BIPARTISAN POLICY CENTER

January 26, 2021

The Honorable Ron Wyden
Chairman
Senate Committee on Finance
221 Dirksen Senate Office Bldg
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Bldg
Washington D.C. 20510

The Honorable Richard E. Neal
Chairman
House Committee on Ways and Means
1102 Longworth House Office Bldg
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
House Committee on Ways and Means
1139 Longworth House Office Bldg
Washington D.C. 20515

Dear Chairmen Wyden and Neal and Ranking Members Crapo and Brady,

The Bipartisan Policy Center's infrastructure project has several recommendations we write to bring to your attention as you begin to consider policies for inclusion in a forthcoming infrastructure package.

The United States faces a $2 trillion infrastructure funding gap over the next 10 years. That represents the difference between what is planned to be spent and what is actually needed to maintain, modernize, replace, and upgrade the nation's infrastructure. Even more is likely needed when considering the imperative to quickly decarbonize transportation systems, reduce emissions, address climate change, and adapt our infrastructure to mitigate the unavoidable climate impacts already underway. Addressing these needs will require a transformation in how we plan, fund, and build infrastructure across the country.

Several BPC projects have endeavored to build consensus on these issues and develop bipartisan policy recommendations. In particular, we encourage your committees to consider:

Increasing fuel user fees for the last time and indexing them to inflation. A static gas tax, unadjusted to keep pace with inflation, can meet fewer infrastructure needs over time and puts increasing pressure on Congress to find offsets in the budget or deficit-spend—the latter being fiscally irresponsible given the exploding federal debt. In total, Congress must find about $200 billion in the budget to cover projected Highway Trust Fund revenue shortfalls over the next 10 years. To boost federal transportation funding, finally tackle deferred maintenance, sustainably pay for needed investments, and buy time to transition to a user fee based on vehicle miles traveled, fuel user fees should be increased by at least 15 cents and indexed to inflation. This is the only short-term option that will adequately cover all near-term needs and maintain the user-pay principle embedded in the current system. To avoid negatively impacting consumers and the economy as we continue to fight COVID-19, such an increase could be scheduled to phase in only when economic growth picks up.

Strengthening the user-pay, user-benefit model. The Highway Trust Fund provides for a nexus between who pays and who benefits from the fund, though it does not follow a direct 1:1 user-pay, user-benefit model. Starting in 1970, just 14 years after the creation of the trust fund, Congress began expanding the list of eligible projects to include transit projects, despite only collecting revenue from a variety of

vehicle-related taxes. Policymakers should seek to ensure that those who benefit from HTF spending are contributing something. To that end, Congress could:

- Roughly synchronize spending with user tax/fee receipts;
- Periodically analyze all HTF user taxes and fees to ensure costs are fairly allocated to different classes of system users;
- Ensure more beneficiaries of the HTF pay into it by, for example, reinstating the diesel tax for passenger trains, eliminating reduced user fees on fuel intercity and local buses, and levying a modest user fee on bicycle tires.
- Support electric vehicle ownership while ensuring that their drivers contribute to the HTF.

Creating a new direct payment infrastructure bond. While the current state of the municipal bond market is not as dire as it was during the Great Recession, state and local governments still face a challenging budget and economic outlook. Direct payment bonds have a successful history of encouraging infrastructure investment during times of economic uncertainty—and could again provide governments with a tested financial tool to help them meet their infrastructure investment needs. Last Congress, several related legislative proposals were actively considered. For example, Section 90101 of H.R. 2, the Moving Forward Act, proposed a new direct payment bond program, initially with a 42 percent interest rate subsidy that would decrease to 30 percent by 2027. Sens. Roger Wicker (R-MS) and Michael Bennet (D-CO) similarly introduced S. 4203, the American Infrastructure Bonds Act, to create a new direct payment bond. Under their proposal, state and local governments would be able to issue taxable bonds, receiving a 35 percent subsidy for issuances through 2025 and a 28 percent subsidy for those issued thereafter. These proposals serve as valuable starting points for a new direct payment bond program, demonstrate their bipartisan support, and affirm their appeal as an economic stimulus tool.

Expanding Private Activity Bonds. PABs complement the existing tax-exempt bond market by extending favorable tax treatment to public-private partnerships (traditional tax-exempt debt is generally available only for publicly-owned and managed projects). They are a proven tool to finance infrastructure projects and expanding their use—for example, by raising their volume cap and expanding their application to other types of infrastructure projects—would give communities with yet another option to finance pressing infrastructure needs.

Enabling TIFIA and WIFIA to support more projects. The TIFIA program offers loans, loan guarantees, and letters of credit to surface transportation projects, and its water counterpart, WIFIA, finances clean water and drinking water projects. Both programs offer assistance at favorable interest rates with deferred repayment, flexibility which can be essential for infrastructure projects but is not typically available in the private market. TIFIA and WIFIA could support more projects with higher authorization levels, tweaks to help rural communities access financing, and an effort to better align the programs' budget scoring with actual loan experience.

Authorizing equity tax credits. In recent years there have been several proposals for infrastructure tax credits, including from the Obama administration and the campaign of then-candidate Donald Trump. Like direct payment bonds, these proposals are intended to attract investment from private entities with federal tax liability. While there are limited examples of federal tax credits for infrastructure, a well-utilized federal tax credit to support low-income housing has been very successful at increasing investment in affordable homes. Your committees could consider authorizing infrastructure tax credits, either as a stand-alone program or by allowing states to convert PABs into tax credits, as proposed in S. 146/H.R. 1508, the Move America Act.

Addressing tax defeasance rules. A municipality that wants to sell or lease to a private partner an infrastructure asset that was originally financed with tax-exempt debt must first "defease," or repay, any debt that remains outstanding. In other words, the benefit of the municipal tax exemption cannot be passed on to the new, private owner of the asset. Options for defeasance are currently limited and can be costly. More flexibility in these rules would empower the public and private sectors to develop solutions to infrastructure challenges that meet local needs.

Restoring advance refunding bonds. Before the Tax Cut and Jobs Act of 2017 removed the tax exemption from advance refunding of municipal bonds, local governments used advance refunding to minimize the costs of financing infrastructure projects, such as water and wastewater facilities. From 2012-2017, municipalities saved more than $14 billion of taxpayer money through this financing tool. Take for example a typical municipal bond, paid back over 30 years. A municipality could opt to "advance refund" the bond, essentially paying it off before the typical 10-year refinance window by selling new bonds, usually at lower interest rates. In an advance refunding (as opposed to a current refunding), the bond issuer was able to pay off that old bond issue more than 90 days in advance of its first call date. Just as homeowners do when refinancing a mortgage, borrowers repay their outstanding debt to take advantage of a favorable interest rate environment, reducing their interest payments, and freeing up funds for other projects. By eliminating this provision, the Tax Cuts and Jobs Act made it more difficult for local governments to meet their ever-increasing infrastructure needs. This should be fixed.

Expanding the types of infrastructure assets that qualify for REITs or develop similarly tax-advantaged Infrastructure Investment Trusts. REITs hold mostly real estate assets and earn mostly passive income (rent), allowing them to be taxed only at the shareholder level. REITs are already allowed to hold certain infrastructure assets including railroad lines, pipelines, communications towers, storage facilities, and prisons, though commercial and residential real estate are the most common holdings. REITs may have advantages over conventional infrastructure funds, including: liquidity, as REIT stock can be publicly traded; incremental scalability in raising capital; attractiveness to the entire range of institutional and individual investors; and certain tax advantages. REITs represent a well-understood vehicle to access capital markets and allow the public to participate in owning qualifying infrastructure assets. Expanding them or creating a related program would bring more transparency, liquidity, and investment to the infrastructure marketplace.

Above all else, America's infrastructure is in desperate need of more funding. The current backlog of deferred maintenance did not appear overnight but is instead the culmination of decades of underinvestment. Delaying needed infrastructure improvements has a significant public cost—older facilities may produce more emissions, break down more often, and may critically and fatally fail. To tackle deferred maintenance and build new and needed infrastructure, robust, long-term funding must be included in any infrastructure package that moves through Congress.

We further hope to be a resource to you and your committees. Our work in recent years has clearly demonstrated there is much that can be accomplished, on a bipartisan basis, to more sustainably fund our nation's infrastructure needs, promote economic growth, and address climate change.

Thank you for your important work and please let us know how we can be helpful.

Sincerely,

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CC: Members of the Senate Committee on Finance and House Committee on Ways and Means