Global Infrastructure Investor Association

SULLIVAN & CROMWELL LLP

BUILDING A NEW FOUNDATION FOR U.S. INFRASTRUCTURE

White Paper
May 2025

Foreword by Jon Phillips
Chief Executive, Global Infrastructure Investor Association

For global infrastructure investors, the United States is the biggest single market in the world. It is a land of opportunity, with enormous potential for investors to help deliver the country's energy security agenda, pave the way toward a future of digital data and artificial intelligence, and make its transportation systems fit for the second quarter of the 21st century and beyond.

We and our members developed the attached White Paper in partnership with Sullivan & Cromwell LLP. In it, we make a series of policy recommendations that we believe can help the U.S Congress and the Administration turn opportunity into reality. Around the world, private investors are helping governments deliver their infrastructure agendas, by bringing private capital, expertise, and efficiencies to bear either through ownership and management of infrastructure assets, or by working in close partnership with public authorities to modernize energy networks, airports, ports, highways, and railroads.

We welcome your views on these recommendations. Please provide them as soon as possible by using the QR code below.

The Global Infrastructure Investor Association represents the world's leading infrastructure investors and advisors to the sector. In total our members have more than US$2 trillion in assets under management in nearly 70 countries, with decades of expertise in owning, managing, maintaining, and renewing infrastructure that forms the bedrock of modern economies.

In its 2025 Report Card for America's Infrastructure, the American Society of Civil Engineers has estimated that the U.S faces a $3.7 trillion funding gap if it continues to invest in infrastructure at current levels. However, if Congress were to take policy actions to unlock a greater role for private investment and expertise, that gap could be very significantly narrowed, benefiting communities and boosting economic growth and jobs across the country.

In a global race to attract private capital, the recommendations in this White Paper provide a pathway to making the U.S. the world's top destination for private investment in infrastructure, helping to deliver the Administration's economic growth priorities. Private ownership, public-private partnerships, and the use of private sector skills and experience can all help to usher in a new Golden Age of American infrastructure.

Jon Phillips

Jon Phillips

May 2025

EXECUTIVE SUMMARY

The U.S. has long been a target market for investors, in light of its size and economic opportunities. But over-reliance on public debt to pay for infrastructure, and obstacles like permits that take years to obtain, are holding back progress. The U.S. has a $3.7 trillion infrastructure funding gap that cannot be closed without the private sector taking a greater role in infrastructure investing.

This paper is a call to action from the global infrastructure investment community for the U.S. Congress and the Trump Administration to supercharge investment in the U.S. infrastructure market and to make it easier for state and local governments to access private capital and expertise, in order to deliver the infrastructure that American communities are seeking over the next 25 years and beyond.

This call to action to improve investor confidence in the U.S. infrastructure sector can be summarized in three key steps:

1. **Keep Building**. Reauthorize and strengthen expiring infrastructure programs to create conditions for long-term private investments that deliver the economic growth, local jobs, and modern infrastructure that communities deserve.

2. **Preserve Incentives**. Protect the jobs created and investments made using energy tax incentives that support reliability and investment by preserving credits such as the investment, production, and associated manufacturing tax credits. If Congress changes existing credits, Congress should honor all tax credit investments already made.

3. **Open the Door**. Facilitate private investment by enacting permitting reform, building state capacity to leverage existing assets, urging states to pass Public-Private Partnership (P3) legislation, maintaining and expanding Build America Bureau programs, and encouraging private sector investment through innovative financing mechanisms.

In the pages that follow, we expand on how these steps can be achieved and explore how these recommendations can address directly the challenges facing the infrastructure sector. We focus on permitting reform, renewed support for public-private partnerships, preservation of existing tax incentives, budgetary reforms, and skills training programs, combined with specific recommendations to address the needs of key infrastructure sectors, such as air transportation, transmission infrastructure and allocation of water resources.

Together, these recommendations provide a blueprint for a new foundation for U.S infrastructure.

BUILDING A NEW FOUNDATION FOR U.S. INFRASTRUCTURE – A WHITE PAPER

The infrastructure sector is vital to the U.S. economy, and its success as a sector plays a critical role in the economic growth of the United States. But the experience of recent years has demonstrated that concerted policy changes are needed to avoid falling behind other leading developed economies in development of infrastructure while ensuring the long-term competitiveness of the U.S. economy.

This paper addresses 25 challenges facing the U.S. infrastructure sector and offers concrete recommendations for potential changes in U.S. federal and state policy, laws and regulation to address the infrastructure needs of the United States and promote a new era of dominance for energy and infrastructure investment. This paper explores these potential changes and provides preliminary legal analysis of how they might be effected under current law, or how the law might be changed to accommodate a particular objective.

Certain infrastructure sectors, such as telecommunications and energy, have undergone dramatic changes in the last several decades, spurred by inflows of private and public capital. The telecommunications sector—transformed by exponential improvements in AI, computer and information transmission technology—and the energy sector—spurred by transformative technological improvements in extractive methods, improvements in the environmental impact of the industry attributable to the development of renewable fuel sources, and improvements in grid connectivity and new energy storage technologies—demonstrate a path for continued growth and partnership between public sector investment and private capital. Other sectors, such as transportation and water infrastructure, have remained relatively stagnant, as assets reach the end of their useful lives or require substantial refurbishment or replacement.

In many of these sectors, there is no one cause of the challenges they face, as assets fall victim to growing deferred maintenance costs, failure to fully recoup the cost of use from those who benefit from the relevant assets, federal budgetary scoring rules, permitting delays and challenges, and other factors. The successes and barriers faced by these infrastructure sectors demonstrate the opportunity and demand for continued public and private support to enable these sectors to achieve their economic potential.

The challenges faced by the infrastructure sector are not insurmountable, and this paper suggests a series of specific actions that can be taken, through a combination of federal legislation, executive action, and regulatory rules and guidance, to restart the infrastructure sector on the road to success. Many of the policy recommendations included below build on the successes of existing federal and state programs or suggest new action drawn on the success of other countries that have implemented sweeping infrastructure policy. Together, these recommendations provide a strong foundation on which to build the U.S. infrastructure sector into the second quarter of the 21st Century and beyond.

TABLE OF CONTENTS

Page

A. Permitting Reform

1. Prioritize Prompt Implementation of Permitting Streamlining Procedures in Title 41 of the FAST Act

- *The Problem:* The streamlining provisions contained in the permitting provisions of Title 41 of the FAST Act, know as FAST-41, sought to improve the federal environmental permitting process through a variety of streamlining procedures, including "notice of initiation" and "coordinated project plan" procedures. Although these procedures are subject to permitting timetables set by designated lead agencies, the average time needed to complete review is often delayed beyond the promised timelines.

- *The Solution:* The promised streamlining actions of designated lead agencies should be bolstered; current statutory limitations on the extension of established deadlines should be tightened; and executive oversight and accountability measures over burdensome timeline modifications should be heightened.

- *Recommended Actions:*

    - Department of Transportation (DOT) to prioritize (1) expanded development of an inventory of federal environmental review and authorization processes for various categories of projects pursuant to § 4370m-1 of FAST-41, (2) maintenance of the Permitting Dashboard in accordance with the public disclosure requirements in § 4370m-2, and (3) coordination of required governmental reviews as set forth in § 4370m-4.

    - Grant authority to Executive Director of the Permitting Council to establish procedures and deadlines for coordinating federal review of projects.

    - Permitting Council to supplement the streamlining provisions in the Infrastructure Investment and Jobs Act (IIJA) that required the Council to develop "recommended performance schedules" that do not exceed two years, by establishing accountability measures that will mitigate delays to timetables by:

        - Tracking streamlining efficacy in the FAST-41 database by requiring clear data on the permitting process from start to end dates of each project.

        - Disclosing in the FAST-41 database which "covered projects" were approved by the Permitting Council under 42 U.S.C. § 4370m-2(a)(4)(A) pursuant to the "discretionary" standard and which pursuant to the "objective" standard.

        - Holding a biennial oversight hearing regarding permitting streamlining processes before either the House Committee on Transportation and Infrastructure or the Senate Committee on Homeland Security and Governmental Affairs.

2. **Amend FAST-41 to Enhance Provisions Relating to Streamlining Federal Permitting Processes**

- *The Problem:* FAST-41 is subject to frequent delays arising from poor coordination among federal agencies and absence of a process to accelerate resolution of issues, with no consequences for failure to comply with review completion deadlines.

- *The Solution:* Amend and update provisions in the FAST Act to improve existing streamlining procedures, including through the implementation of clearer issue resolution and approval measures and imposing penalties for agency delays.

- *Recommended Actions:*

    - Amend § 4370m-4 to include accelerated issue resolution processes for federal reviews and permit approvals, with escalation to arbitrating authority, such as the Executive Director of the Permitting Council or the OMB, and, ultimately, the President.[1]

    - Amend FAST-41 to mandate deemed approval of a permit if an agency fails to comply with review completion guidelines.

    - Impose fiscal penalties on agencies that fail to comply with review completion deadlines.[2]

3. **Adapt FAST-41/NEPA Streamlining Provisions to Other Infrastructure Legislation Where Process-Enhancing Techniques Are Lacking**

- *The Problem:* FAST-41 and NEPA apply only to surface transportation projects and environmental approvals, respectively, but there are other federal approval processes that demand similar streamlining.

- *The Solution:* Although some other infrastructure legislation, such as the Water Resources Development Act, contain some review acceleration procedures (for example, the designation of a lead agency for process oversight and coordination with state and local authorities), such legislation could benefit from enhanced dispute escalation procedures akin to those outlined in FAST 41.

---

1 References in this paper to "arbitrating authority" refer to an inter-agency committee of senior officials of agencies with appropriate areas of responsibility. FAST-41 currently provides only that agencies must work cooperatively to resolve any delay or denial issues. By contrast, §139(h)(6) of the National Environmental Policy Act of 1970 (NEPA), 23 U.S.C. § 139, contains a three-step dispute resolution process with a designated timetable involving (i) an initial meeting with relevant stakeholders following a lead agency's receipt of a meeting request from any stakeholder (e.g., another participating agency, a project sponsor or a state governor), (ii) a referral to the Secretary of Transportation and (iii) a further referral to the Council on Environmental Quality (CEQ). If the CEQ cannot resolve the issue, then the issue is escalated to the President.

2 Similar financial penalties are set forth in § 139(h)(7) of NEPA, which provides procedures that rescind, subject to certain conditions, a specified amount of funds from the office of the head of an agency that fails to comply with review completion deadlines. There is little evidence that these procedures have been widely used.

- *Recommended Actions:*
    - Survey and review other infrastructure legislation to identify critical legislation lacking similar streamlining provisions.
    - Amend applicable infrastructure statutes to provide for dispute resolution by an arbitrating authority of escalated issues, as discussed in item 2 above.
    - Expand upon existing framework to designate lead agencies for process oversight and coordination with state and local authorities.

4. Amend NEPA to Allow Resolution of CEQ-Escalated Issues by an Arbitrating Authority

- *The Problem:* Major infrastructure projects subject to NEPA often face significant delays due to interagency disputes and conflicting interpretations of environmental impacts. Although the Council on Environmental Quality (CEQ) is tasked with resolving such disputes, its authority is limited to coordination and recommendations, and there is currently no mechanism for decisive resolution when agencies remain at an impasse.
- *The Solution:* Amend NEPA to grant authority to an arbitrating authority to resolve CEQ-escalated disputes, based on a transparent multi-factor test. This test would weigh considerations such as environmental impact, national economic interest, national security, and climate resilience. The process would preserve environmental protections while ensuring timely decisions on high-impact projects.
- *Recommended Actions:*
    - Amend NEPA to allow submission to an arbitrating authority of CEQ-referred disputes when interagency disagreement cannot be resolved within a specified timeframe.
    - Establish a 90-day deadline for CEQ to resolve escalated disputes before reference to an arbitrating authority becomes available.
    - Direct CEQ to develop and publish a multi-factor framework to guide decisions by the arbitrating authority, incorporating public input and expert consultation.

5. Adapt Compensatory Mitigation Mechanisms for Permits Issued Under Section 404 of the Clean Water Act to Other Infrastructure Legislation

- *The Problem:* The CWA Section 404 program allows compensatory mitigation for wetlands and other aquatic resource impacts, where developers are required to restore, create or enhance natural habitats to offset environmental damage. However, compensatory mitigation is not uniformly applied across other infrastructure sectors, leading to inconsistent treatment and confusion, additional costs and lengthy delays for developers who must navigate complex regulatory requirements on a case-by-case basis.
- *The Solution:* Extend the compensatory mitigation mechanisms from Section 404 of the CWA to other infrastructure legislation where such mechanisms could alleviate adverse

environmental effects of other types of infrastructure development. Such mechanisms would create a clear and uniform framework that streamlines the regulatory process across sectors, allowing developers to plan more easily and execute projects while ensuring environmental impacts are effectively managed. Such mechanisms would take into account economic externalities while letting projects proceed, rather than resulting in the effective blockage or abandonment of projects that could be economically beneficial to a region.

- *Recommended Actions:*
  - Amend relevant infrastructure legislation (e.g., NEPA, Energy Policy Act, and Federal Highway Act) to incorporate compensatory mitigation measures consistent with those available under Section 404 of the CWA.
  - Establish a streamlined process for developers to engage in compensatory mitigation efforts that are predictable and consistent across different types of infrastructure project, while also encouraging creativity and early compliance.
  - Develop clear guidelines for mitigation practices (e.g., restoration, enhancement, or preservation) that are flexible enough to accommodate various infrastructure types while maintaining effective environmental protection.

6. Improve Existing Federal Credit and Investment Programs

- *The Problem:* Federal credit programs like TIFIA (Transportation), WIFIA (Water), and RRIF (Rail) are intended to catalyze private investment in infrastructure, but they remain underleveraged due to overly cautious risk assessments, burdensome application processes, and outdated statutory constraints. Many developers—especially those in the private sector—face long wait times, opaque criteria, and limited flexibility in project structuring. As a result, billions of dollars in available federal credit go unused each year, and high-potential projects are delayed or derisked through more expensive private capital.
- *The Solution:* Modernize federal infrastructure credit programs to align more closely with private-sector financing realities and improve access for a broader range of sponsors. This means adopting smarter risk models, increasing loan capacity, and making the programs more predictable and responsive to market needs.
- *Recommended Actions:*
  - Create a single application portal and shared underwriting framework across TIFIA, WIFIA, and RRIF to reduce duplication and speed up credit approvals.
  - Revise credit scoring models used by DOE, DOT, EPA, and FRA to reflect actual performance data from past infrastructure loans—moving away from overly conservative default assumptions that constrain credit availability and inflate interest rates (e.g., moving from 10% to 5% default assumption).
  - Increase annual appropriations for TIFIA and eliminate the budgetary scoring penalty that limits the program's ability to issue loans at scale.

- Authorize subordinated lending structures that better match the risk appetite of private capital and make it easier to stack federal loans with equity and senior debt.

- Expand lending programs using small federal appropriations to provide more favorable terms (flexible repayment, longer lifetimes, first loss positions, insurance/reinsurance, etc.) in order to encourage public and private partners to build projects.

- Allow broader use of programmatic or portfolio-based loans for developers with strong track records, enabling faster approvals for replicable projects like distributed energy or resilience upgrades.

- Provide predevelopment credit support for environmental review and permitting costs to help move large-scale projects through the pipeline faster and de-risk early-stage investment.

- Streamline transaction execution procedures to resemble more closely the private commercial senior lending market.

B. *Supporting Use of Public-Private Partnerships (P3s)*

7. Expand Existing Programs that Incentivize States and Localities to Use Public-Private Partnerships (P3s)

- *The Problem:* State and local infrastructure projects currently operate inefficiently due to lack of coordination with the private sector. This leads to increased development costs, worse service, and delayed projects.

- *The Solution*: Use available federal resources to expand ongoing P3 initiatives, and increase stakeholder engagement at the state and local level.

- *Recommended Actions:*

  - Federal Transit Administration to restart currently authorized state-level programs such as the Penta-P program and Public-Private-Partnership Workshops, and expand the Capital Investments Grant (CIG) program.

  - Build America Bureau to expand efforts to assist states with creating and operating P3 offices, as permitted under the FAST Act, including by assisting states in developing enabling legislation for P3s and providing capacity grants to states to develop and maintain state agencies to establish and promote P3s.

  - Create opportunities for states and local governments to retain an economic interest in the successful operation of P3 projects, to better align the interests of users, state and local governments, and private operators.

  - Partner with private firms to support initial purchase or offtake agreements for P3s and other infrastructure projects through creative uses of existing statutory transaction authority, such as the DOE Loan Programs Office, Defense Production Act, or new legislation, to catalyze long-term investments in key resources.

  - Build America Bureau to create a centralized database on its website of model forms, for easy state and local access.

8. Expand Use of P3s at Federal Level and Use Successful Examples of Federal P3s as Models for Future Projects

- *The Problem:* The lack of public-private partnerships at the state and local level is partially due to a lack of precedent at the federal level, making projects seem riskier to state and local legislators than they actually are in practice.

- *The Solution*: The federal government should lead the way in demonstrating the success of public-private partnerships.

- *Recommended Actions:*

  - Enact legislation to provide for privatization of federal property using Military Housing Privatization Initiative as a model project.

  - Increase staffing at DOE, DOT and the CHIPS programming office, among other federal agencies, and establish a new cross-agency office for infrastructure, to increase federal capacity for P3 projects and develop a pipeline of future projects.

  - Expand support for Build America Bureau grants, including Innovative Finance and Asset Concession Grants and the Regional Infrastructure Accelerators Program.

  - Enact legislation to expand the use of P3s in operating and maintaining federal land.

  - Coordinate with existing efforts of the National Governors Association to bolster states' efforts to enhance P3 opportunities.

9. Establish an "Asset Recycling" Initiative Modeled on Australia's

- *The Problem:* The U.S. lacks a cohesive policy to incentivize widespread state and municipal action promoting new greenfield projects and the repair of existing infrastructure assets.

- *The Solution:* The Australian federal government established an Asset Recycling Initiative as part of its Infrastructure Growth Package that could serve as a model for new federal infrastructure legislation. By establishing a similar program in the U.S., the federal government could promote concessions or sales of infrastructure assets the proceeds of which could in turn be allocated to new infrastructure investment in exchange for an additional percentage of the estimated proceeds the state earned in the grant of the concession or sale.

- *Recommended Actions:*
  - Implement an asset recycling regulatory framework whereby states and municipalities identify infrastructure assets eligible for the grant of a long-term concession to operate (or build and operate in the case of a new project) and develop a P3 proposal that would include a commitment to use the funds earned from the concession for the construction of greenfield assets or repair and/or redevelopment of brownfield assets.
  - Develop criteria for eligibility for state and municipal participation in asset recycling programs, including credit criteria and infrastructure project viability criteria, including:
    - the net benefit of the concession or sale of the recycled asset,
    - the likelihood of enhancement of the long-term productive capacity of the regional economy, and
    - the potential for enhanced private sector involvement in the funding and financing of the relevant infrastructure asset, and
    - state or municipal commitment to enact permitting reforms to facilitate investment in the subject asset and other infrastructure assets.
  - Offer states or municipalities loan guarantees or direct loans, potentially leveraging existing loan programs, to support innovative projects that are difficult to fund through traditional federal programs.
    - Such loans and loan guarantees could be funded through fiscal expansions, funding reallocations of existing programs, or tax-exempt debt (which would require a change to the Internal Revenue Code to permit such loan guarantees and to allow private infrastructure operators to use tax-exempt debt to finance an infrastructure transaction if the proceeds are recycled by the public entity into other qualifying infrastructure projects).
  - Make the asset recycling awards contingent on the applicant completing a value-for-money (VfM) analysis requiring that the applicant predict not only the upfront capital costs, which may be similar regardless of the approach used, but also the full range of life-cycle costs, which are likely to differ more significantly depending on whether or not a project uses a P3 structure.
  - Require the state or municipality seeking to participate in the asset recycling program to retain some sort of ongoing interest in the asset as a condition to eligibility through a revenue share, free carry or "promote" structure, which could ensure that the state or municipality continues to reap the benefits of the asset.
  - Amend the Internal Revenue Code to permit the sale of assets that had been financed with tax-exempt debt, as well as the issuance of new tax-exempt debt for

the acquisition of existing infrastructure assets, in each case so long as the proceeds of the sale are recycled into other qualifying infrastructure projects.

C. Tax Incentives

10. Preserve the Availability and Use of Tax Credits Supporting the Infrastructure Sector

- *The Problem*: Investment tax credits and production tax credits, such as the Clean Electricity Investment Credit and the Clean Electricity Production Credit, are important subsidies for investment in desired infrastructure projects. However, the efficacy of such incentives is reduced by the complicated tax planning required to be allocated the tax credit and uncertainty surrounding their future availability.

- *The Solution*: Safe harbors similar to those for rehabilitation credits and wind energy production tax credits would provide certainty to potential investors and reduce tax planning costs. Clear policy pertaining to the future availability of these incentives and the continued eligibility of projects financed on the basis of currently available incentives will promote continued private sector investment.

- *Recommended Actions*:

    - Department of Treasury and IRS to issue guidance regarding permissible transaction structures to provide investors clarity regarding the requirements to be eligible for investment tax credits.

    - Preserve existing tax credits that support infrastructure investment, including the 30D clean vehicle credit, the clean electricity PTC (45Y) and ITC (48E), the 45V clean hydrogen credit, the 45X advanced manufacturing production credit, the 45Z clean fuel PTC, the 40B sustainable aviation fuel credit, the 48C advanced manufacturing credit, and the 25D residential clean energy credit.

    - Build on the existing framework of the DOT's Mega Program (the National Infrastructure Project Assistance Program) to include investment tax credit availability for "transformative" infrastructure projects with national or regional economic, mobility or safety benefits and consider establishing a similar program in other critical federal agencies, including DOE.

11. Improve and Expand Availability of Tax-Exempt Bond Financing for Infrastructure

- *The Problem*:

    - Private Activity Bonds (PABs) allow for cheaper financing of infrastructure projects than would typically be available to a private issuer, but the total amount of PABs that a state can issue or allocate to a local government is capped. If the volume cap is reached, a state project sponsor will be incentivized to avoid a P3 transaction, even if it would prefer the risk transfer and other benefits associated with using a P3 structure.

- The existing tax-exempt bond framework provides only a tax exemption, making such bonds attractive only to investors with taxable income.

- *The Solution*:

    - Increasing the PAB volume cap would allow state and local governments to employ more P3 structures for infrastructure projects or otherwise incentivize private issuers to seek government buy-in for critical infrastructure projects.

    - Providing a tax credit rather than just a tax exemption would expand the investor base for infrastructure bond financing. This credit could be refundable and/or transferable, similar to clean energy tax credits.

- *Recommended Actions*:

    - Congress to amend the Internal Revenue Code to raise the volume cap for PABs or eliminate the cap entirely.

    - Congress to create a separate allocation for infrastructure projects so that they do not have to compete with other uses of PABs for allocations.

    - Congress to enact programs under which bondholders receive a tax credit for a portion of interest received from infrastructure bond financing rather than a tax exemption, similar to the Build America Bonds program that sunsetted at the end of 2010.

12. Expand the Types of Income and Assets Permitted by REITs or Introduce a New Type of Equity Entitled to Tax Advantages that Is Relevant to Infrastructure Investments

- *The Problem*: Many types of infrastructure investments would likely not qualify for REIT (Real Estate Investment Trusts) holding structures under 26 U.S.C. § 856, even though such status would offer tax efficiencies, such as non-taxation at the entity level, that would attract significant private capital.

- *The Solution*: Congress can amend federal tax statutes to expand the types of assets and forms of income that are permitted to be held by REITs and/or create a new type of entity that would be entitled to similar tax advantages that REITs enjoy, which entity would be permitted to make a wide range of infrastructure investments.

- *Recommended Actions*:

    - Amend the definition of "real estate assets" in 26 U.S.C. § 856(c)(5)(B) and the definition of "rents from real property" in 26 U.S.C. § 856(d)(2)(C) to include infrastructure assets and related income as types of assets and income permitted by REITs.

    - Enact in the tax code a new type of entity entitled to tax advantages similar to those of REITs that is permitted to make investments in infrastructure.

13. Repeal FIRPTA or Exempt Infrastructure Investments from FIRPTA to Attract Offshore Capital Investment in U.S. Infrastructure

- *The Problem:* The Foreign Investment in Real Property Act (FIRPTA), 26 U.S.C. § 897, taxes capital gains of foreign investors if they accrue from dispositions of U.S. real estate or the shares of U.S. corporations predominantly owning real estate. This disincentivizes such foreign investors from investing in U.S. assets, or the shares of U.S. corporations that predominantly own assets, that might constitute "real estate" under FIRPTA, among which are likely many infrastructure projects that, as a result, receive less funding.

- *The Solution:* Congress can address this problem by either repealing FIRPTA, thereby eliminating this differential treatment of foreign investors' capital gains in respect of U.S. real estate altogether, or otherwise amending FIRPTA to specifically exempt all infrastructure projects from the statute's definition of "real property."

- *Recommended Actions:* Repeal 26 U.S.C. § 897 or amend the definition of "interest in real property" in § 897(c)(1) to exclude infrastructure investments.

D. Budgetary Reforms

14. Revise OMB Policy to Update Federal Budget Scoring Standards Related to Capital Leases to Specify Treatment of P3 Projects

- *The Problem:* Statutory budgetary scoring rules, intended to promote transparency and responsible spending, require federally supported infrastructure projects to be fully funded upfront and not, for example, with long-term debt, making such ventures more expensive during the current legislative session, without accounting for lifetime spend of the project. These same rules compound the problem by failing to recognize infrastructure-related operating concessions as distinct constructs, instead treating them as capital (and not operating) leases requiring substantial upfront outlays.

- *The Solution:* OMB should issue a policy change that recognizes infrastructure concessions as a means of transferring risk from the public sector to the private sector, distinct from both operating and capital leases. OMB might use, as guidance, the Governmental Accounting Standards Board's recognition of the operating concession as a unique device whose budgetary effects should be measured against the actual risks that the government bears. Indeed, even treating operating concessions as operating, rather than capital, leases would be insufficient, as the OMB's current scoring standards for operating leases do not adequately address their actual long-term costs, for example the deferred maintenance costs that the federal government is expected to incur eventually, albeit not in the short term.

- *Recommended Action:* OMB to update federal budget scoring standards to treat infrastructure operating concessions as a distinct concept and not as leases.

15. **Consider Adapting Approach Previously Taken in Military Housing Privatization Initiative for Use in Other Federal Infrastructure Projects**

- *The Problem:* Budget scoring affects the amount of budgetary authority that federal agencies need to include in their annual budget during the budget year cycle when a new contract is signed. For an activity carried out in partnership with the private sector to be considered "non-budgetary" and therefore removed from the federal budget, OMB applies a strict test requiring that the activity not be controlled by the federal government. Initially, from 1997 until 2008, OMB's analysis exempted certain military housing partnerships created pursuant to the MHPI from this general policy, but it later reversed course and determined that any borrowing by P3 entities under the MHPI after 2014 would be scored as if the P3s were in fact controlled by the federal government.

- *The Solution:* OMB and CBO could revisit this and expand the "non-budgetary" exemption for removal from the federal budget to include other infrastructure projects where risk is transferred to a private partner.

- *Recommended Actions:*

  - Reinstate the original scoring methodology for the MHPI and/or other projects, thereby providing housing developers and federal agencies with the greater flexibility needed to optimize and expand P3 structures.

  - OMB and CBO to update federal budget scoring standards to reflect portion of risk borne by private partners in a wider range of infrastructure projects.

  - Modify requirements so that fewer P3 projects undertaken by federal agencies and their private-sector partners would be treated as direct government spending for budgetary purposes, or, alternatively, evaluate the individual proposals on a case-by-case basis to determine appropriate level of budgetary authority.

E. Skills Training

16. **Strengthen and Expand Federal Programs that Provide Grants and Contracts for Technical Assistance and Workforce Development Across Infrastructure Sectors**

- *The Problem:* Federal programs aimed at incentivizing infrastructure initiatives and supporting innovation in the infrastructure market through workforce availability and development are often underfunded or have a limited reach.

- *The Solution:* Increase funding for Section 5314(b) of the FAST Act, which authorizes the Secretary of Transportation to undertake, or make grants and contracts for, human resource needs related to public transportation activities. These activities could include employment training programs, outreach programs to increase employment in key infrastructure sectors, research on sector-specific personnel and training needs, and training and assistance for business opportunities.

- *Recommended Actions:*
  - Enact new legislation providing funding and competitive grant programs for technical assistance and workforce development in key infrastructure sectors, including energy, water, transportation and social infrastructure.
  - Adapt provisions of the Workforce Innovation and Opportunity Act and accompanying regulations to encourage infrastructure workforce development by:
    - creating a framework for efficient identification of labor needs in the infrastructure sector,
    - implementing training programs for the development of skilled labor addressing the needs of the infrastructure sector,
    - identifying sectors where current workforce demands exceed supply of skilled labor and creating specific financial incentives to attract potential workers,
    - connecting potential employers with skilled labor efficiently, and
    - creating specialized training programs and job placement resources aimed at facilitating the deployment of new technologies and AI tools in the infrastructure sector.

F. Assessment of Infrastructure Projects

17. Develop Standardized, Comprehensive Performance Metrics to Monitor Infrastructure Projects

- *The Problem:* Infrastructure projects developed and operated in the U.S. are subject to overlapping and sometimes conflicting reporting obligations imposed by federal, state and local legislation and regulation, increasing compliance costs and siphoning resources that could be devoted to existing or new projects.
- *The Solution:* Agencies with oversight authority over infrastructure projects can assist in standardizing the reporting of data that is currently collected by federal agencies, states and local governments with overlapping jurisdiction, as is currently done by the Department of Transportation, with a focus on standardized quantitative metrics.
- *Recommended Actions:*
  - Department of Transportation and Department of Energy to promulgate rules requiring that TIFIA (Transportation Infrastructure Finance and Innovation Act), RRIF (Railroad Rehabilitation and Improvement Financing), and IRA (Inflation Reduction Act) projects provide data for reporting requirements in a format that can be aggregated and analyzed.

- Agencies administering competitive funding programs to promulgate regulations making participation contingent on applicant's completion of a VfM analysis.

- Provide statutory reporting requirement for infrastructure projects that receive federal funds and require that data be provided in a format that can be aggregated and analyzed.

- Provide grants to state and local governments to offset costs of transitioning to standardized and reported metrics.

G. *Improvements to the Airport Investment Partnership Program (AIPP)*

18. Increase the Number of Commercial Airports Participating in AIPP

- *The Problem:* The predecessor to the AIPP limited participation in the pilot privatization program to 10 airports and restricted the type of public airports that may participate. In addition, a participating airport could only be leased, not sold. Although the predecessor program was amended to remove the restriction on the number and type of public airports that may participate in the program, it retained many of the restrictions from the predecessor program, including the provisions restricting the outright sale of commercial airports. As a result, participation has remained limited.

- *The Solution:* Implement further procedural amendments and expand exemptions to the AIPP to encourage broader participation.

- *Recommended Actions:*

    - Accelerate the application and approval procedures for the AIPP, thereby reducing uncertainty for applicants.

    - Reduce the threshold for approval, currently 65%, for increases in airport rates and charges that exceed the rate of increase of the Consumer Price Index (CPI), which are currently allowed only if approved by (i) at least 65% of the air carriers serving the airport and (ii) air carriers whose aircraft landing at the airport during the preceding calendar year had a total landed weight of at least 65% of the total landed weight of all aircraft landing at the airport during such year.

    - Allow commercial airports to be sold, as is the case with general aviation airports.

    - Reduce the percentage match private operators must provide to obtain AIP grants (currently 30%) to the level of comparable public operators (currently 10-25%).

    - Eliminate the current federal income tax exemption of interest on bonds issued by public-sector airport owners or extend tax-exempt or tax-preferential treatment to airport infrastructure bonds issued by private investors.

    - Provide a model concession agreement for public airport operators.

19. Relax Restriction on Public Airport Operators Using Airport Sale or Lease Proceeds for Non-Airport Purposes (or Expand Available Exemption)

- *The Problem:* The AIPP grants an effective veto right to a minority bloc of air carriers at each airport on privatization decisions by limiting the use of revenues generated by an airport (including proceeds generated by sale or lease of an airport to a private party) to expenditures for the capital or operating costs of the airport and related airport systems, unless the operator receives the consent of (i) 65% of an airport's air carriers and (ii) air carriers whose aircraft landing at the airport during the preceding calendar year had a total landed weight of at least 65% of the total landed weight of all aircraft landing at the airport during such year. Air carriers, in most cases, will see advantages from privatization only if they can negotiate lower rents and landing fees in return for agreeing to it, but this would diminish the potential financial return to investors. The 2018 AIPP amendments sought to alleviate this problem by specifying that if an exemption is granted to an airport operator from the requirement to use airport revenues only for airport purposes, the FAA must also grant exemptions to the airport operator to the extent necessary to waive any obligation of the airport operator to repay to the Federal Government any grants, or to return to the Federal Government any property, received by the airport and to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

- *The Solution:* Reduce the 65% threshold to incentivize public airport authorities to apply to the AIPP and to invest airport sale or lease proceeds in improvements to other critical infrastructure. At the same time, increased federal funding could be made available to private operators for airport improvements in order to incentivize private investment in airport infrastructure.

- *Recommended Actions:*

    - Amend 49 U.S.C. §47134(b)(1)(A) to lower the percentage of air carriers required to consent to use proceeds generated by the sale or lease of an airport to a private party for expenditures other than capital or operating costs of the airport and related airport systems. Merely reducing the percentage from 65% to more than 50% could have a material effect.[3]

    - Amend 49 U.S.C. §§47107(b) and 47133 to expand the permitted use of proceeds beyond capital or operating costs of the airport, local airport systems or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including, for example, permitting the use of proceeds for the development of adjacent non-air transportation related commercial infrastructure or digital or transportation infrastructure located elsewhere that arguably enhances overall local or regional mobility.

[3] *See* Congressional Research Service, Airport Privatization: Issues and Options for Congress, March 11, 2021, https://www.congress.gov/crs_external_products/R/PDF/R43545/R43545.16.pdf.

- Amend 49 U.S.C. §47109(a)(4) to allow private operators to receive AIP grants on a basis equal to that made available to public operators (75–95% of eligible costs).

H. *Advancing Transmission Infrastructure*

20. Strengthening Federal Authority for Energy Transmission Development

- *The Problem*: Energy transmission systems in the U.S. are increasingly strained, with transmission congestion and construction delays hindering the development of essential infrastructure. Although DOE has the authority to designate National Interest Electric Transmission Corridors (NIETC), the permitting process is slow and often bogged down by state-level reviews or overt opposition. This causes delays in addressing critical congestion issues, impeding the development of a nationwide high-voltage direct current (HVDC) grid.

- *The Solution*: Strengthen federal authority by expediting permitting processes and encourage the use of existing rights of way to build out an HVDC grid. Providing more decisive action will accelerate the creation of a modernized energy grid that meets national energy needs and enhances transmission efficiency.

- *Recommended Actions:*

  - Congress should authorize the DOE to conduct congestion studies at any time, eliminating the need to wait for state-level reviews or approvals.

  - Empower the Federal Energy Regulatory Commission (FERC) to assume permitting responsibilities, allowing projects to proceed even if state permits are delayed or rejected.

21. Eliminate Internal Government Roadblocks to Long-Distance Energy Transmission in Highway Rights of Way

- *The Problem:* State Departments of Transportation (DOTs) face significant internal roadblocks that hinder the development of long-distance energy transmission through highway rights of way. The primary issue is the lack of collaboration between state DOTs and public service commissions when implementing projects. Moreover, although the joint DOE and federal DOT energy office has undertaken this effort in its work program, there has been little to no action taken to move it forward.

- *The Solution*: Create a Deputies-level executive branch working group, backed by an Executive Order, to facilitate progress in developing transmission infrastructure using highway rights of way.

- *Recommended Actions:*

  - Draft a model for streamlined approval processes between public utility commissions and state DOTs.

- Eliminate previously identified obstacles that have prevented the implementation of energy transmission projects.
- Establish pilot projects to demonstrate the feasibility and benefits of using highway rights of way for energy transmission.

I. Improvements to Existing Water Programs

22. Amend WIFIA to Allow More Flexibility in Funding Projects (but Without Negatively Affecting Existing State Revolving Funds (SRFs))

- *The Problem*. Existing legislation requires that WIFIA financing be provided to support only large projects: projects outside rural areas must have at least $20 million in eligible project costs, and rural projects must have at least $5 million in eligible project costs. In contrast, there are no project size requirements for eligibility under SRF programs.[4]

- *The Solution*. WIFIA could be amended to remove or increase the 49% cap on the portion of costs that may be funded by WIFIA loans so that a greater share of federal funds may be used in a water project.

- *Recommended Actions*.

  - Amend WIFIA to remove or increase the 49% cap on the portion of costs that may be funded by WIFIA loans.
  - Build protections into legislation to ensure that implementing WIFIA does not reduce financing from SRFs.
  - Increase funding for SRFs.

23. Reform and Expand Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Programs by Incorporating More Relevant Data into Funding and Allocation Decisions

- *The Problem:* The current CWSRF allocations, based on a formula from the 1987 Water Quality Act, do not reflect current water quality needs or recent census population data, underestimating needs in areas such as stormwater management, decentralized wastewater treatment, and combined sewer overflow correction.

- *The Solution:* Congress should regularly update the CWSRF allocation formula, similar to the DWSRF, by incorporating the latest available data on population, water quality needs, and

---

[4] SRFs have historically been the largest source of water infrastructure assistance for states. The Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) form the two pillars of state water funding programs. CWSRF is a loan program that provides low-cost financing for state and tribal land water quality projects. DWSRF is a loan program that provides low-cost financing to state and tribal lands for public and private water systems infrastructure projects to achieve compliance with the Safe Drinking Water Act and to protect public health. Under DWSRF, small water systems and disadvantaged communities are given higher funding priority. Both programs are managed by the states, and loans or other types of assistance are distributed according to each state's program and priorities. Each year, Congress appropriates funds, which the EPA distributes among the states.

infrastructure demands every four years. This would ensure equitable and accurate distribution of funds to address critical water quality challenges across states. Further, the allocation of $11.7 billion to the CWSRF over five years from 2022 to 2026 from the Bipartisan Infrastructure Law has provided significant relief with the problem.

- *Recommended Actions:*
    - Congress could mandate periodic reviews of the CWSRF allocation formula every four years to incorporate updated census and water quality data.
    - Enhance state capacity to document needs in stormwater management, decentralized wastewater treatment, and combined sewer overflow correction for inclusion in allocation calculations, including through standardized data collection, technical assistance, and stakeholder collaboration.
    - Engage stakeholders in Great Lakes, Southern, and Western states to address concerns about funding shifts under proposed formula changes.
    - Ensure transparency by publicly sharing the specific factors and weighting used in any revised allocation formula.

24. Consolidate Smaller State Water Districts – Especially Troubled Water Systems – with Larger, Better-Funded Agencies

- *The Problem:* Smaller water districts often face higher per capita costs for maintenance, operations, and improvements, and some struggle to meet demand due to population growth or drought-induced water shortages. These districts may also fail to comply with state and federal regulations.

- *The Solution:* Consolidating smaller, poor-performing water districts with larger ones can reduce costs, improve operational efficiency, and ensure compliance with water quality standards.

- *Recommended Actions:*
    - State environmental or public health agencies, in coordination with the EPA, identify and evaluate underperforming small water districts for potential consolidation with larger, more efficient districts.
    - Secure funding through DWSRF, state bonds, or federal emergency relief to cover consolidation costs.
    - State regulatory agencies, with EPA oversight, monitor post-consolidation water quality and operational performance to ensure compliance with regulations.

25. **Create Market for Water by Allowing Interstate Water Trading so that Prices Accurately Reflect Costs of Delivery**

- *The Problem:* Inefficient water use, driven by pricing that does not reflect delivery costs, contributes to wasteful consumption and costly droughts, such as California's $1.5 billion drought, while restrictive local laws and complex regulations hinder water trading and market-based allocation. These barriers prevent sustainable water use and exacerbate shortages, particularly in water-scarce regions.

- *The Solution:* Implementing water pricing that reflects delivery costs and establishing a market for water trading, similar to Australia's model, can promote efficient and sustainable water use while encouraging innovation in conservation. Federal and state subsidies for essential water use (15 to 25 gallons per day) can protect low-income residents, allowing higher market prices for nonessential use to drive conservation.

- *Recommended Actions:*

  - Suggest reforms to state laws and provide model legislation to simplify intra-state and interstate water trading by reducing regulatory barriers and standardizing approval processes imposed by state and local water authorities.

  - Introduce tiered water pricing, with subsidies for essential use and market-based rates for nonessential consumption, to encourage conservation.

  - Streamline water rights transfer processes by reducing the need for extensive studies and public hearings, while ensuring environmental protections.

  - Department of the Interior to subsidize and promulgate a framework water trading program among Western states, modeled on Australia's market-based system, to evaluate market-driven water allocation and conservation.

The Global Infrastructure Investor Association (GIIA) is the membership body for the world's leading infrastructure investors, and advisors to the sector.

On their behalf, we work with governments, regulators and other stakeholders to promote the role of private investment in providing infrastructure that improves national, regional and local economies.

Collectively, the GIIA community has more than $2 trillion in infrastructure assets under management across nearly 70 countries.

Sullivan & Cromwell LLP provides the highest quality legal advice and representation to clients around the world. The results S&C achieves have set it apart for almost 150 years and have become a model for the modern practice of law.

S&C is a recognized leader in infrastructure investment, mergers & acquisitions, and finance. S&C has acted for a variety of players, including private equity firms, pension funds, sovereign wealth funds, strategic operators, developers, financial institutions, and federal government agencies on a wide range of transactions in relation to energy transition, mobility, digital, and other sectors.

Headquartered in New York, S&C comprises more than 900 lawyers who serve clients around the world through a network of 13 offices, located in leading financial centers in Asia, Australia, Europe and the United States.

May 2025