NATIONAL TAXPAYERS UNION

Issue Brief

SEPTEMBER 5, 2019
BY THOMAS AIELLO

Actions the Trump Administration Can Take to Boost Infrastructure Development

Introduction

President Trump has made removing expensive and unneeded regulations a cornerstone of his domestic economic agenda. The cost of complying with federal regulations, rules, and guidance has grown substantially in recent years, and for a long time has functioned on a drag on economic growth. But due in great part to the administration's targeted dismantling of the administrative state, the American economy is in the best shape in decades. Thanks to deregulation, American businesses are able to spend more time growing, innovating, and hiring—and less time worrying about new burdens from unelected bureaucrats in Washington.

For just about any business owner, whether a mom and pop store proprietor or a corporate CEO, regulatory reform can be a welcome relief to both the bottom line and to their customers. But these developments also bring significant benefits to American workers. With businesses better able to expand and compete, the nation is experiencing the lowest unemployment rate since the

Key Facts:

There are a number of options to improve infrastructure without new federal spending.

Removing inefficient federal mandates can lower construction costs and boost transportation development.

Capitalizing on the power of the free market will enable infrastructure needs to be met in a fiscally responsible manner.

1960s, and the fastest wage growth since the 1990s. Retirement savings are at the highest levels ever, much of them in accounts held by middle-class families invested in stocks of public companies. Close to half of all U.S. households directly or indirectly invest in the stock market. In fact, according to a report recently reduced by the White House Council of Economic Advisers, the administration's deregulation efforts will boost household incomes by $3,100 over the next decade.

Reining in unnecessary impositions upon the private market is the appropriate approach to ensuring greater prosperity for all, but the principles of deregulation can also be used to reduce construction costs on federally-funded infrastructure projects and increase the efficiency of America's transportation system.

Infrastructure has long been a priority of the Trump Administration, and with a divided Congress, it's one of the few issue areas with some semblance of bipartisan agreement. Earlier this spring, in fact, it looked like those predictions would come true after President Trump and Congressional leaders announced they had a handshake over a $2 trillion infrastructure spending deal. But as the calendar turns to Fall, Congress has yet to release even draft legislation and the prospects of any substantial infrastructure spending package grow more unlikely by the day.

There is no question federal and state policymakers should take action to address the seriousness of America's ailing infrastructure situation. Outdated infrastructure also hampers the ability for American businesses to remain competitive in a globalized world. Meanwhile, workers and self-employed Americans lose the equivalent of tens of billions of dollars in time and productivity, whether stuck in traffic or stuck with a slow internet connection. A modernized infrastructure and transportation system will ensure that individuals and businesses maximize their growth potential.

But from the perspective of the taxpayers, simply adding $2 trillion in new spending to a national debt that is already projected to rise by $12 trillion over 10 years is financially irresponsible, and President Trump would be wise to avoid such a price tag. Furthermore, such spending will only further metastasize a bureaucratic, federally-driven process that has plagued Washington for decades.

Instead of adding trillions of dollars of new, unaccountable spending, the Trump administration should expand on its successful deregulatory agenda to boost private investment, better manage taxpayer funds, and encourage innovation. The administration has already made substantial progress toward these ends, but the journey is ongoing.

It is imperative that the administration focus on maximizing every already-appropriated infrastructure dollar and retool existing regulations that are inefficient or unnecessary. The federal government has a well documented history of squandering taxpayer dollars on projects that could be funded by the private sector, state governments, or not funded at all. As such, National Taxpayers Union (NTU) offers up a series of policy recommendations that President Trump and the administration can take to foster a more competitive, nimble, and responsible approach to transportation and infrastructure in the United States.

Specifically, the administration should have three major goals for infrastructure:

1. *Ensure current infrastructure spending is allocated in an efficient manner that minimizes waste.* Getting rid of federal mandates that increase the cost of infrastructure spending will maximize every taxpayer dollar.

2. *Promote private capital investment through deregulation.* Eliminating regulations that

suppress the private sectors ability to finance public infrastructure projects will make their completion more likely to be on time and under budget.

3. *Adhere to free market principles.* As we've seen in virtually every comprehensive transportation-specific deregulation action (like airline, freight rail, trucking), the free market will always increase productivity and lead to better economic outcomes. Government must prioritize the market to get better outcomes.

Labor

End Project Labor Agreements on Taxpayer-funded Projects: Project Labor Agreements (PLAs) mandate contractors sign a collective bargaining agreement with workers as a condition to work on a government-funded construction project. Requiring workers to join a union in order for them to work is a discriminatory policy against the 87 percent of workers who are not registered in a union. In addition to locking the vast majority of the workforce out of the hiring process, PLAs can raise construction costs by as much as 18 percent. Imposing measures that needlessly raise costs that taxpayers ultimately pay for is wasteful and inefficient approach to infrastructure spending.

President Trump should immediately rescind Executive Order 13502, an Obama-era policy that instituted PLAs on taxpayer-funded construction projects. As it stands, 24 states have passed laws or executive orders that restrict PLAs and prioritize open competition for government-funded projects. Ending EO 13502 would lower government construction costs by increasing competition and opportunities for contractors to bid on government work. A coalition of free market, taxpayer advocacy organizations sent a letter to president Trump last year urging him to do so.

Implement Reforms to the Outdated Davis-Bacon Act. The 1931 Davis-Bacon Act (DBA) is an expensive mandate requiring contractors for federal construction projects pay prevailing union wages for non-union labor. On average, taxpayers are forced to pay wages that are 22 percent higher than market rates. The result, according to the Heritage Foundation, is more than $100 billion worth of additional costs over the next decade and fewer job opportunities on each project. DBA gives unionized firms an advantage when bidding on infrastructure projects, keeping taxpayer costs unnecessarily high and competition to a minimum.

Earlier this spring, the Department of Labor's Office of Inspector General issued eight recommendations to improve the overall quality and accuracy of DBA prevailing wage rates. DOL should prioritize implementing Recommendation 3, which would calculate DBA rates using Bureau of Labor Statistics data. As it stands, DOL simply uses surveys of tiny sample sizes of the construction workforce, providing prevailing wages that may not be representative of the actual market wages.

Procurement

Require an Open Bidding Process for Infrastructure Project Materials: As it stands many of the billions of dollars in federal funds devoted to infrastructure flows to state, county, or local agencies and is applied to projects that are managed locally. Within this flow of funds, issues of economic inefficiency arise due to the fact that many states, counties, and localities limit or direct which materials can be used in publicly-funded infrastructure and construction projects. In many cases, these jurisdictions effectively restrict or prevent consideration of all cost-effective options. Such an approach can in turn prevent new and innovative materials that can prove safer and more efficient from even being considered. In turn, the costs of public infrastructure projects can be artificially inflated by outdated materials, wasting billions in taxpayer dollars.

In the previous Congress, Rep. Brian Babin (R-TX) introduced a bill (H.R. 5310) that would have provided "maximum flexibility" to state and local engineers in considering which materials to use for projects that receive partial federal funding from the Army Corps of Engineers, Environmental Protection Agency, the Federal Highway Administration, or the Department of Agriculture. Although that bill did not receive a floor vote, President Trump can pursue other options. In 2012, the U.S. Department of Agriculture issued guidelines for open competition in materials selection for the Department's rural water and wastewater grants to states and localities. Building upon regulations and circulars from the Office of Management and Budget, these extensive guidelines could serve as a model for developing a government-wide directive affirming and strengthening procurement procedures in federal infrastructure grant programs. By allowing for an open and competitive bidding process, project managers and engineers will be better able to evaluate different options and select materials for infrastructure projects that enhance performance, durability, and reduce costs to taxpayers. Importantly, such an Executive Order will not mandate one particular material over another or force engineers to choose any materials that they do not believe is best suited for their project. It is about opening up markets, not propping up mandates or monopolies. Furthermore, the legislation will not retroactively impact any current or previously authorized infrastructure projects.

End "Buy American" Restrictions: Earlier this year, President Trump signed Executive Order 13858, which expands "Buy American" requirements to infrastructure projects that receive federal financing as a way to boost the use of American-made products. These mandates require certain components of products must be manufactured within the United States. Protectionist policies like "Buy American" laws limit selection and artificially limit competition, which often lead to higher costs for projects. Essentially, these laws prohibit taxpayers and contractors from getting the best value on projects.

Since "Buy American" mandates raise costs on taxpayer-funded projects, President Trump should repeal this executive order. By ending this flawed policy, it will ensure taxpayer funds used to finance infrastructure are maximized by using a greater number of less expensive components. Furthermore, it is estimated that "buy America" requirements have little to no impact on job creation.

Trucking

Approve Updates to Hours of Service Rules for Commercial Drivers. Recently, the Trump administration announced a proposal to relax regulations for commercial truck drivers. The proposal consists of five changes for truck drivers' "hours of service." First, truck drivers could in the future use their 30-minute breaks that they receive every eight hours when they are on duty but not driving, such as when they are waiting for a truck to be loaded with cargo. Previously, the drivers had to go formally "off duty" to use the break. Under the proposed rules, truck drivers can also split their required 10 hours of off-duty time into two breaks, a seven-hour break for sleeping and another three-hour break when they choose. Under current law, they must take one 10-hour break after a day of driving. The new rule is estimated to provide $270 million in savings for the economy and consumers.

Ensuring regulations that govern the trucking industry are efficient and not overly burdensome given the importance of trucking on the economy. The trucking industry employs more than seven million people and moves 70% of the nation's domestic freight.

Railways

Avoid Backdoor Rate Regulation of Railroads. In 2016, the Surface Transportation Board (STB) under President Obama issued several proposed regulations that would reverse forty years of deregulation that benefited the U.S. economy, consumers, and taxpayers. The most concerning of these proposed rules has to do with competitive switching, which requires an incumbent railroad to serve a rival's customers on its own facilities with the non-incumbent railroad paying compensation. If regulators move forward with this harmful proposal it would effectively undo the deregulatory framework enacted in 1980 that has made freight rail transportation more competitive and affordable. To that end, this rule would undoubtedly increase complexity and inefficiency into America's vast rail networks, thereby raising costs and slowing the delivery of shipments. It could also lead to reduced investment into the rail network and potentially threaten the financial viability of the entire industry.

The new regulators on the STB should scrap this proposed rule to ensure America's railroad industry remains both domestically and globally competitive. Evidence points to the fact that smarter regulations—not heavy-handed actions from Washington—lead to better outcomes and market-based prices that ultimately benefit everyone, including shippers and consumers of their goods. Attempting to tip the scales through what amounts to a new form of rate regulation will have unintended and unwelcome consequences in the long term.

Avoid Revenue Adequacy Calculation to Cap Rates: In 1980, President Carter signed the Staggers Rail Act into law to greatly deregulate the American railroad industry. The law was intended to replace the highly-regulated structure of the American rail shipping system which had existed since the passing of the Interstate Commerce Act of 1887. The Staggers Act also gives railroad regulators the discretion to implement policies that ensure railroads generate "adequate revenues" to remain operational and attract capital to maintain their network. As a result, the Surface Transportation Board annually checks each railroad to see which are meeting these revenue standards. However this measurement is outdated and does not reflect the underlying needs of the railroad industry.

Rather than a measure of the minimum amount of revenue needed for a healthy rail system, some want to turn revenue adequacy into a finding that a railroad is already earning as much revenue as it needs. Per this view, when a rail customer challenges a railroad's rate as too high, if the railroad is revenue adequate, the railroad's rates should be subject to more stringent regulation, up to and possibly even including a hard cap — that is, once a railroad is revenue adequate, it can no longer raise rates and may have to lower them. This would result in a de facto price control set by a regulator over a private market business. Businesses should be able to charge prices based on economic factors through supply and demand.

Technology

Promote 5G: 5G is faster and more reliable than the current generation of wireless technology, and will enable everything from autonomous car deployment to smart grid electricity technology to "the internet of things". For taxpayers, the deployment of next-generation networks also translates to savings as government services from traffic system management to trash collection become more efficient. The potential for infrastructure improvements is enormous - but 5G rollout requires infrastructure work in and of itself, which means the government needs to do its part to help enable these benefits to accrue to Americans.

Cap In-Kind Cable Operator Contributions: According to Section 621 of the Cable Act of 1992, local governments are able to charge cable operators a fee that is capped at 5 percent of gross revenue from cable service. In addition to boosting government coffers, operators may also be required to meet non-monetary conditions of a franchise agreement, usually referred to as "in-kind contributions." These additional conditions can include public access channels, funds to assist local citizens or organizations in producing programming for these channels, and studios and equipment for those interested in providing local programming. In some cases, it also means providing free or discounted cable services to government buildings. These additional fees and taxes are not just borne by companies striving to deploy new networks across the country, they are also passed along to consumers to offset the increased cost to deploy new services. By increasing the cost to use rights-of-way, these municipalities are creating a barrier to entry for new broadband deployment in their communities.

The Federal Communications Commission (FCC) is taking action to clarify that the Congressionally established 5 percent cap on franchise fees must also include the value of in-kind contributions in their calculations. The FCC should finalize this proposed rule.

Auction Spectrum for Private Use. The allocation of spectrum for commercial use is determined by the Federal Communications Commission, which is sometimes conducted on an inefficient and outdated basis. While the FCC has done a decent job allocating spectrum and recognizing the need for more wireless development, the majority of all usable spectrum is still controlled by the government. As newer technologies roll out, it's important to ensure they have sufficient spectrum bandwidth to be developed in the private sector. This path not only prevents costly taxpayer-funded 5G deployment, it also means taxpayers benefit proactively from 5G-enabled innovations in everything from traffic management to garbage collection.

Auctions are certainly not the only answer to every situation involving spectrum use, but along with other tools informed by cost-benefit analysis, unused spectrum can be put to better use for the benefit of taxpayers as well as consumers. A recent example is an auction initiated for the 24 gigahertz band, which could prove valuable for 5G deployment. Here a few officials in the Department of Commerce raised the objection that development of this band could have interfered with weather forecasting traffic, despite evidence to the contrary.

Market actors have numerous opinions on how each individual band of spectrum can be most efficiently allocated and put to use, and their concerns must be carefully weighed. Yet, all should be able to agree that government hoarding of spectrum is not in the best interests of the nation or the economy. While an Executive Order cannot impact an independent federal entity like the FCC in the way it can other agencies, President Trump can encourage departments under his direct authority (such as Commerce and Defense) to continue identifying self-built obstacles that impede the FCC's progress on a more rational spectrum policy.

Tax:

Remove Regulatory Barriers to Public-Private Partnerships: Public-Private Partnerships (PPPs) allow efficient and effective management over the life cycle of a project, including not just design and construction, but operation and maintenance as well. Though primarily confined to roads in the U.S., these partnerships are widely utilized for public buildings in other countries, and with great success. Based on this experience, unlocking the PPP policy toolkit for government facilities here could deliver savings of 25 percent over the life cycle.

Although Congress should make modifications to the Tax Code that would extend private activity bond availability to "vertical infrastructure" (a key financing feature of other PPPs), the Executive Branch can take other helpful actions. The Office of Management and Budget's Circular A-11 creates several operating lease "scoring" requirements for public buildings that act to discourage the use of PPPs. Going forward, Circular A-11 should be modified to ensure that federal government obligations from PPPs, lease purchases, and leasebacks as classified as annual operating lease costs instead of upfront capital leases. As former General Services Administration official Dorothy Robyn wrote some five years ago, "Reforming these rules would allow the government to shrink its real estate footprint, modernize its legacy infrastructure for the 21st century, and save billions of dollars."

Conclusion

There are many areas of infrastructure, from energy pipelines to air travel to postal delivery, that the Administration as well as Congress has examined for regulatory reform opportunities. These efforts should continue in addition to the suggestions outlined above, and for good reason. Many in Washington view a multi-trillion-dollar spending deal is the only way to revitalize America's infrastructure. But that view is fundamentally flawed. Rather, the best way to revitalize America's infrastructure and modernize the transportation system is to ensure tax dollars are allocated efficiently and projects can proceed instead of being tangled in red tape. Capitalizing on the power of the free market will enable the infrastructure needs of the United States to be met in a fiscally responsible manner.

Furthermore, what's needed is a better allocation of billions of tax dollars we already spend instead of throwing more borrowed money at the problem. By slashing some, or all the aforementioned regulations, the Trump administration can double down on the free market, taxpayer protection, and its promise of improving infrastructure.

About the Author

Thomas Aiello is a Government Affairs Associate with National Taxpayers Union.