Holland & Knight

800 17th Street, N.W., Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Federal Update
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CONGRESSIONAL UPDATE

FY 2017 Appropriations: President Donald Trump signed a $1.1 trillion omnibus spending bill on Friday, May 5, funding the government through September 30 – the end of FY 2017 – and avoiding a government shutdown. The President also issued a "signing statement" that documented his caveats to certain provisions of the package that he felt limited his constitutional authority. These included provisions that restrict transfer of prisoners from Guantanamo Bay; prevent federal marijuana law enforcement; and a mandate that the President give Congress advance notice before taking certain military actions. Presidents George W. Bush and Barack Obama released similar statements.

The spending package was secured seven months late, leaving only four and a half months before FY 2018 begins on October 1. Amid concern from members of Congress that the delay could lead to another stopgap measure in September, House Speaker Paul Ryan (R-WI) has said that the FY 2017 process in which 11 appropriations bills were packaged together, was not one he wished to continue, and urged bipartisan cooperation to finalize individual FY 2018 appropriations bills. However, the short timeline, including a month-long congressional recess in August, could slow the process. While late budget submission is not unusual, it has delayed hearings on budget requests for federal agencies. Additionally, Congress has renewed focus on passing a GOP replacement to the Affordable Care Act (ACA). These factors could all result in obstacles to passing a FY 2018 spending package in September, raising the possibility of another stopgap continuing resolution (CR) in the fall.

The FY 2017 Omnibus Appropriations bill appropriates $19.5 billion for the U.S. Department of Transportation (DOT) – $650 million more than fiscal year (FY) 2016.

Highways: Includes the FAST Act authorized funding level of $43.266 billion in obligation limitations on Highway Trust Fund contract authority— $905 million increase over FY 2016. The bill allows states to reprogram "dead earmarks" that are at least 10 years old and less than 10 percent obligated and transfer that money to the surface transportation block grant programs (old STP program). This provision was also included in the FY 2016 bill.

Transit: The legislation provides:

- $9.734 billion obligation for transit formula grants, same as the FAST Act authorized level--$386.1 million increase over FY 2016

- $2.53 billion for the Capitol Investment Program (New Starts/Small Starts/Core Capacity)--$353 million above FY 2016. Includes $100 million for the Peninsula Corridor Electrification Project.

TIGER: Includes $500 million for the TIGER grant program in 2017, same as last year's funding level. Most of the terms and conditions are the same as in prior years except that the maximum grant size is lowered from $100 million to $25 million. (DOT has not provided grants close to $100 million over the past five years). The maximum share of total annual grants that can go to projects in any one state drops from 20 percent to 10 percent.

Rail: The bill provides $1.495 billion for Amtrak, a $75 million budget increase above last year. Includes money for the new Federal Railroad Administration (FRA) grant programs established by the FAST Act:

- $68 million for the Consolidated Rail Infrastructure and Safety Improvements grant program: Purpose is to improve the safety, efficiency, and reliability of passenger and freight rail systems. Eligible activities include a wide range of capital, regional and corridor planning, environmental analyses, research, workforce development, and training projects.
- $25 million for the Federal-State Partnership for State of Good Repair program: Purpose is to reduce the state of good repair backlog on publically-owned or Amtrak-owned infrastructure, equipment, and facilities. Eligible activities include capital projects to (1) replace existing assets in-kind or with assets that increase capacity or service levels, (2) ensure that service can be maintained while existing assets are brought into a state of good repair, and (3) bring existing assets into a state of good repair.
- $5 million for the Restoration and Enhancement Grants program: Purpose is to provide operating assistance to initiate, restore, or enhance intercity passenger rail transportation.

Administration Update

<u>FY 2018 Budget Released</u>: On May 23, the Trump Administration released its full budget request for FY 2018, based on the March 2017 "skinny" budget outline. The budget represents a $4.1 trillion spending plan, and projects $3.65 trillion in revenue collections in 2018. While the congressional appropriations process will likely ignore and avoid many of the cuts contained in the President's request, the proposal serves as a reflection of the White House's priorities and could lead to negotiated cuts in some programs.

The President's FY 2018 budget requests $16.3 billion for the Department of Transportation (a $2.4 billion, or 12.7 percent decrease, from FY 2017 levels).

- **Capital Investment Grants (New Starts/Small Starts/Core Capacity):** The FY 2018 budget requests $1.23 billion, a $928 million reduction from FY 2017 levels. It also maintains the proposal from the skinny budget to limit funding for the Capital Investment Program to projects with existing full funding grant agreements (FFGAs).

- **Transit Formula Grants:** The budget requests $9.73 billion for Transit Formula Grants, as enacted under the FAST Act.

- **Highway Funding:** The budget proposes highway funding at $44 billion, as enacted under the FAST Act.

- **Amtrak:** The budget proposes ending federal support for long distance services, and requests $774 million in funding for Amtrak, with $235 million authorized from the FAST Act dedicated to the Northeast Corridor (NEC) and State-Supported services.

- **TIGER:** The budget proposes eliminating funding for TIGER grants, citing it as unauthorized under the last two multi-year surface transportation authorization acts.

- **Federal-State Partnership for State of Good Repair Grants:** The budget requests $25.94 million to remain available to restore and replace aging transportation infrastructure.

<u>President Releases Tax Reform Plan</u>: The president's economic adviser, Gary Cohn, and Treasury Secretary Steven Mnuchin unveiled the President's list of goals for a tax overhaul on April 26. The plan, a key point of President Trump's agenda, calls for reducing the federal income tax rate to 15 percent for corporations, small businesses, and partnerships of all sizes. Additionally, it imposes a one-time tax on the approximately $2.6 trillion in earnings that U.S. companies have gained from foreign profits. It also proposes lowering the number of income tax rates to just three, from the original seven, reducing the individual top rate to 35 percent, from the original 39.6 percent. The plan also proposes to end a 3.8 percent investment income tax, applicable to individuals earning more than $200,000 a year, and as well as the estate tax. However, the plan does not protect the federal income tax deduction allowed for state and local taxes. The large tax cuts will face Democratic opposition, as Senate Minority Leader Chuck Schumer (D-NY) promised to oppose a plan that would give tax relief to high earners, stating: "We don't need a tax plan that allows the very rich to use pass-throughs to reduce their rates to 15 percent while average Americans are paying much more." Senate Majority Leader Mitch McConnell (R-KY) has said the administration and the GOP do not anticipate Democratic involvement on the tax plan.

The tax plan has not yet addressed issues posed by House Republicans, such as border-adjustment taxes on imports and domestic sales. House Speaker Paul Ryan (R-WI) said the reconciliation process will be the best time to bring tax reform to the floor.

<u>Infrastructure Package Update</u>: New details have emerged regarding the administration's proposed infrastructure plan. Office of Management and Budget (OMB) officials have said the plan, which would invest $1 trillion in infrastructure, will use $200 billion in federal funds (included in the recently unveiled President's FY 2018 budget request) over a decade, to incentivize state, local and private-sector financing for projects.

Although the details are scarce, the infrastructure investment is referred to as an effort to "fix underlying incentives, procedures, and policies to spur better, and more efficient, infrastructure decisions and outcomes, across a range of sectors, including surface transportation, airports, waterways, ports, drinking and wastewater, broadband and key Federal facilities." The budget also states that the $1 trillion target will be met with a combination of new federal funding, incentivized non-federal funding, and expedited projects. The Administration will continue working with stakeholders to finalize a proposal.

As part of the budget release, the Administration also released a fact sheet outlining the principles for the infrastructure initiative:

1. Make Targeted Federal Investments. Focusing Federal dollars on the most transformative projects and processes stretches the use and benefit of taxpayer funds. When Federal funds are provided, they should be awarded to projects that address problems that are a high priority from the perspective of a region or the Nation, or projects that lead to long-term changes in how infrastructure is designed, built, and maintained.

2. Encourage Self-Help. Many States, tribes, and localities have stopped waiting for Washington to come to the rescue and have raised their own dedicated revenues for infrastructure. Localities are better equipped to understand the right level – and type – of infrastructure investments needed for their communities, and the Federal Government should support more communities moving toward a model of independence.

3. Align Infrastructure Investment with Entities Best Suited to Provide Sustained and Efficient Investment. The Federal Government provides services that non-Federal entities, including the private sector, could deliver more efficiently. The Administration will look for opportunities to appropriately divest from certain functions, which will provide better services for citizens, and potentially generate budgetary savings. The Federal Government can also be more efficient about disposing underused capital assets, ensuring those assets are put to their highest and best use.

4. Leverage the Private Sector. The private sector can provide valuable benefits for the delivery of infrastructure, through better procurement methods, market discipline, and a long-term focus on maintaining assets. While public-private partnerships will not be the solution to all infrastructure needs, they can help advance the Nation's most important, regionally significant projects.

The fact sheet also includes a few transportation proposals:

- Tolling on Interstates: The document says that "Tolling is generally restricted on interstate highways. This restriction prevents public and private investment in such facilities. We should reduce this restriction and allow the States to assess their transportation needs and weigh the relative merits of tolling assets." Unclear if the White House wants to remove the current ban on tolling any roads built with federal aid or if they want to just expand the list of exemptions from the general toll ban.

- Expand Transportation Infrastructure Finance and Innovation Act (TIFIA): Proposed increasing the TIFIA credit assistance program to $1 billion per year and that the TIFIA eligibility criteria should be expanded.

- Expand Private Activity Bonds: The document says "The Private Activity Bonds (PABs) program allows the Department of Transportation to allocate authority to issue taxexempt bonds on behalf of private entities constructing highway and freight transfer facilities. PABs have been used to finance many Public Private Partnerships (P3s) projects, along with TIFIA. As of August 15, 2016, nearly $11.2 billion in PABs have been issued for 23 projects. The Administration recommends removing the $15 billion cap under current law to ensure that future P3 projects can take advantage of this cost-saving tool, and encourage more project sponsors to take advantage of this tool. The Administration also supports the expansion of PAB eligibility."

In Holland & Knight's meetings with the House Transportation and Infrastructure Committee and Senate Environment and Public Works (EPW) Committee staff, we have learned that they want to increase the FAST Act authorized programs funding levels. They would also like to include incentives for public private partnerships (PPPs) and environmental streamlining to expedite highway and transit projects. However, they do not want to open up the NEPA process. They are also including funding for water infrastructure and Army Corps of Engineers. The Senate EPW Committee is planning to mark up a bill this summer before the August recess.

DOT Announces Regulatory Reform Task Force: The Department of Transportation (DOT) announced on May 26 that Deputy Secretary Jeffrey Rosen will oversee the agency's Regulatory Reform Task Force (RRTF), serving as the Chairman and Regulatory Reform Officer. The task force was formed following President Trump's executive order directing agencies to begin identifying "unnecessary regulatory burdens." Transportation Secretary Elaine Chao said the RRTF will examine methods to accomplish DOT's primary safety objectives and review rules issued at the end of the Obama Administration.