Legislative and Regulatory Update

Jeff Shoaf
July 21, 2017
Trump Administration
Trump Administration

• Being run like a bad family owned small business
  – Autocratic leader
  – No coordination of message, mission
  – Employees operate in fear
    • Loyalty exalted over all/family members untouchable
    • Frank discussion/internal criticism discouraged
    • Pits individuals/groups against others
  – Lack of delegation
    • Reviewing applicants for 3rd tier Department jobs
    • Only 30% of confirmable posts nominated
Political Appointee Tracker

Of 564 key positions requiring Senate confirmation ...

370  No nominee  7  Awaiting nomination  139  Formally nominated  48  Confirmed

In collaboration with

The Washington Post

The Post and Partnership for Public Service, a nonprofit, nonpartisan organization, are tracking more than 500 key executive branch nominations through the confirmation process. These positions include Cabinet secretaries, deputy and assistant secretaries, chief financial officers, general counsel, heads of agencies, ambassadors
Trump Administration

• Resulting in.....
  – Squandering of the power of the Office
  – Picks unnecessary fights
  – Sending conflicting messages/undermining credibility
  – Making GOP Congressmen wary of being thrown under the bus
  – Creating a lot of electoral hope for Dems
Legislative Agenda
Week of July 17: Appropriations markups, nomination hearings and “Made in America” week at the White House

Outlook for Congress:

**Tuesday, July 18**
- **House Republicans** will release their FY0218 budget, with increases in defense spending and decreases in mandatory spending
- **Senate Finance Committee** hearing on “Comprehensive Tax Reform: Prospects and Challenges” (9:00 AM)
- **House Agriculture Committee** hearing on “The State of Infrastructure in Rural America” (10:00 AM)
- **Senate Banking, Housing and Urban Development Committee** nomination hearings for multiple HUD positions, assistant Commerce secretary for global markets and assistant Treasury secretary for financial institutions (10:00 AM)
- **Senate Foreign Relations Committee** nomination hearings for the ambassador to the Holy See and coordinator for counterterrorism (10:00 AM)
- **House Appropriations Committee** markup of the FY2018 State and Foreign Operations bill and the Labor, HHS and Education bill (10:00 AM)
- **House Financial Services Subcommittee** hearing on “Restricting North Korea’s Access to Finance” (2:00 PM)
- **House Republicans** will release their FY0218 budget, with increases in defense spending and decreases in mandatory spending

**Wednesday, July 19**
- **House Agriculture Committee** hearing on "The State of Infrastructure in Rural America" (10:00 AM)
- **Senate Commerce, Science and Transportation Committee** nomination hearings for Ajit Pai, Jessica Rosenworcel and Brendan Carr to be members of the Federal Communications Commission (10:00 AM)
- **House Appropriations Committee** markup of the FY2018 State and Foreign Operations bill and the Labor, HHS and Education bill (10:00 AM)
- **House Financial Services Subcommittee** hearing on “Restricting North Korea’s Access to Finance” (2:00 PM)

**Thursday, July 20**
- **Senate Judiciary Committee** markup to vote on the nomination of Christopher Wray to be FBI director as well as nominations for a district judge, an assistant attorney general and a US attorney (9:30 AM)
- **Senate Foreign Relations Committee** nomination hearings for the US representative to NATO and ambassadors to Canada and the UK (9:30 AM)
- **Senate Appropriations Committee** markup of the FY2018 Energy, Water Development and Related Agencies bill and the FY2018 Agriculture, Rural Development, FDA and Related Agencies bill (10:30 AM)

Outlook for the White House:

- **Monday**, the President will be kicking off “Made in America Week,” the first week of a 3-week series
- **In the afternoon**, he will tour American made products on the south lawn, including a tractor, boat and cherry picker
- **Wednesday**, Treasury Secretary Mnuchin and Gary Cohn will hold bilateral trade talks with Chinese officials
Trump Infrastructure Plan

• Quietly unveiled in budget
• Components
  – Making targeted federal investments
  – Encouraging self-help
  – Reform the permitting process
• AGC-NAM Coalition
  – Expanding the tent; 60 + groups
  – Meeting at least monthly/plenty to discuss
Trump's $1 trillion infrastructure promise has an obstacle: His own budget cuts

by Patrick Gillespie @CNNMoney
June 9, 2017: 7:27 AM ET
Trump Skinny Budget

**TRANSPORTATION DEPARTMENT**

The Transportation Department's budget would shrink by 13 percent. The spending plan would move what has been a core government function — air traffic control — outside of government hands, and push responsibility for many transit and other projects to localities.

Read full story: Proposal shifts air traffic control outside federal government, cuts funding for transit and Amtrak

- Shifting air traffic control outside the government
- Eliminates funding for many new transit projects and support for long-distance Amtrak trains
- Eliminates $175 million in subsidies for commercial flights to rural airports
- Cuts $499 million from the TIGER grant program, which has funded dozens of road, transit and other projects

<table>
<thead>
<tr>
<th>2017 BUDGET</th>
<th>2018 PROPOSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>$18.6B</td>
<td>$16.2B</td>
</tr>
</tbody>
</table>

Decreased $2.4B (-13% change)
Trump’s proposals address many different types of infrastructure

Specific proposals included in Trump’s infrastructure initiative

**Air traffic control privatization**

Trump calls for the creation of a non-governmental entity to manage the nation’s air traffic control system. The proposal would reduce passenger taxes and the new entity would be responsible for setting and collecting fees directly from users.

**Increase infrastructure flexibility at Department of Veterans Affairs**

The administration will pursue reforms to help the VA acquire and maintain the facilities necessary to provide high quality medical care. The budget includes proposals to expand the VA’s authority to lease out its vacant assets for commercial or mixed-use purposes and to speed its ability to pursue facility renovations and improvements.

**Divestiture of the Power Marketing Administration’s transmission assets**

The budget proposes to sell the PMA’s transmission assets. Investor-owned utilities provide for the vast majority of the nation’s electricity needs. According to the administration’s plans, selling these assets will more efficiently allocate economic resources and help relieve long-term pressures on the federal deficit related to future federal capital investment.

**Reform laws governing the Inland Waterways Trust Fund**

In 1986 Congress mandated that commercial traffic on inland waterways be responsible for 50% of the capital costs of the locks, dams and other features that make barge transportation possible. The budget proposes establishing a fee to increase the amount paid by commercial navigation users of inland waterways. The additional revenue proposed will finance future capital investments in these waterways to support economic growth.

Trump calls for cuts to several major DOT programs

<table>
<thead>
<tr>
<th>Program name</th>
<th>Justification provided</th>
<th>2018 request</th>
<th>YoY percent change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Investment Grants (New Starts)</td>
<td>“Localities are better equipped to scale and design infrastructure investments needed for their communities. Several metropolitan areas... have already begun to move in this direction by asking residents to approve multi-billion dollar bond measures to speed the delivery of highway and transit investments.”</td>
<td>$1.2 billion</td>
<td>43%</td>
</tr>
<tr>
<td>Essential Air Service</td>
<td>“The EAS program was originally established as a temporary program nearly 40 years ago to provide subsidized commercial air service to rural airports. Many EAS flights are not full and have high subsidy costs per passenger. Attempts at incrementally reforming the program have not resulted in much change in the cost of EAS. The Administration is proposing a wholesale redesign of the program, to eliminate the discretionary component of the program and focus the remaining resources on those remote communities in most need of support.”</td>
<td>$0</td>
<td>100%</td>
</tr>
<tr>
<td>Amtrak grants</td>
<td>“Amtrak's long distance trains do not serve a vital transportation purpose, and are a vestige of when train service was the only viable transcontinental transportation option. Today communities are served by an expansive aviation, interstate highway, and intercity bus network. The remaining Federal funds for Amtrak are dedicated to Amtrak's Northeast Corridor (NEC) and State-Supported services, which do provide real transportation alternatives for regions.”</td>
<td>$774 million</td>
<td>45%</td>
</tr>
<tr>
<td>National Infrastructure Investments (TIGER grants)</td>
<td>“This program began as part of the 2009 stimulus bill and has not been authorized under the last two multi-year surface transportation authorization acts. It provides Federal funding for projects with localized benefits, and often these projects do not rise to the level of national or regional significance.”</td>
<td>$0</td>
<td>100%</td>
</tr>
</tbody>
</table>

Trump’s proposal suggests many avenues for funding infrastructure

Funding proposals included in Trump’s infrastructure initiative

Liberalize tolling policy and allow private investment in rest areas
The administration supports reducing the restrictions on tolling on interstate highways to allow for increased investment in such facilities. The administration also supports allowing the private sector to construct, operate, and maintain interstate rest areas, which are often overburdened and inadequately maintained.

Lift the cap on Private Activity Bonds and expand eligibility to other non-federal public infrastructure
The Private Activity Bonds program allows the DOT to allocate authority to issue tax-exempt bonds on behalf of private entities constructing highway and freight transfer facilities. PABs have been used to finance many public private partnership (P3) projects along with TIFIA. 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 use it. The administration also supports the expansion of PAB eligibility.

Fund the Water Infrastructure Finance and Innovation Act (WIFIA) program
The EPA’s new WIFIA loan program is designed to leverage private investments in large drinking water and wastewater infrastructure projects. Because WIFIA loans can only support up to 49 percent of a project’s eligible cost, the federal investment must be leveraged with non-federal sources.

Expand the Transportation Infrastructure Finance and Innovation Act (TIFIA) program
TIFIA helps finance surface transportation projects through direct loans, loan guarantees, and lines of credit. The administration supports the expansion of TIFIA eligibility.

Establish a federal capital revolving fund
The administration is developing a proposal to establish a mandatory revolving fund for the financing of federally-owned civilian capital assets. The fund would be repaid with annual appropriations and would help address the underinvestment in capital assets driven in part due to the large upfront costs of such procurements.

Trump recommends reform for the current environmental review and permitting process

Principles guiding environmental review reform

Improving environmental performance
Trump proposes establishing a pilot program to experiment with different ways projects will perform to better protect and enhance the environment.

Accountability
The administration will seek proposals for tools to start holding agencies accountable for their performance as Trump believes the review and permitting of projects should be included in each agency’s mission, and their performance should be tracked and measured.

One federal decision
Under the current system, project sponsors work with one agency but are often told to stand in line with several other agencies for numerous other approvals. The proposal calls for the federal government to navigate its own bureaucracy and designate a single entity with responsibility for shepherding each project through the review and permitting process.

Unnecessary approvals
The administration supports putting infrastructure permitting into the hands of responsible state and local officials where appropriate as Trump expresses that the federal government exerts an inordinate amount of control through “unnecessary” bureaucratic processes.

Judicial reform
The administration believes resources would be better spent on enhancing the environment rather than feeding needless litigation. As such, the administration will submit proposals that curtail “needless” litigation.

Tax Reform

- **AGC goals**
  - Lower rates, Simplification, Permanency, Fund and Finance infrastructure, Eliminate AMT, Eliminate Death Tax and Reform C corps and pass throughs simultaneously

- **Current draft of House bill**
  - Repeals AMT & Death Tax
  - Retains mortgage interest, charitable, R&D deductions
  - Lowers & condenses tax brackets
    - Individual rates: 12-25-33%
    - Business rates: 20% C-corp and 25% S-corp
  - 50% deduction of cap gains, dividends, interest income (16.5% top effective rate)
Tax Reform Questions & Concerns

- Treatment of pass-through income (business income vs. wages as “reasonable compensation” at ordinary rates)
- Interest deductibility & Immediate full expensing
- Retention of certain business tax credits (179D, Historic Preservation, LIFO, NMTC, WOTC)
- Treatment of carried interest and muni bonds
- Is estate tax step-up in basis retained?
- Transition rules (e.g. 5-year phase-outs with 20-30% haircuts on assets or holdings)
- International provisions: Destination based cash flow tax with border adjustability tax (BAT) mechanism and deemed (mandatory) repatriation of foreign earnings ($2.6T overseas @ 8.75%)
Regulatory Agenda
The 2017 Regulatory Road Ahead

AGC’s primary regulatory objective is to help build a construction-friendly regulatory environment. With President Trump in office, there are many Obama administration executive orders, rules, and other requirements in AGC’s crosshairs. For a complete and comprehensive guide to AGC’s regulatory agenda, see AGC’s “Make Federal Agencies Responsible Again” Document.

Additionally, with a Republican Congress, opportunity exists to reform the regulatory process to curb executive overreach. Questions remain, nevertheless, as to where traditional business interests and the populist president’s message will overlap and diverge. And, further uncertainty remains with many political appointees not yet nominated or confirmed by the Senate.
AGC Regulation Tracker: Table of Contents

SAFETY & HEALTH pages 2-5
- Permissible Exposure Level (PEL) for Silica
- Electronic Tracking of Workplace Injuries and Illnesses
- Continuing Obligation to Make & Maintain Accurate Record of Recordable Injury & Illness
- Consultation Agreements
- Standard Improvement Project (SIP's) IV
- Crane Operator Qualification in Construction
- Noise in Construction
- Safety and Health Management Program Guidelines
- Letter Granting Union Reps Walk Around Rights at Non-Union Workplaces

- LRRP Program Expansion to Public & Commercial Bldgs
- Floodplain Management and Protection of Wetlands
- Tailoring Rule
- Post Construction Stormwater Rule
- NEPA GHG Guidance
- Municipal Separate Storm Sewer System Permits
- Changes to Endangered Species Act Critical Habitat Designations and ‘Adverse Modification’ Definition
- "Assumable Waters" Determination
- Draft Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration
- Fish and Wildlife Service Mitigation Policy and ESA
AGC is Regulatory Roll Back Advocate and Resource

• Lobbied Congress on for CRA actions
• Prepared approximately 200 pages worth of detailed reforms/comments
  – Make Federal Agencies Responsible Again Document
  – Environmental Permitting and Review (NEPA, 404, ESA)
  – Buy America/n
• Invited to speak with EPA, Corps, GSA officials
• Meeting with DOL, DOT, Commerce Sec.
Regulatory Successes

• Final Rules Repealed
  – Blacklisting
  – OSHA Volks Rule (Injury & Illness Recordkeeping SOL)

• Final Rules Delayed
  – Silica (9/23/17)
  – OSHA Electronic Injury & Illness Recordkeeping (no new date suggested for compliance)
  – DOT GHG Performance Measurements (indefinite)
Priority Rules

- OSHA’s Silica Rule
- Electronic Recordkeeping (drug testing)
- Overtime Rule
- WOTUS
- Paid Sick Leave
- EEO-1 Reporting rule
- PLA Executive Order
OSHA Silica Rule

- Went into effect 6/23/17; enforcement starts 9/23/17
- 5x lower than previous exposure level
- Requires engineering controls, respirators, exposure control plan, training program and competent person
- Min: have training program, competent person and exposure control plan
- Court case oral arguments 9/26/17
- Compliance info @https://www.agc.org/industry-priorities/safety-health/respirable-crystalline-silica-construction
OSHA Recordkeeping Rule

- Companies will have to report beginning 12/1/2017
- >250 employees submit form 300A, then 300A, 300 & 301 by 7/1/18 and 3/2/2019.
- <250>20 just form 300A
- Controversial drug testing provisions (anti-retaliation)
- In court, litigation has been stayed while agency looks at modifying rule
- Continue to talk to agency about use of info, level of detail
- Working to get drug testing position rescinded
Overtime Rule

- Scheduled to take effect 12/1/16, but now enjoined
- Increased salary threshold from $23K to $47K
- Case was briefed June 30
- DOL has authority to withdraw appeal of injunction and let it stay in place, they can keep the old salary levels or develop new ones, start another rule making or wait for congress to legislation
- Texas AFL-CIO has filed as an intervener and could defend rule
EEO-1 Report

• Significant expansion of information on form from 180 data cells to 3660. Includes wage, hours, race, gender, ethnicity among other things.

• Applies to everyone: employers >100 starting March 2018

• Direct federal and federal-aid contractors and first -tier subs applies at >50, but old form

• Form may be easier to rescind, but need to staff up EEOC

• AGC has asked for rescinding, testified before congress
WOTUS

• June 27 EPA and Corps proposed rule to rescind 2015 Obama WOTUS rule
• Rule never went into effect, court enjoined 10/9/15
• Used Executive Order and Rulemaking
• Rule will reestablish old rule and then begin new rulemaking process
• Supreme Court will be briefed later in July, not sure how new rule impacts
• All efforts subject to legal challenge
Paid Sick Leave

• Federal contractors included in new contracts
• 56 hours sick leave each year (1hr/ per 30hrs worked)
• In effect 1/1/17
• No luck repealing, Trump campaigned on paid maternity leave, included in budget
Additional Regulatory Rollback Successes

• Guidance Rescinded
  – OSHA guidance granting union reps walk around rights at non-union jobs
  – CEQ NEPA Guidance requiring more review
  – FWS ESA Compensatory Mitigation Principles that would institute new ESA “goals” for projects.
Permitting Reform

• Requiring a nationwide merger of the NEPA and the Clean Water Act Section 404 permitting processes, with the U.S. Army Corps of Engineers issuing a 404 permit at the end of the NEPA process, based on the information generated by NEPA. Data show these processes take the longest, are the most costly, and are subject to the most disagreements;

• To reduce duplication, the monitoring, mitigation and other environmental planning work performed during the NEPA process must satisfy federal environmental permitting requirements unless there is a material change in the project; and

• A reasonable and measured approach to citizen suit reform to prevent misuse of environmental laws.
Border Wall Penalties

• 23 state and local jurisdictions considering penalties
  – No future contracts
  – Divest in state pensions
• AGC retained Wilmer Hale through aid of patron
  – Broad federal preemption
  – Letter from Sen Johnson (R-WI) to DHS
  – AGC seeking meeting w/DHS
• Lack of additional funding curbing appetite
  – DHS has asked for limited proposals
  – Larger firms passing for now
Construction Advocacy Fund

• Formalize structure: Advisory Board
  – Increase member involvement
  – Expand number of issues addressed and scope of our battle plans
• Strict definition of “advocacy”
  – Infrastructure
  – Workforce & Safety
  – Regulatory reform
  – Legal issues
• Identify state & local issues of national impact