confusion by Clarifying that Metropolitan Planning Organizations Need only Conform to the Most Recent National Ambient Air Quality Standard*

- Currently, the Clean Air Act requires EPA to establish National Ambient Air Quality Standards (NAAQS) for certain pollutants. It also requires EPA to periodically review and, if necessary, update these standards.
- This creates a problem every time EPA promulgates newly updated NAAQS before prior standards are revoked. State DOTs and metropolitan planning organizations (MPOs) may be required to demonstrate conformity to both the old and new standards for the same pollutant, creating redundancy and uncertainty, and causing State DOTs and MPOs to spend their limited resources unnecessarily.
- Amending the Clean Air Act to clarify that conformity requirements apply only to the latest NAAQS for the same pollutant would avoid this confusion and reduce legal challenges.

2. *Reduce Uncertainty by Establishing Motor Vehicle Emissions Budgets before Requiring Initial Transportation Conformity Determinations for Newly Designated Areas*

- Currently, the Clean Air Act requires a newly designated area to comply with conformity requirements one year after the effective date of the final

nonattainment designation (42 U.S.C. 7506(c)). Conformity typically is demonstrated by showing that an area's transportation plans will not exceed the motor vehicle emissions budget established for that area.

- This creates a problem for newly designated areas because the emissions budget usually takes longer than a year to establish and for EPA to approve. Therefore, in order to demonstrate conformity, MPOs in newly designated areas have to use other less suitable tests, such as "an interim emissions test" or a test based on emissions budgets developed for a previous standard for the same pollutant. These requirements have created confusion and uncertainty.
- Allowing transportation conformity to apply one year after EPA approves or finds the emissions budgets adequate for conformity purposes would eliminate confusion and give MPOs certainty in meeting Federal requirements.

F. Reducing Inefficiencies in Preserving Publicly Owned Land and Historic Properties

1. *Remove Overlapping DOI, USDA, and HUD Reviews from Individual Section 4(f) Evaluations*

- Under current law, DOT is prohibited from using parklands or historic sites unless it determines that there is no other prudent and feasible alternative. Current law requires consultation with DOI, USDA, and the Department of Housing and Urban Development (HUD) in making these determinations. The FHWA/FTA implementing regulations for Section 4(f) of the DOT Act (23 CFR 774.5) require Section 4(f) determinations to be sent to DOI, USDA, and HUD for review and provide a minimum of 45 days for the agencies to comment. Current law also provides for an additional 15-day period after the comment deadline for DOI, USDA, and HUD to transmit comments before FHWA may assume no objection (49 U.S.C. 303 and 23 U.S.C. 138).
- The DOI, USDA, and HUD reviews can delay project delivery even though the review generally does not produce any changes in the determinations, because the agencies have had little direct involvement in a project.
- Removing DOI, USDA, and HUD responsibilities to review individual Section 4(f) determinations would reduce delays in the project development process while not reducing protections to parklands and historic sites.

2. *Eliminate Duplicative Reviews of Historic Property Impacts for Transportation Projects*

- Under current law, potential impacts of transportation projects on historic sites must undergo a review under both Section 106 of the NHPA and Section 4(f). These two laws are different in approach (Section 4(f) results in a substantive determination and Section 106 is a process resulting in an agreement), but both are designed to protect the same historic resources. The FAST Act added an optional process for historic preservation reviews to address this issue, but it

added new steps and concurrence points that do not exist in the current regulatory process.

- Conducting two reviews to protect historic properties is redundant and creates substantial additional work. It is also inconsistent with requirements for other infrastructure projects, which only need to comply with Section 106. Because of the additional concurrence points, the optional process included in the FAST Act is a more cumbersome process and has not been used.
- Specifying that an action taken pursuant to a Section 106 agreement does not constitute a "use" under Section 4(f), and therefore would not require a different analysis, would reduce duplication and delay, without reducing protections for the historic properties.

3. *Eliminate Redundancy in Conversion Requirements When Land Purchased with Land and Water Conservation Fund Money Is Impacted*

- Currently, parks and other sites that have been the subject of Land and Water grants of any type cannot be converted to other than public outdoor recreation uses without approval of the NPS. This includes approval of equivalent property to substitute for the converted area. This requirement applies to infrastructure projects that might use parks or other recreational facilities that were funded by Land and Water grants.
- Consulting with the NPS and obtaining its approval for equivalent substitution property can be a lengthy process leading to delayed project delivery. The work of the NPS often duplicates the work of the lead Federal agency in identifying equivalent substitute property.
- Eliminating the requirement for the NPS approval in identifying and procuring replacement property would eliminate duplicative work and speed project delivery (including where authority has been delegated to States).

4. *Reduce Uncertainty by Establishing Reclamation Title Transfer Authorization*

- Currently, there is no blanket authorization for Bureau of Reclamation to transfer title to certain federally owned facilities currently operated by non-Federal partners, who are the primary beneficiaries. Congress provides title transfer authority with respect to individual facilities.
- Obtaining authority from Congress to transfer title for each facility individually is arduous and very time consuming, often taking several years. Delays in obtaining title negatively impact the ability of non-Federal partners to obtain private financing to perform required major rehabilitation and replacement needs. As a result, entities may need to request funding from the Federal Government to perform required work.
- Establishing new transfer authority in the Bureau of Reclamation would streamline the process and reduce delays for executing title transfers. This also would facilitate non-Federal partners' ability to seek private financing for major rehabilitation and replacement needs. Additionally, this would give non-Federal partners greater flexibility in setting operating criteria.

5. *Reduce Uncertainty by Authorizing the Secretary of the Interior to Review and Approve Permits for Pipelines Crossing Lands Administered by the National Parks Service*

- Current law delegates to the Secretary of the Interior authority to review and approve rights-of-way across lands administered by the NPS, but only for electric, water and communications facilities. For pipelines (natural gas and oil) and facilities necessary for the production of energy, specific congressional authorization is needed for each proposed project crossing one of these lands.
- Obtaining congressional approval for each pipeline crossing and facilities necessary for the production of energy is time consuming and delays construction of needed natural gas pipeline facilities. It also is inconsistent with the process adopted for other types of facilities.
- Authorizing the Secretary of the Interior to approve rights-of-way for pipelines and facilities necessary for the production of energy across NPS-administered land in a manner identical to that for other facilities would reduce the delays and uncertainties caused by requiring congressional approval.

II. DELEGATION TO STATES

These provisions will streamline and expand existing procedures to entrust environmental review and permitting decisions to States. These provisions also would help avoid duplication by facilitating reliance on State and local reviews and documentation.

A. Expand Department of Transportation NEPA Assignment Program to Other Agencies

- Using current authority, DOT has successfully assigned its NEPA responsibilities to six States under certain conditions and contingent upon the States signing a memorandum of understanding with the DOT.
- However, this authorization to assign responsibility is limited to FHWA and FTA.
- Authorizing other agencies to assign NEPA responsibilities to States would extend the benefit of this program to other types of infrastructure agencies and projects, under requirements similar to those in the DOT NEPA assignment program.

B. Allow States to Assume FHWA Responsibilities for Approval of Right-of-Way Acquisitions

- Currently, there is no specific authorization for States to assume FHWA's responsibilities for approving right-of-way acquisition transactions. In addition, FHWA regulations require States to obtain authorization before proceeding with any real property acquisition using Federal-aid highway funds.

- Waiting for FHWA can delay the project delivery process for Federal review of what has become a routine activity for States.
- Providing States with authority to assume some, or all, of FHWA's responsibilities for approval of right-of-way acquisitions (subject to the same legal protections that currently apply to the right-of-way acquisition process) would eliminate these delays. DOT would retain the right to terminate a delegation if a State improperly carries out its responsibilities for approving right-of-way acquisitions.

C. Broaden NEPA Assignment Program to Include Other Determinations

- Currently, the Surface Transportation Project Delivery Program ("NEPA assignment program") allows States to fully assume Federal responsibilities under NEPA for highway and transit projects. However, it prohibits DOT from assigning, and States from assuming responsibility for, any project-level conformity determination required under the Clean Air Act for the same projects (42 U.S.C. 7506). It also does not authorize States to assume responsibilities for determinations regarding flood plain protection and noise policies, which would affect determinations made by States during the environmental review process (23 U.S.C. 109 and 327).
- This inconsistent treatment diminishes the effect of the NEPA assignment program. It causes the environmental review process assumed by a State to be interrupted or impacted by Federal approvals or determinations during an environmental review that otherwise has been fully assumed by the State.
- Allowing DOT to assign, and States to assume, project-level transportation conformity determinations and determinations regarding flood plain protections and noise policies as part of the NEPA assignment program would create a more efficient NEPA assignment program. It also would provide an incentive for additional States to participate in the NEPA assignment program. Consistent with the requirements of the NEPA assignment program, States would need to demonstrate the technical capacity to make these determinations. This provision would not change EPA's responsibilities under the Clean Air Act.

III. PILOT PROGRAMS

These provisions would create pilot programs to experiment with new ways to address environmental impacts while delivering projects in a more timely and predictable way.

A. Performance-Based Pilot

- This pilot program would experiment with using environmental performance measures instead of an environmental review process to address environmental impacts of an infrastructure project. Up to 10 projects would be

selected to participate in the pilot based on project size, national or regional significance, and opportunities for environmental enhancements.

- The project sponsor for a selected project would agree to design its project to meet performance standards and permitting parameters established by the lead Federal agency. The lead Federal agency would develop these standards with public input and in coordination with other cooperating Federal agencies. The project sponsor's agreement to meet the performance standards and permitting parameters would be in lieu of complying with NEPA and relevant permits or other authorizations.
- The performance standards would result in design elements and enhanced mitigation that address the impacts of the project and meet permit requirements. The pilot would support the goals and objectives of NEPA and meet permit obligations without being constrained by its procedural requirements. It would focus on good environmental outcomes rather than a lengthy environmental review process.

B. Negotiated Mitigation Pilot

- This pilot program would experiment with negotiation of mitigation to address environmental impacts of transportation projects.
- This pilot would authorize the Secretary of Transportation (or other infrastructure agencies) to establish an alternative decision-making process in lieu of NEPA, based on negotiated mitigation agreements and supporting mitigation markets that address anticipated project impacts for a specific set of projects.
- Negotiated mitigation strategies could include purchase of offsets, avoidance of anticipated impacts, and in-lieu-fee dedicated to an advanced mitigation fund.
- This pilot also would establish conditions and limitations for the DOT authority under this pilot.

IV. JUDICIAL REFORM

These provisions would reform judicial review standards for environmental reviews to avoid protracted litigation and to make court decisions more consistent. These provisions also would narrow the scope of judicial review by exempting certain actions or issues from challenge.

A. Limit Injunctive Relief to Exceptional Circumstances

- Currently, a legal challenge to a project under NEPA can delay the start of a project, due to the uncertainty it creates about whether the project will be able to proceed.
- This creates unpredictability regarding time frames for projects, which at the outset can discourage potential investors, and in the end can postpone the public benefits of needed infrastructure projects.

- Limiting injunctive relief to exceptional circumstances would allow for environmental concerns to be addressed without unduly delaying needed infrastructure projects.

B. Revise Statute of Limitations for Federal Infrastructure Permits or Decisions to 150 Days

- Currently, for many infrastructure projects, the statute of limitations allows plaintiffs to file legal challenges to Federal permitting and authorization decisions for up to six years after the decisions have been issued. In addition, under the program in which States can substitute comparable State laws for NEPA ("NEPA substitution program"), the statute of limitations is two years (23 U.S.C. 330).
- Infrastructure projects require significant investment in time and resources. Delays and uncertainty caused by legal challenges to environmental and permitting decisions inhibit investment in projects and impede the delivery of public benefits from improved infrastructure. These delays and uncertainties are exacerbated by long statutes of limitations, creating uncertainty well after decisions have been made.
- Establishing a uniform statute of limitations of 150 days for decisions and permits on infrastructure projects would reduce uncertainty and prevent substantial delays in project delivery, while still affording affected parties an adequate opportunity to initiate legal challenges. A 150-day statute of limitations would be consistent with the statute of limitations Congress already has enacted for surface transportation projects. In addition, revising the statute of limitations for the NEPA substitution program to 150 days would remove a barrier to States using this program.

C. Provide Certainty in Claims on Currentness of Data in Environmental Reviews and Permits

- Environmental reviews and permitting decisions require in-depth studies and data. These reviews can be costly and time consuming. Project sponsors and Federal agencies are expected to use current data in conducting their environmental and permitting reviews.
- With projects spanning several years, a project sponsor may need to conduct multiple studies to generate data on the same issue. While using complete and up-to-date data is necessary to make an informed decision, litigation risk should not be the primary driver in deciding whether to conduct a new study.
- Directing Federal agencies to establish guidelines regarding when new studies and data are required would clarify requirements and create more certainty in the NEPA process. Courts would be precluded from reviewing any claims based on the currentness of data, so long as agencies were in compliance with their established guidelines. In a case where agencies' guidelines for the same data conflict, the guidance for the lead agency would prevail.

PART 4—WORKFORCE DEVELOPMENT

These provisions are dedicated to the American workforce and to policies that will help Americans secure stable, well-paying jobs. The American workforce is an important national asset, and thus should be included in legislation aiming to strengthen and invest in our country's infrastructure.

Currently, there are almost seven million individuals looking for work and roughly six million unfilled jobs. Past Federal policies have left too many Americans behind. This Administration is committed to helping more individuals access affordable, relevant, quality education and skills-development that leads to full-time work and long-term careers. These provisions also will have the important benefit of helping more companies find skilled workers to fill open jobs.

An infrastructure bill will generate new projects that directly increase employment in the construction industry, as well as boost the demand for labor more broadly as additional infrastructure investment spurs economic growth. The provisions outlined below will ensure our country has enough skilled workers to perform not only existing work but also fill the new jobs created by the bill.

A. ACCESS TO EDUCATION AND WORKFORCE DEVELOPMENT PROGRAMS

A. Expand Pell Grant Eligibility to High-Quality, Short-Term Programs

- The Federal Government spends tens of billions of dollars each year in grants for postsecondary education. However, the vast majority of these funds are available only to help pay for courses that meet certain time and/or length requirements. This model is becoming outdated given the expansion of short-term education and workforce development programs that teach relevant skills and help individuals secure well-paying jobs. For example, Pell Grants are generally available only to students who do not yet have a bachelor's degree and who are enrolled in institutions of higher education offering degree programs of at least 600 clock hours or 15 weeks in length.
- Pell Grants are not available for individuals pursuing shorter-term certifications, including persons who are in skilled trades and who are achieving certifications as part of an apprenticeship program. The Workforce Innovation and Opportunity Act (WIOA) can fund some of these types of education, but its funding is broadly distributed across a variety of workforce development efforts.
- Expanding Pell Grant eligibility to high-quality, short-term programs 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. There is no "one size fits all" approach to postsecondary education. Rather, there are multiple pathways to success for students, and Federal law should enable students to explore and access these pathways. It is of utmost importance that, as Pell recipients are given greater flexibility in spending grant dollars, measures are undertaken to

ensure students receive quality education. Additionally, efforts should be taken to ensure high-quality, short-term courses and programs are available in fields where there are shortages of qualified workers.

B. Reform Career and Technical Education

- Equipping Americans with the education needed to do the jobs available in our modern economy does not just require changes to our postsecondary education and workforce development policies; it requires changes to our secondary education policies as well. One Federal program related to skills-development and career readiness – the Carl D. Perkins Career and Technical Education (CTE) program – is in dire need of reform. CTE funds are spread thinly and support a broad, fragmented range of activities, many of which are unlikely to improve student outcomes and are often not aligned to local workforce needs.
- Too often, CTE programs do not successfully prepare students for jobs in high-demand fields or local industries. In the 2015-2016 school year, the most common CTE field for secondary CTE concentrators – those who specialize in a single CTE field – was arts and design, followed by business and health.
- Enacting a modified version of the Perkins CTE reauthorization bill passed by the House in June 2017 (H.R. 2353) would ensure that more students in America's secondary and postsecondary institutions have access to high-quality technical education that teaches them practical knowledge and skills needed in today's technology-driven economy. There are several important opportunities to amend H.R. 2353 to improve the legislation and advance the Administration's goals. Needed amendments include:
    - Directing the majority of funding to high schools to promote strategies such as apprenticeship, work-based learning, and dual-enrollment.
    - Authorizing activities to promote and expand apprenticeships.
    - Increasing high-quality CTE programs in high schools by promoting STEM CTE offerings and other offerings related to in-demand industry sectors (determined using the WIOA definition as a starting point and expanded based on input from the private sector) and requiring that they are evidenced-based (as defined by the Every Student Succeeds Act).
    - Allowing States to pool funds to support regional centers and consortia that support multiple districts in partnership with local businesses and other community stakeholders.
    - Strengthening the bill's emphasis on the use of evidence-based research.
    - Authorizing funding for fast-track programs that prepare high school graduates for jobs rebuilding America's infrastructure.

C. Strengthen Ties to the Workforce for College Students

- The Federal Work Study program (FWS) currently is not well-suited or targeted to support students pursuing career and technical education, especially for low-income and low-skilled students seeking to enter or return to the workforce quickly.

- FWS funds are disproportionately distributed to four-year non-profit and flagship public institutions, leaving out quality two-year programs, many of which have a uniquely strong focus on workplace readiness.
- Enacting FWS reforms to better distribute the aid to schools and students who can most benefit would ensure that more participants obtain relevant workplace experience, including by participating in an apprenticeship. This could include:
  - Revamping the funding formula to send funds to schools with a strong record in enrolling Pell students and putting them on a pathway to success.
  - Limiting eligibility to undergraduates.
  - Using program dollars to fund career-related internships or expanding apprenticeship and career pathway programs.

II. EMPOWERING WORKERS

A. Reform Licensing Requirements for Individuals Seeking a Job on an Infrastructure Project

- In many cases, States accepting Federal funding to support infrastructure projects do not allow workers with out-of-State skilled trade licenses to work on those projects.
- Preventing out-of-State professionals from working on infrastructure projects can: (1) reduce the speed of these projects, delaying the effect of the economic benefit they provide; and (2) increase the cost of the projects by artificially limiting the supply of professionals available to work on those projects. These provisions also put Americans who live in rural States or other areas at a disadvantage since they frequently need to relocate (often temporarily) in order to secure work.
- Requiring that States accepting Federal funds for infrastructure projects accept workers with out-of-State licenses to work on those projects would speed project delivery, reduce project costs, and provide flexibility to workers with out-of-State skilled trade licenses.

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