INFRASTRUCTURE: WHAT'S CHANGED, WHAT HASN'T, AND HAS THE MOMENT FINALLY ARRIVED?

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President Trump has been calling for bold action on infrastructure since launching his campaign for office, and did so again in his second State of the Union address on February 5. The new Democratic House majority has already started to answer with a series of hearings in key committees, highlighting infrastructure's bipartisan appeal. Although a major infrastructure initiative struggled to gain traction last year, recent changes in the policy landscape could lead to a different outcome this time. The K&L Gates infrastructure policy team can help clients develop strategies to effectively engage with the White House and the Congress regarding a major infrastructure package.

WHAT'S CHANGED

New Players: The Democratic takeover of the House of Representatives represents the biggest change, with a new suite of leaders poised to make their mark on infrastructure policy. For the most part, many Democratic lawmakers share President Trump's view (also held by many congressional Republicans) that significant investment is urgently needed to maintain and improve the country's infrastructure. However, congressional Democrats bring different perspectives and priorities to the infrastructure discussion, including a greater focus on sustainability, resilience, and social infrastructure investments. President Trump may have been extending an olive branch across the aisle on these concerns when he said that an infrastructure package should include "investments in the cutting-edge industries of the future."

New Process: The White House drove the infrastructure debate during the last Congress, with the Trump administration releasing a comprehensive infrastructure plan in February 2018. The center of gravity has shifted to the other end of Pennsylvania Avenue – and to the House in particular. House Democrats are expected to initiate action on a major infrastructure package this year. The Republican-controlled Senate will then be in the driver's seat to consider a House proposal, with input from the White House; Senate Democrats will also have a major have a role to play given the 60-vote threshold requirement in that chamber.

Although the recent government shutdown created a temporary detour, House Democrats are moving quickly to assemble an infrastructure package. The House Transportation and Infrastructure Committee held a hearing on February 7 where Chairman Peter DeFazio (D-OR) declared, "We are starting off by sounding the alarm bells – investing in America's infrastructure cannot wait." The Committee is expected to formulate the specifics of a package over the next several months, with the goal of releasing a proposal in the April/May timeframe. As noted below, the tax-writing House Ways and Means Committee has also started to consider revenue options that could support infrastructure funding.

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Although action is expected to begin in the House, the Senate is not sitting still: The Senate Commerce Committee and Senate Environment and Public Works Committee have also held hearings with more planned soon.

New Opportunities: A key challenge for infrastructure previously has been the difficulty of moving a significant package when there are so many other "must-pass" pieces of legislation competing for congressional attention. However, with authorization for surface transportation programs scheduled to expire on September 30, 2020, there is already a "must-pass" infrastructure item on the agenda of the 116th Congress. The surface transportation reauthorization could provide a vehicle for a broader infrastructure package or a fallback option if efforts to advance a separate package fall short.

WHAT HASN'T CHANGED

The Trillion Dollar Question: The central question of the infrastructure debate remains how to pay for a package costing potentially a trillion dollars (or more). The Trump administration's infrastructure plan was criticized by some for its heavy reliance on state and local "self-help" and private sector funding. Congressional Democrats, in contrast, favor direct federal spending. In previous congresses, Chairman DeFazio has expressed support for a range of potential funding measures, such as increasing and indexing the federal gasoline tax, lifting the cap on airport passenger facility charges, and preserving Harbor Maintenance Trust Fund revenues for infrastructure. However, it's not clear whether these measures could yield the trillion dollar investment that lawmakers are seeking or whether any of them are feasible politically. The gas tax has not been increased since 1993, underscoring the political difficulty of raising new revenue from existing sources. That may lead policymakers to consider other options, such as a carbon or a financial transactions tax.

Some Democratic policymakers have also suggested reversing aspects of the Trump administration's recent tax reform to pay for infrastructure. Last year, Senate Democrats proposed increasing the corporate and top individual tax rates and making other changes to generate revenue for infrastructure. However, such changes are a non-starter with nearly all congressional Republicans and would almost certainly be rejected by the Trump administration.

How House Democrats choose to pay for an infrastructure package will directly affect prospects for enactment. The tax-writing House Ways and Means Committee formally launched its consideration of infrastructure funding measures with a hearing on March 6, where committee Chairman Richard Neal (D-MA) commented on his positive interactions with Trump administration officials and said, "I think we have a real opportunity to work together and do something big here."

WHAT'S NEXT

Infrastructure will remain a key agenda item for Congress and the Trump administration for the foreseeable future. Hearings, briefings, white papers, discussion drafts, and other steps in the policy process offer important opportunities for stakeholders to advance priorities. As with the tax reform effort that concluded in 2017, major action on infrastructure may be a multiyear effort that spans multiple Congresses. However, as with tax reform, engagement in the early stages of the policy process is essential to shaping the final outcome. If you haven't yet

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considered the potential opportunities of infrastructure – including the opportunities that could be created by congressional Democrats' broader view of the issue – now is the time.

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