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Understanding & Applying the Recent Federal Infrastructure Funding, Buy-America and Buy-American Laws

November 14, 2022



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Aging Infrastructure



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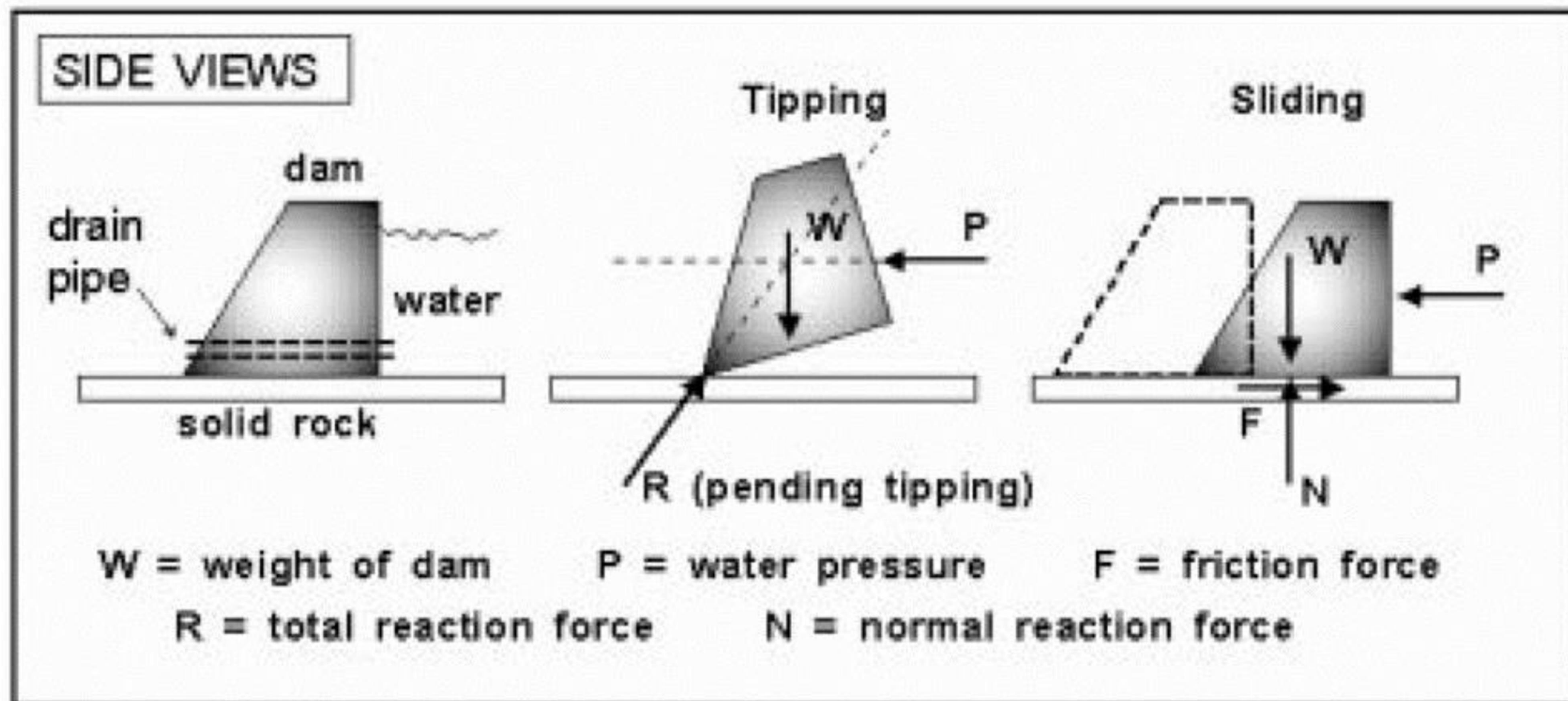


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Aging Infrastructure



THE CURRENT STATE OF INFRASTRUCTURE IN LIGHT OF THE IIA

What Does the Act Do?

- Infrastructure Investment and Jobs Act
 - “Bipartisan Infrastructure Bill”
 - “IIJA”
- \$1.2 trillion
- Largest federal investment
 - Public transit
 - Passenger rail
 - Bridges
 - Clean drinking water
 - Wastewater infrastructure



Overview

- Repair and modernize transportation
 - Highways
 - Bridges
 - Public transportation
 - Safety
- Non-transportation priorities
 - Broadband
 - Energy
 - Environmental

Infrastructure Developments in 2022

- 4,000 projects
- Repair
 - 65,000 miles of highways
 - 173,000 miles of road
 - Build 1,500 bridges
 - Maintenance for 45,000 bridges
 - Airport terminals

Safe Streets and Roads for All Program

- Goal
 - Reduce traffic fatalities
 - Crosswalks, bicycle lanes, centerlines, and rumble strips
 - “Stitching back” communities divided by roads or highways
 - Focus
 - Urban neighborhoods
- Availability
 - Metro planning orgs.
 - Cities

Growth & Decline

- Growth
 - 17% Amtrak and Class I rail work
 - 9% Bridge and tunnel construction
 - 6% Port and waterway projects
 - 5% Highways and streets
 - 3% Airports
- Decline
 - 10% Subway and light rail



Safety

- Protect
 - “Vulnerable road users”
 - Safety Contingency Funds
 - Red Grade Crossings
- Implement
 - Manual on Uniform Traffic Control Devices (“MUTCD”)

Build America, Buy American

- Ensure Made in the USA
 - Iron
 - Steel
- Manufactured products
- Construction materials



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New Information on Buy America

- What happened to the USDOT July 2022 request for information on the new requirements as applied to construction materials?
- On November 4, the USDOT proposed:
 - That USDOT awards obligated on or after November 10, 2022 will be subject to the new requirement for construction materials.
 - To waive the Buy America preferences for iron and steel, manufactured products, and construction materials for which:
 - The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total allowable costs under the Federal financial assistance award;
 - The size of the Federal financial assistance award is below \$500,000; or
 - The non-domestically produced miscellaneous minor components comprise no more than 5% of the total material cost of an otherwise domestically produced iron or steel product.
 - To waive the construction materials requirements for (i) any contracts entered into before November 10, 2022, and (ii) any projects that were solicited before May 14, 2022, and entered into contract before March 10, 2023.



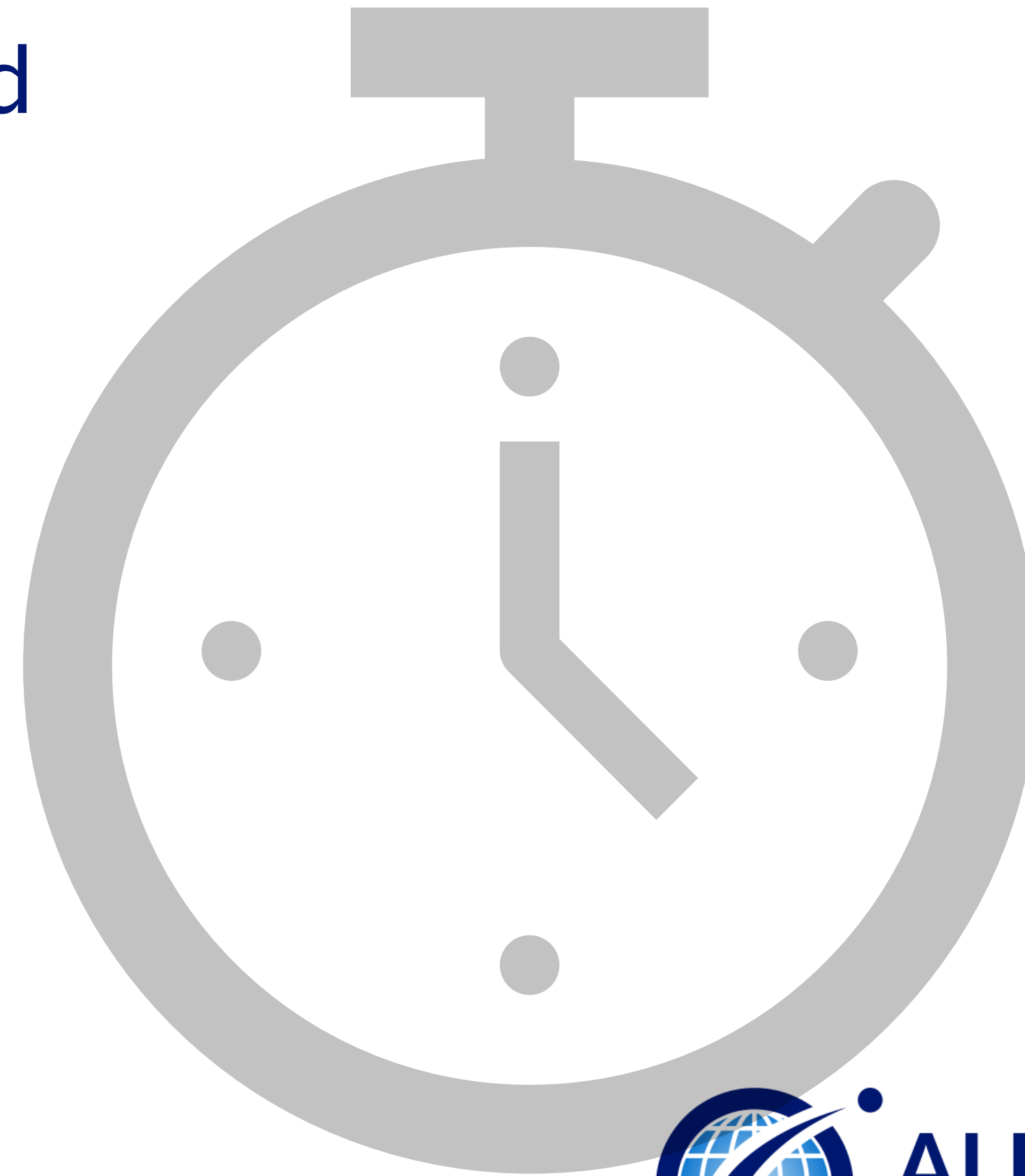
New Information on Buy America

- In an August 2022 presentation, FHWA took the position that its waiver for manufactured products remained in effect. However, broad waivers were supposed to have undergone public review and comment, which has not happened yet.
- We have seen two different state DOTs whose guidance on what constitutes “Construction Material” are different.

It looks like the federal government is telling everyone to just “figure it out.”

FAR Council Final Rule

- October 25, 2022
 - 60% domestic content threshold
- 2024
 - 65%
- 2029
 - 75%



Price Preference Domestic Goods

- No prohibition
 - Use of foreign products
- Encourages
 - Domestic products
 - Price preferencing
 - Qualifying businesses
 - 20% price preference
 - 30% price preference

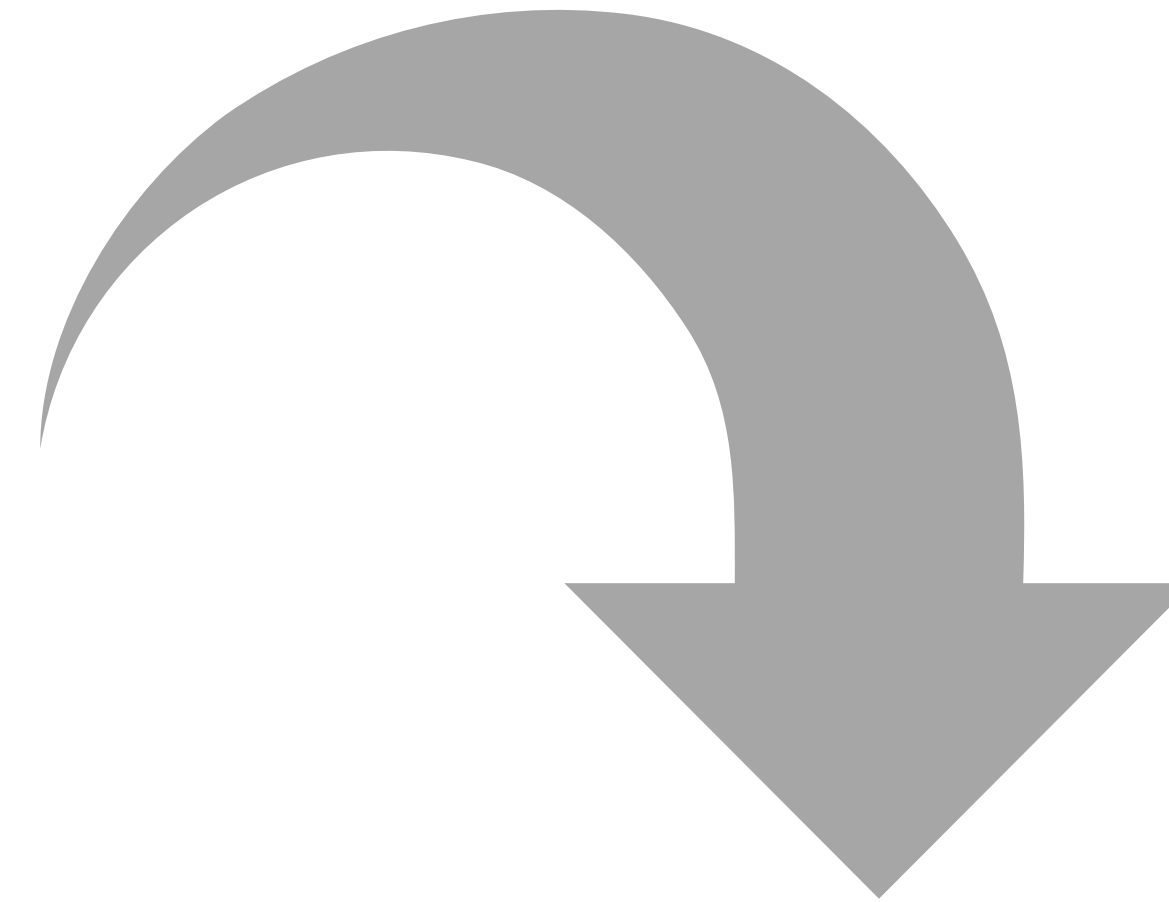
“Critical” Products and Components

- Higher price preferences
 - End products
 - Construction material
 - “Critical” to US supply chains
 - Made of “critical components”
- Effective October 25, 2022

IIJA FUND FLOW

IIJA Funding

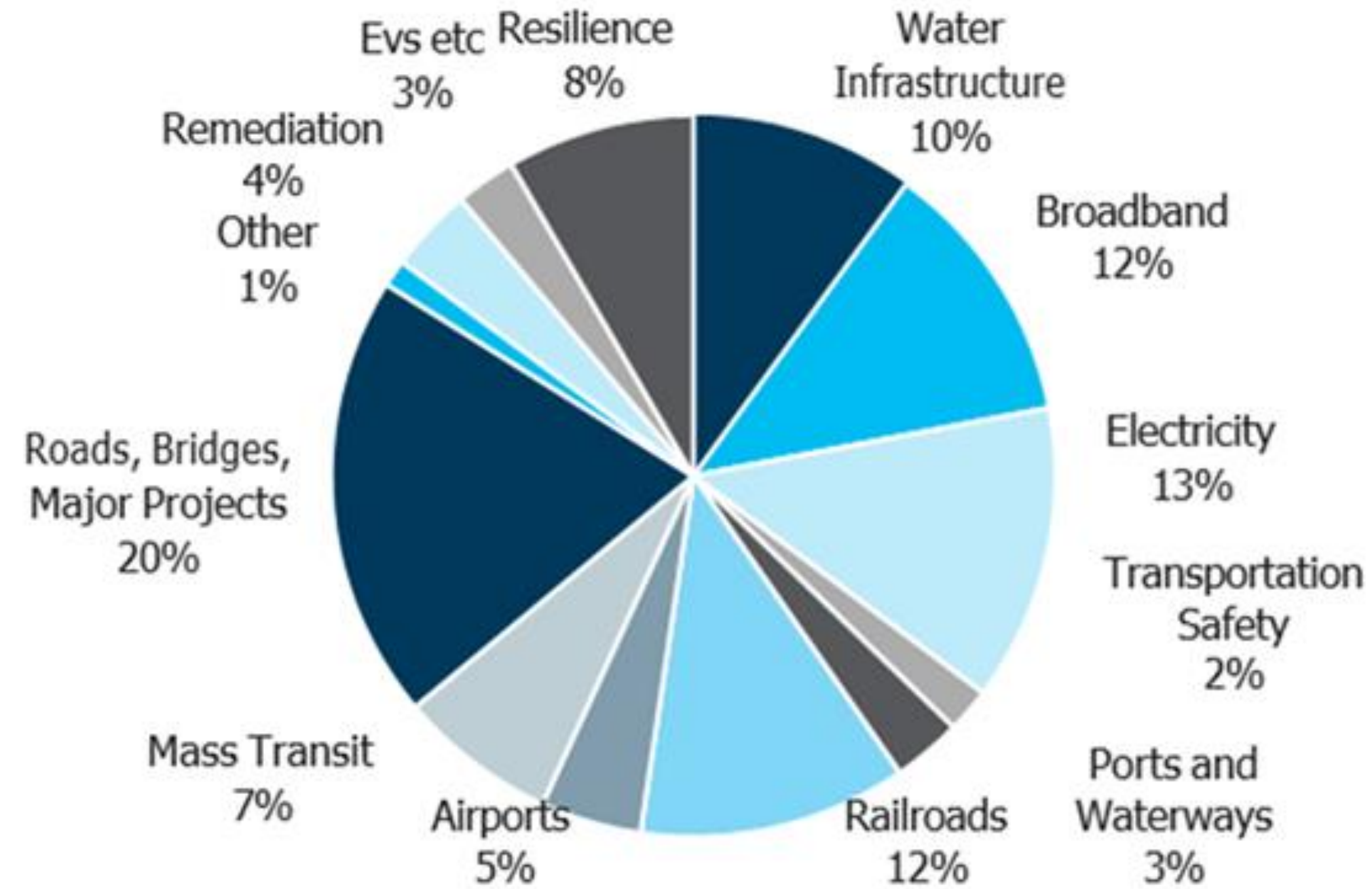
- \$550 Billion
- Distributed Funding
 - Formula Funding
 - Grant Programs
 - Federally Administered Loan Programs
- Priority
 - State/local entities
 - Additional local parties



Overview of Key Areas and Funding

FIGURE 1

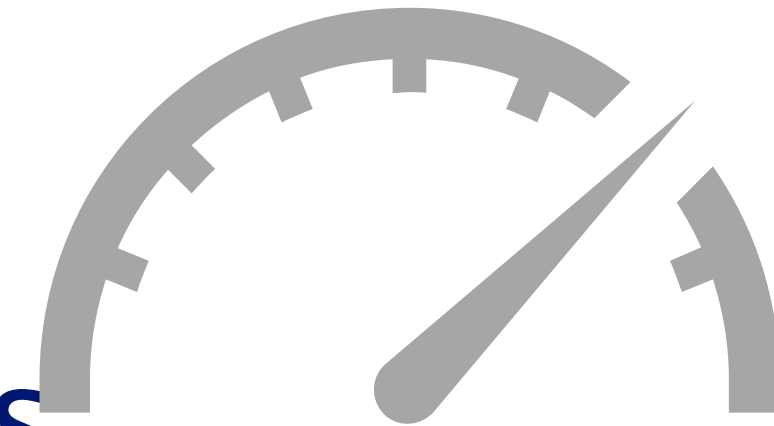
► Allocation of ~\$550bn of Spending at Above Baseline Levels Over 5 Years



Source: Barclays Research, U.S. Congress

Roads, Bridges, and Major Projects – \$110 Billion

- \$55 billion increase
- \$55 billion supplemental appropriations
 - National infrastructure project assistance grants
 - INFRA grants
 - Appalachian Development Highway System
 - Surface transportation PABs
 - Culvert removal and replacement



Passenger Freight Rail - \$66 Billion

- Allocation
 - Northeast corridor
 - National network
 - Consolidated Rail Infrastructure & Safety Improvements – CRISI
 - Railroad crossing elimination
 - Federal State Partnership for Intercity Passenger Rail
 - Restoration & enhancement

Public Transit - \$39 Billion

- Allocation

- Increased contract authority
- Capital investment grants program



Airports - \$2.5 Billion

- Allocation
 - Airport infrastructure
 - Airport terminal replacement
 - Airport terminal energy efficiency
 - Air traffic facilities & equipment



Ports & Waterways - \$17 Billion

- Army Corp of Engineers:
 - Allocation
 - Construction
 - O&M
 - Mississippi River & Tributary
 - General expenses/regulatory needs
- DOT Port infrastructure
- Coast Guard infrastructure
- GSA/CBP



Buses/Transit & Alternative Fuels - \$1.5 Billion

- **Transportation**
 - School buses
 - Ferries
- **Alternative Fuel**
 - Alternative fuel corridors
 - Electric charging



Transportation Safety - \$11 Billion

- Allocation
 - PHMSA modernization
 - FMCSA & NHTSA
 - Safe Streets for All Program
 - SMART grants
 - Safety grants



Power - \$73 Billion

- Allocation
 - Grid infrastructure, resiliency, and reliability
 - Fuel and technology infrastructure
 - Clean energy supply chain
 - Clean energy R&D
 - Hydropower incentives



Broadband - \$65 Billion

- Allocation
 - Deployment grants
 - Rural support
 - “Middle mile” telecommunications infrastructure
 - Tribal Broadband Connectivity Program
 - Inclusion funding
 - Wireless affordability



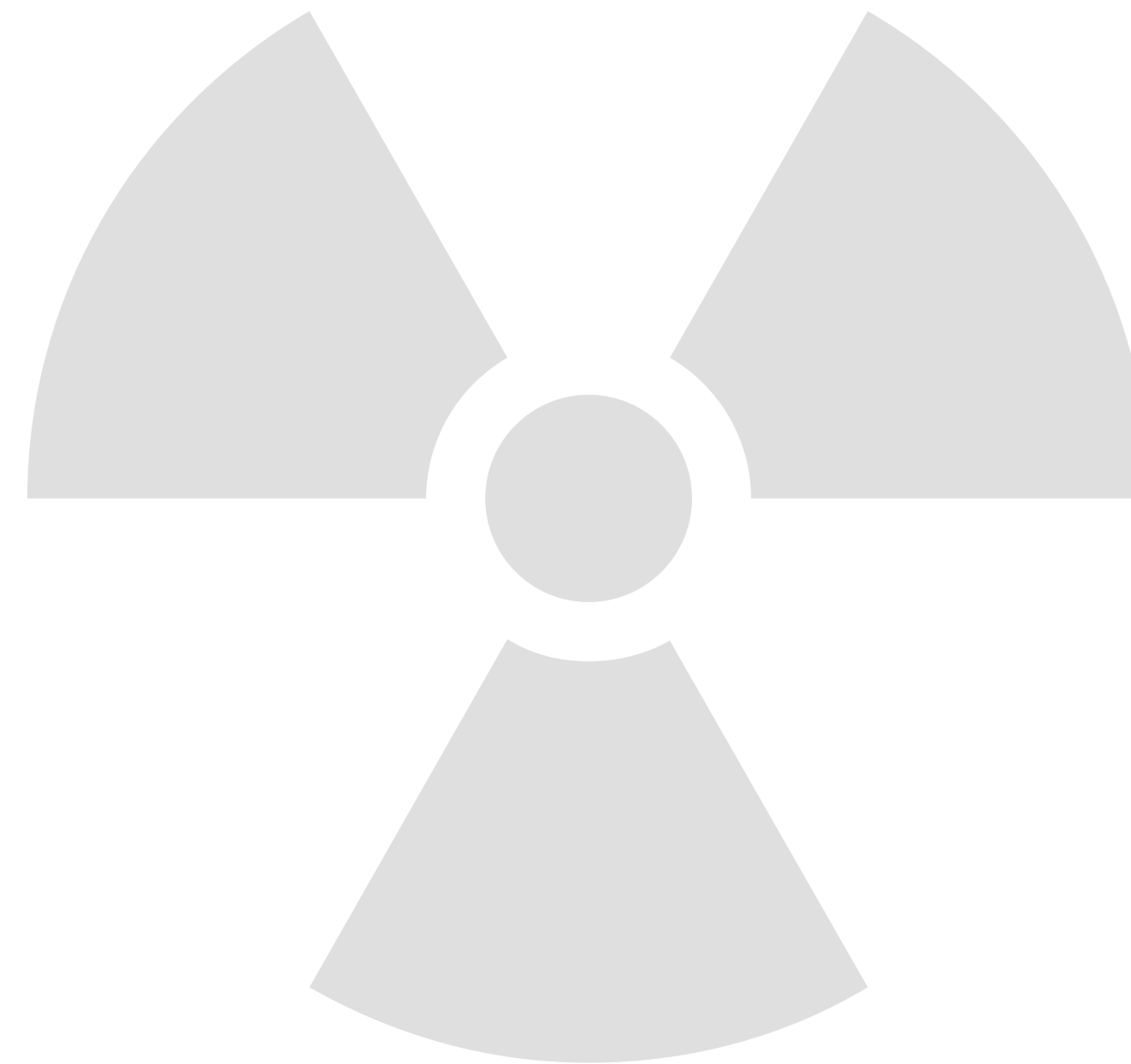
Water - \$5.5 Billion

- Allocation
 - Drinking Water and Clean Water State revolving funds
 - Lead service line replacement
 - PFAS programs
 - Bureau of Reclamation water programs
 - Tribes and tribal assistance organization



Environmental Remediation - \$21 Billion

- Allocation
 - Hazardous Substance Superfund
 - Brownfield competitive grants
 - Orphan wells reclamation
 - Abandoned mine reclamation



Resiliency - \$47 Billion

- Allocation
 - Flood mitigation
 - NOAA funding
 - FEMA grants
 - Waste management and recycling
 - Drought planning
 - Ecosystem resilience
 - Wildfire management
 - Cyber R&D



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IMPACTS OF IIA ON PROCUREMENT AND PROJECT DEVELOPMENT

Project Delivery & Process Improvements

- “One Federal Decision”
 - Streamline the National Environmental Policy Act
 - Consolidating permitting decisions
 - Federal “lead” agency
 - Finalizing reviews within an average of two years
 - Decrease authorization decisions
 - Major projects
 - 90 days

Project Delivery & Process Improvements

- IIJA improves
 - US DOT annual report
 - more projects qualify for categorical exclusion status
 - Easier to gain CE authorization
 - Eliminates “fiscal constraint” requirements

Public-Private Partnerships

- 3 measures to increase PPS
 - **Section 80403**
 - Raise cap on private activity bonds
 - Highway and surface freight transfer facilities
 - **Section 71001**
 - Technical assistance with PPP procurement
 - **Section 70701**
 - Value-for-money analysis

Trade Agreements

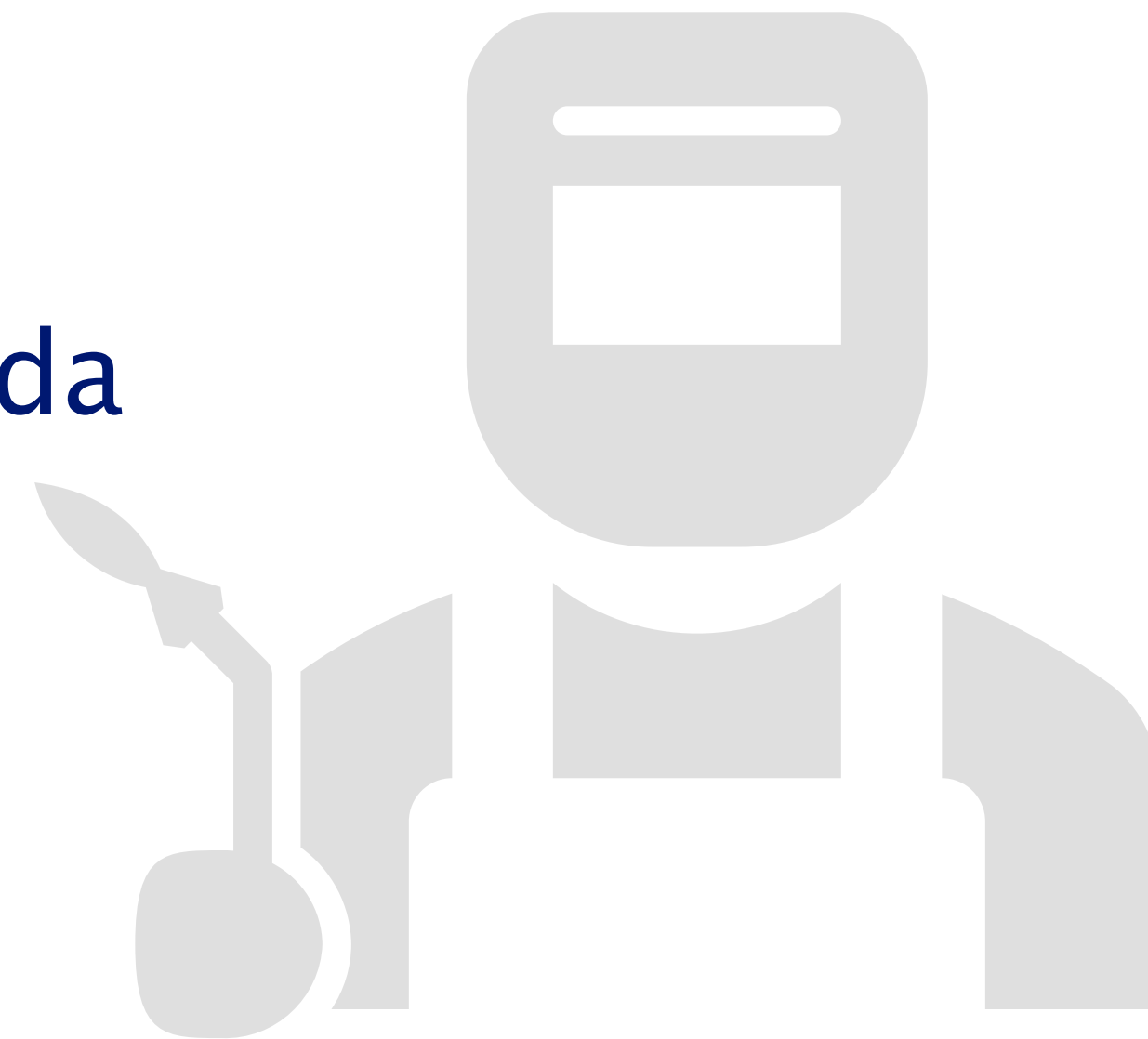
- Trade Agreement Act of 1979
 - Limitations on Buy American Act's
 - Required procurements to be treated as domestic
 - Materials originating in a country
 - Covered by a trade agreement
- IIJA changes the game

OPPORTUNITIES & CHALLENGES PRESENTED BY THE IIJA



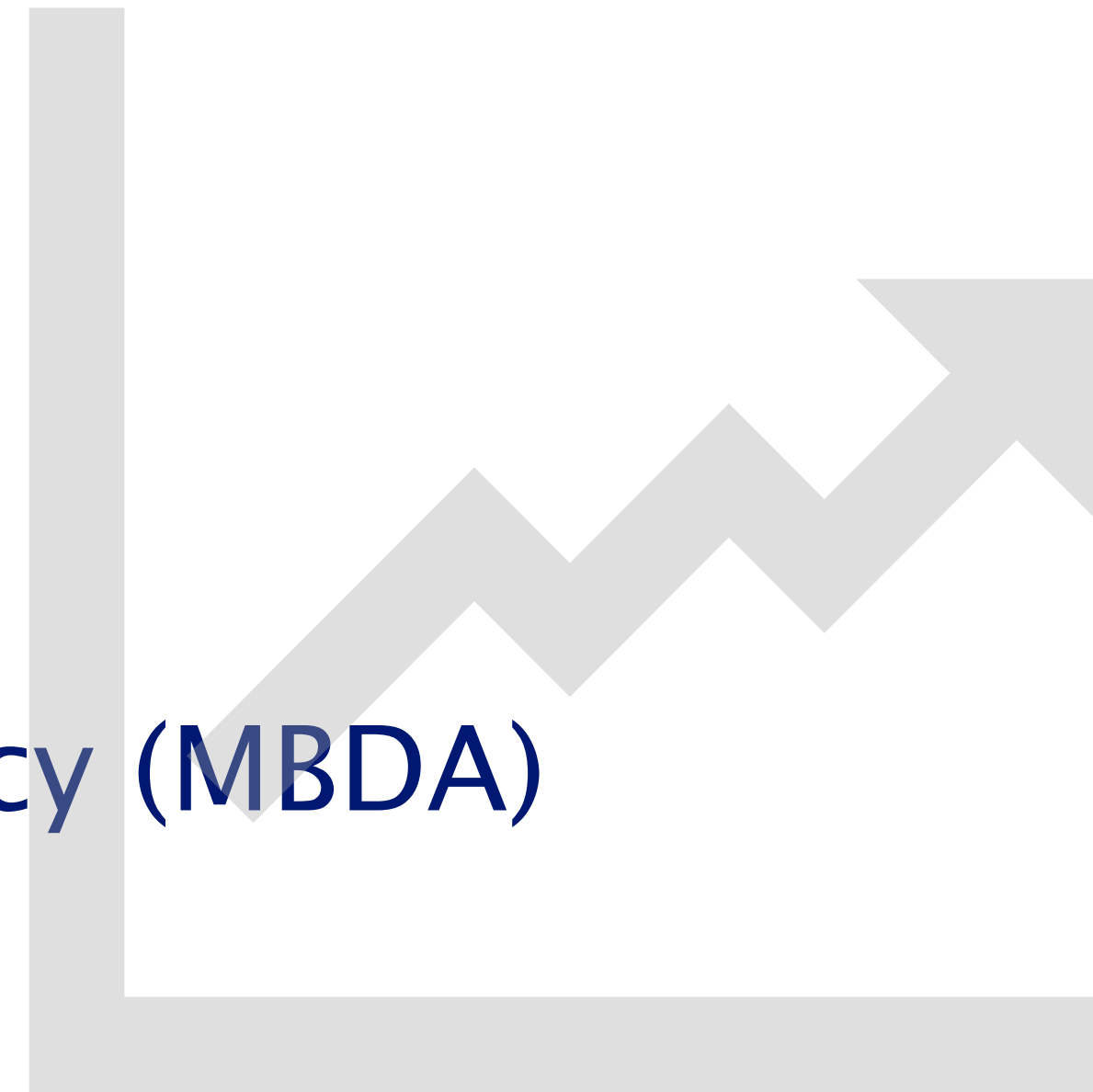
Jobs

- 4 million jobs
- Annually by the Build Back Better agenda
 - 1.1 million caregiving jobs
 - 763,000 green jobs
 - 556,000 manufacturing jobs
 - 312,000 construction jobs



Jobs

- Union and minority jobs
 - Funds awarded to
 - Businesses led by
 - Women
 - People of color
 - Minority Business Development Agency (MBDA)
 - Training centers
 - Energy-efficient building technologies
 - Prioritize high labor standard



Challenges

- **Delayed Funding**
- States and municipalities
 - No access to funds for 4 months
 - Delay implications
 - Projects still in planning stages



Other Challenges

- Project owners reassess procurement
- Travelers Infrastructure Study
 - Contractors not performing well
 - Many jobs lost money
 - 50% of jobs over \$250 million design build
 - No acceptable rate of return
 - 25% of those projects lost money

Other Challenges

- Travelers conclusion
 - More collaborative approach needed
 - Consider
 - Progressive design-build
 - Pricing determined as design progresses
 - Finalized at design completion
 - CMGC at risk method
 - Project owner hires designer
 - Separate from construction manager
 - Collaboration to create a budget

Decline in Public Transit

- IIJA commits \$39 Billion
 - Local public transit
- Experts believe not enough
 - Chicago Red & Purple Line Modernization program
 - Alone \$8.7 billion
 - Investment in private transit slow public transit
- Use below pre-Covid levels
 - NYC Metro
 - 20% below pre-Covid levels

Pop-Up Question

- How much total funding is authorized by the Infrastructure Investment and Jobs Act (IIJA)?
 - A. \$1.2 trillion
 - B. \$0
 - C. \$100 million
 - D. \$200 billion

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THANK YOU! If you have any questions, please contact one of the presenters



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