



**September 21, 2017**

**To:** Legislative and Communications Committee

**From:** Darrell Johnson, Chief Executive Officer

**Subject:** Federal Legislative Status Report

**Overview**

An update is provided of the federal fiscal year 2018 appropriations process. An overview is provided of the President's executive order on infrastructure project streamlining, including how it relates to existing law and the Orange County Transportation Authority's Breaking Down Barriers initiative. Updates are provided on the Presidential Advisory Council on Infrastructure and the confirmation of the Administrator of the Federal Railroad Administration.

**Recommendation**

Receive and file as an informational item.

**Discussion**

**Update on Federal Fiscal Year 2018 Appropriations Process**

On October 1, 2017, the new federal fiscal year (FFY) begins, which requires the passage of either an FFY 2018 appropriations bill or a continuing resolution (CR) in order to allow for the federal government to operate. Both the House and Senate Appropriations Committees took action prior to the August recess to pass FFY 2018 Transportation Housing and Urban Development appropriations bills. While both bills seek to maintain Fixing America's Surface Transportation (FAST) Act authorized funding levels for most transportation programs, differences do exist in the funding levels for the Capital Investment Grant (CIG) program and the Transportation Investment Generating Economic Recovery (TIGER) program.

For the CIG program, which includes funding for New Starts projects like the OC Streetcar, the Senate proposed funding at \$2.13 billion, while the House proposed \$1.75 billion. Both are less than the existing year funding of \$2.4 billion, but are more than the President's proposed \$1.23 billion. This would allow funding for both existing and new full funding grant agreements (FFGA). In addition, both bills include report language directing the advancement and signing of new FFGAs. The House proposal also differs from the Senate

proposal in directing \$400 million in CIG funding to the Gateway Project in New York and New Jersey. For the TIGER program, the House proposal zeroes out funding, consistent with the President's budget request, while the Senate proposal includes \$550 million, more than the \$500 million included in the FFY 2017 appropriations bill.

At the time of the drafting of this staff report, Congress was voting on a package that included a CR that would maintain FFY 2017 funding levels until December 8, 2017. Also linked to the CR was a temporary debt limit extension until the same date and financial assistance for Hurricane Harvey. It was expected that if the package passed, the President would sign it shortly thereafter. Simultaneous to this vote, the House continued to debate the FFY 2018 appropriations bill, considering amendments that would allow for the CIG funding levels to align more closely with what was included in the Senate proposal. Staff will provide a verbal update at the September 21, 2017, Orange County Transportation Authority (OCTA) Legislative and Communications Committee on any actions taken by Congress related to the FFY 2018 appropriations bill or a CR.

#### President's Executive Order on the Environmental Review and Permitting Process for Infrastructure Projects

On August 15, 2017, the President issued Executive Order 13807 on "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," which is included as Attachment A. The executive order seeks to accelerate the federal government's processing time of environmental reviews and authorization decisions for major infrastructure projects so that, on average, the process takes no more than two years. Notably, several provisions of the executive order were significantly influenced by OCTA's Breaking Down Barriers Report and subsequent follow-on studies. In addition, several of the provisions were enacted as part of previous federal reauthorizations, including statutes, such as in Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) and FAST Act of 2015, but never implemented.

The executive order contains six particular policy areas of streamlining potential:

1. **Cross-Agency Priority (CAP) Goal.** Requires federal agencies to modify their Strategic Plan to implement this executive order and tasks the Office of Management and Budget (OMB) and the Federal Permitting Improvement Steering Council (FPISC) with implementing the CAP Goal. A CAP Goal is both a federal government priority goal and tool intended to accelerate progress in priority areas that require active collaboration among multiple agencies. Through this CAP goal, it will require federal environmental reviews and authorization processes for infrastructure

- projects to be consistent, coordinated, and predictable in order for agencies to overcome organizational barriers and achieve better performance than one agency could achieve on its own.
2. One Federal Decision. Tasks a lead federal agency of a major infrastructure project with the responsibility of navigating the project through the Federal environmental review and authorization process.
  3. Dashboard. Provides that, at the discretion of the FPISC Executive Director, projects will be tracked under a Dashboard, similar to that required under the FAST Act. A Dashboard will serve as a method for tracking the environmental review and authorization process for infrastructure projects, allowing for increased transparency and accountability.
  4. Automatic Elevation. Requires that an agency follow a process that automatically elevates missed permitting timetable milestones to appropriate senior agency officials, under the guidance of the OMB.
  5. Penalties. Provides the OMB Director with discretionary authority to determine if penalties are appropriate, to the extent required or permitted by law, for those agencies that fail to meet a permitting timetable milestone.
  6. Council on Environmental Quality (CEQ). Tasks the CEQ with developing an initial list of actions to improve the environmental review process and ensure optimal interagency coordination.

A chart is included as Attachment B, which compares the associated operative provisions of the executive order with recommendations from the Breaking Down Barriers initiative and with existing requirements put in place under MAP-21 and the FAST Act. Staff will continue efforts to promote the policies outlined under the Breaking Down Barriers initiatives as relevant federal agencies analyze and implement methods for reducing the regulatory and administrative burdens that continue to impede major infrastructure projects.

#### Dissolution of the Presidential Advisory Council on Infrastructure

The President ended plans for the Presidential Advisory Council on Infrastructure (Council) on August 17, 2017. A month earlier, the President had issued Executive Order 13805, which formally established the 15-member Council. The Council, which was still being formed, was to consist of members from the following infrastructure sectors: real estate, finance, construction, communications and technology, transportation and logistics, labor, environmental policy, and regional and local economic development. The purpose of the council was to make findings and recommendations to the President regarding Federal Government funding, support, and delivery of infrastructure projects. It is not expected that the dissolution of the Council will



impact continued discussions the Administration is having on a potential infrastructure package.

#### **Pending Confirmation of the Federal Railroad Administration Administrator**

On July 10, 2017, the President nominated Ronald L. Batory, former President and Chief Executive Officer of Conrail Inc., to be the Administrator of the Federal Railroad Administration. The nomination was initially referred to the United States Senate Committee on Science, Commerce and Transportation, where he was reported favorably on August 2, 2017. Currently, Batory's nomination is awaiting to be confirmed in the full Senate. Staff will keep the OCTA Board of Directors updated as the confirmation progresses.

#### **Summary**

An update is provided on the appropriations process. An overview is provided on an executive order on environmental streamlining. An update is provided on the dissolution of an advisory group on infrastructure and the nomination of an Administrator for the Federal Railroad Administration. The July and August monthly activity reports from OCTA's Washington advocate, Potomac Partners DC, are provided as Attachment C and D.

#### **Attachments**

- A. White House Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects"
- B. Comparison Chart of Executive Order 13807, Orange County Transportation Authority's Breaking Down Barriers Report, and Existing Laws
- C. Potomac Partners DC, Monthly Legislative Report, July 2017
- D. Potomac Partners DC, Monthly Legislative Report, August 2017

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