

**AON**

# **DESIGN AND BUILD SOLUTIONS IN AN UNCERTAIN TIME**

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Venue: Robinson College, Cambridge





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# 1

## **US construction market some facts and figures**

# Ailing US Infrastructure

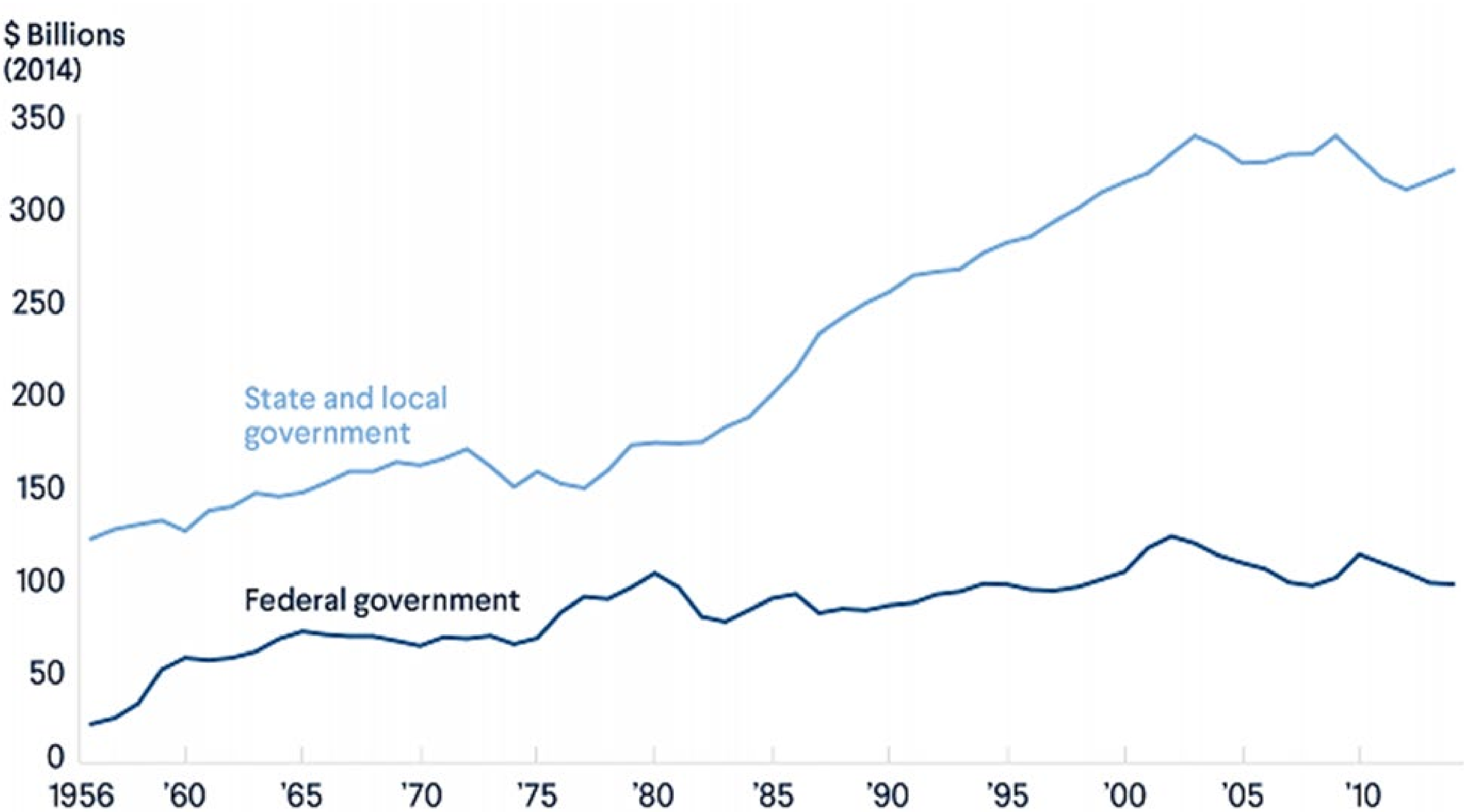
- The US population has more than doubled since the 1960s, when most of the country's major infrastructure systems were designed;
- The American Society of Civil Engineers (ASCE) issued a 'report card' and finds that the nation's infrastructure averages a "D", meaning that conditions are ***mostly below standard***, exhibiting ***significant deterioration***, with a ***strong risk of failure***;
- US Department of Transportation estimates that there is a total "infrastructure gap" of nearly \$1.5 trillion needed by 2025.

# American Infrastructure Spend

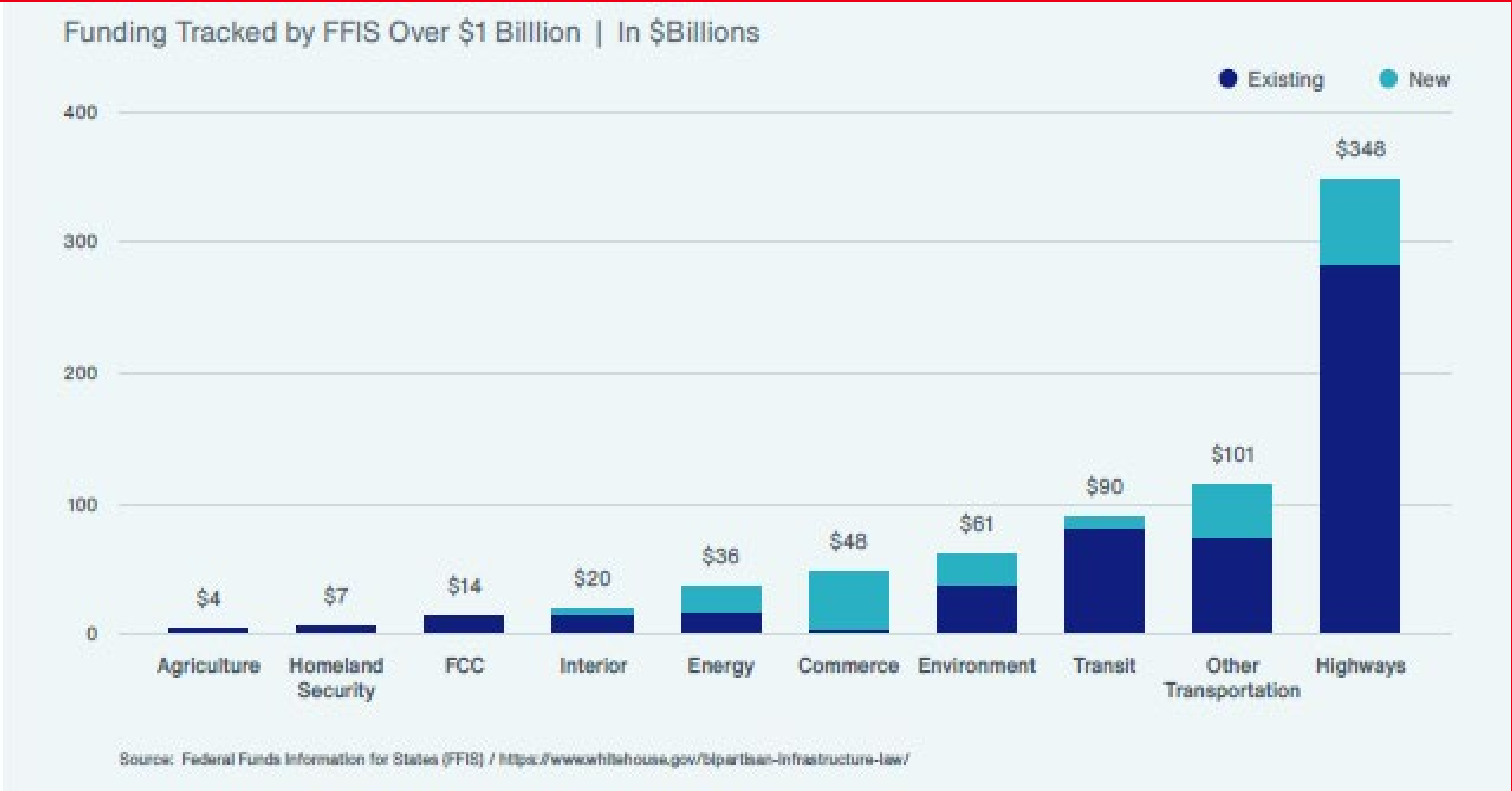
## Spending on Transportation and Water Infrastructure

Public spending  
by level of government  
1956-2014

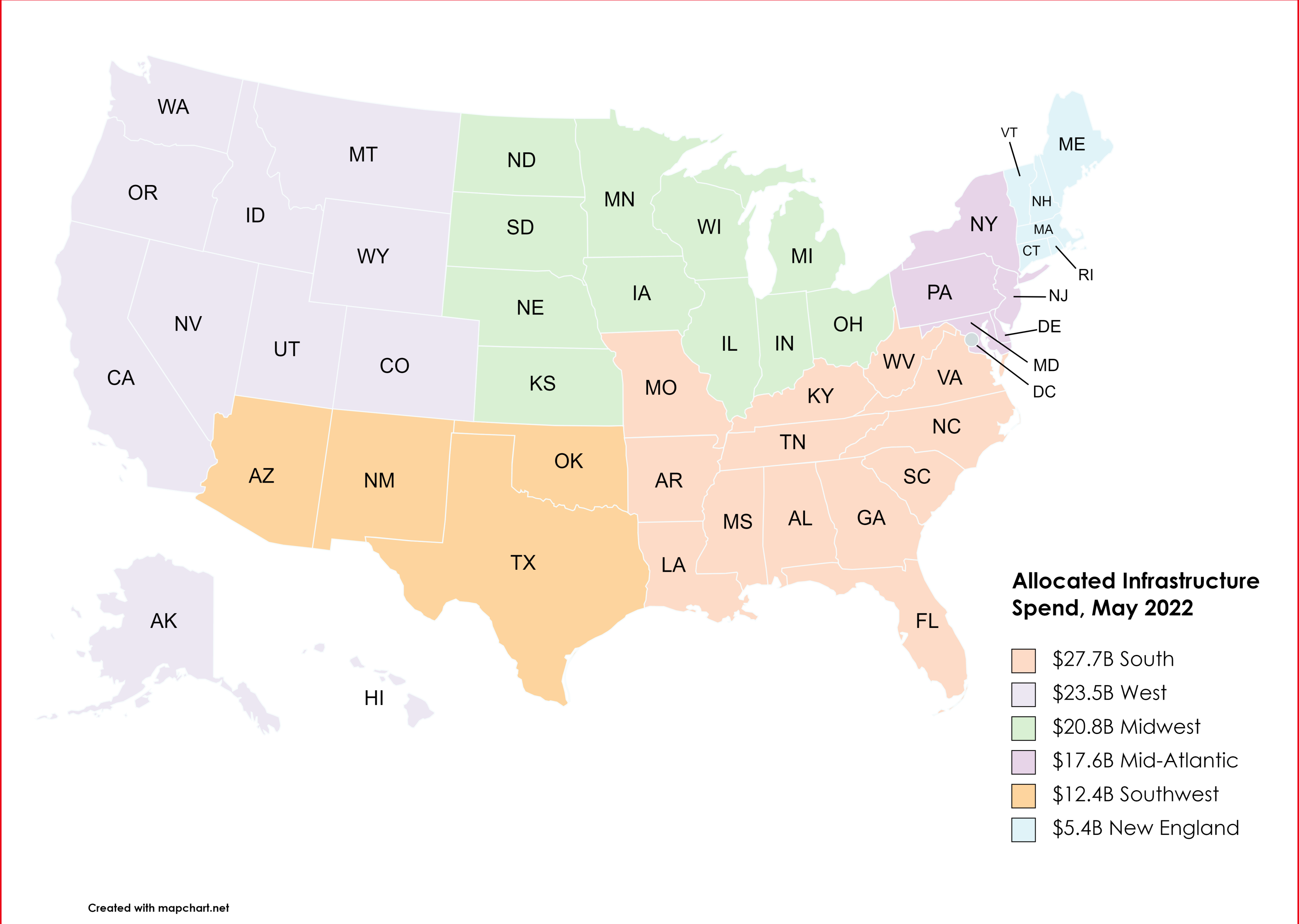
Source: Congressional Budget Office



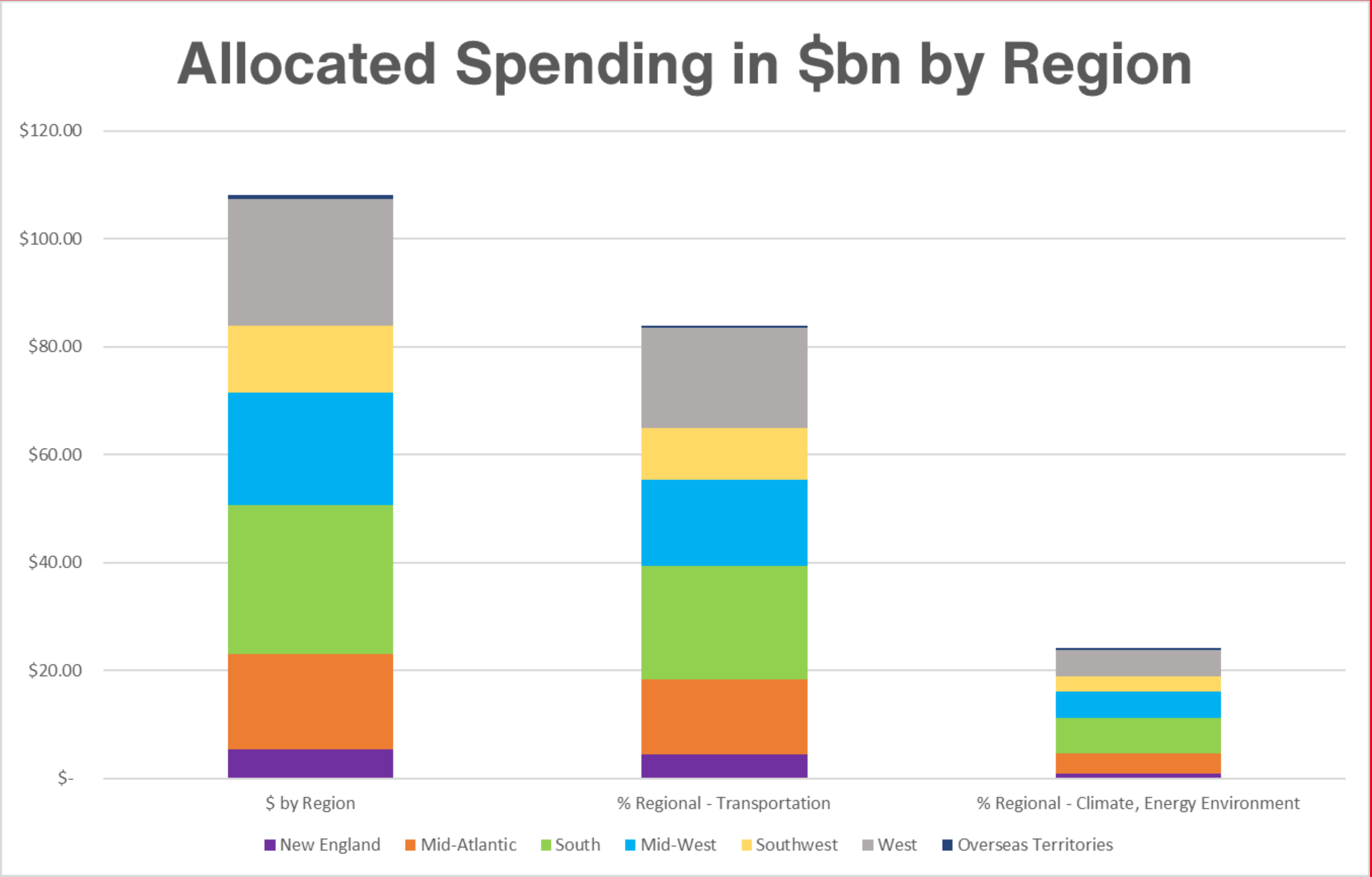
Bipartisan  
Infrastructure  
Law



Bipartisan  
Infrastructure  
Law

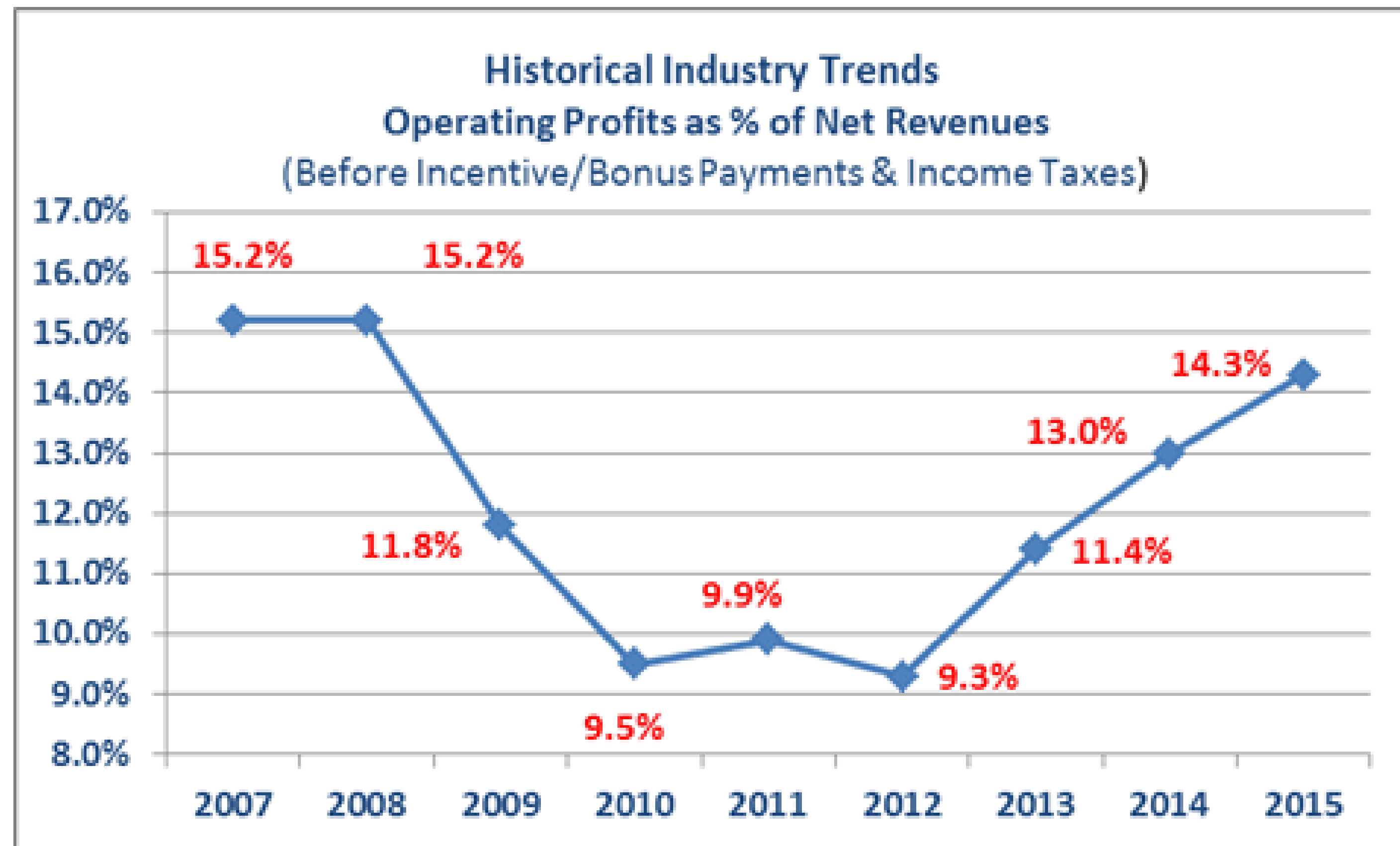


Bipartisan  
Infrastructure  
Law





# Operating Profit on Net Revenue (2007 – 2015)

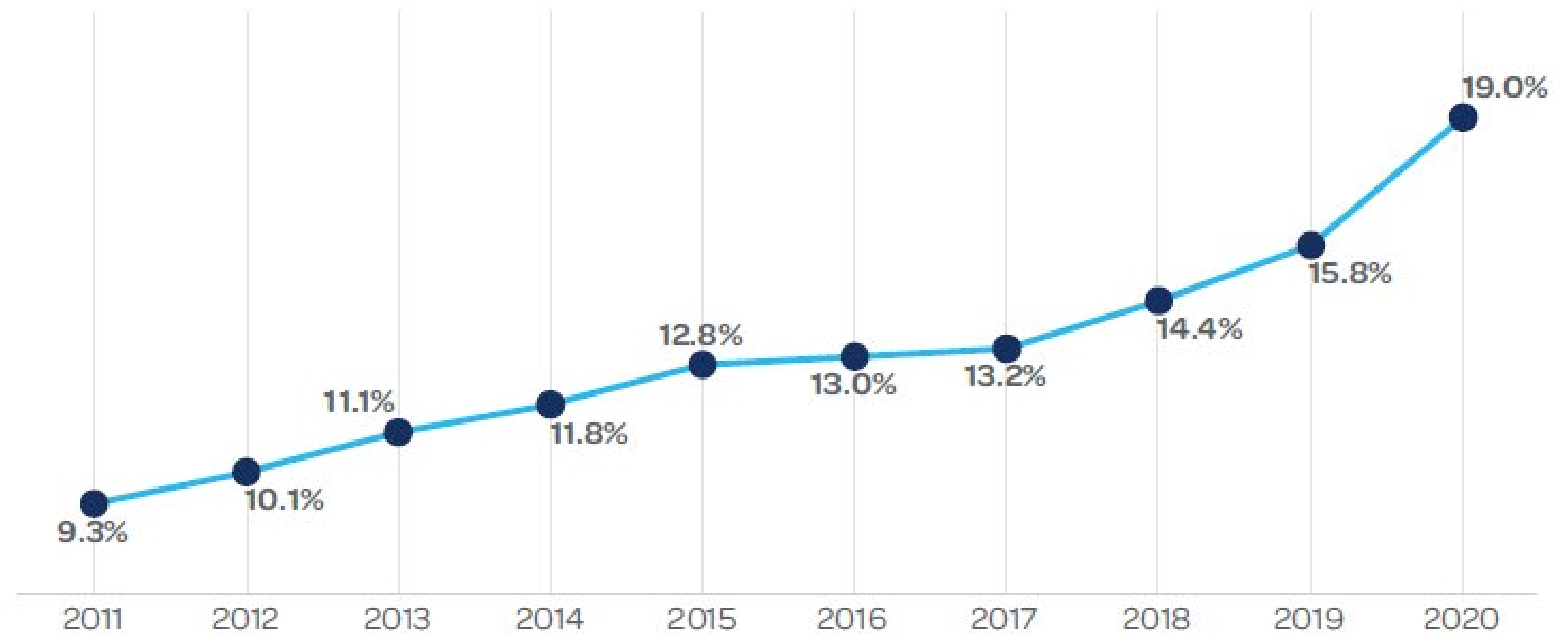




# Operating Profit on Net Revenue (2011 – 2020)

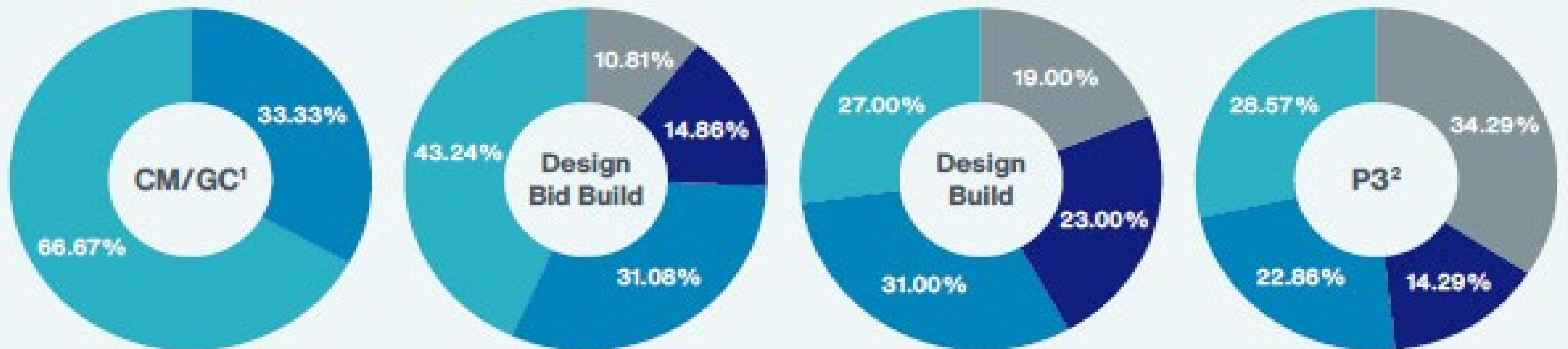
## 10-Year Trend

The 10-year trend in operating profit on net revenue grew significantly, rising to a high of 19% from 9.3% in 2011. Whether this upward trajectory can be sustained will be a function of overhead costs, which declined significantly as a result of the pandemic.





# Infrastructure Study: Profitability by Procurement Type



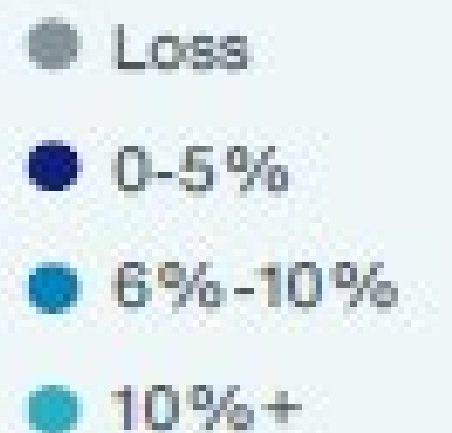
1 Construction Manager/General Contractor

2 Public Private Partnership

Source:

Travelers, Travelers Infrastructure Study – A 17 Year Deep Dive Into Heavy Civil Projects In North America

<https://www.constructionbusinessowner.com/resources/infrastructure-study-finds-inefficiencies-opportunities-design-build>





# A paradigm shift has begun in markets (as reported June 2022)

- Global markets are in the beginning of a fundamental shift after a 15-year period defined by low interest rates and cheap corporate debt, according to Morgan Stanley;
- The transition from the economic conditions that followed the 2008 financial crisis and whatever comes next will take “12, 18, 24 months” to unfold;
- Out of the ashes of this transition period, a new business cycle will emerge;
- Markets will be dominated by two forces – concern over inflation ***fire*** and recession ***ice***.



# 2

## Market Update

# Design & Construction Professional Liability Market

↓ Retraction in Coverage	Insured vs. Insured (not available in US)
↓ Retraction in Market Appetite	<b>Designers</b> - Both annual corporate and project specific policies <b>Contractors</b> – project specific becoming more difficult (minimum of 40% design pre bid)
↑ Increased Self Insurance Obligations	<b>Designers</b> – Over 3 years > 40% <b>Contractors</b> – Only marginal increases
↑ Increased Annual Premiums	<b>Designers</b> - Over 3 years rates up ~ 40% <b>Contractors</b> – flat to 10% rates up over 3 years
↑ Increased Project Premiums	<b>Designers</b> - 50% rate on-line not unusual <b>Contractors</b> – 25-30% rates increases



# Design & Construction Professional Liability Market

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## **Inflation (1)**

- **Losses have increased in the last 24 months beyond the economic inflation rates, due to social inflation, such as:**
  - **Proliferation of class-action lawsuits;**
  - **Rollbacks on state tort reforms;**
  - **Litigation funding;**
  - **Increased awards of damages from sympathetic juries;**
  - **Government-driven actions.**
- **The plaintiffs' bar has also discovered that by alleging a wide range of vaguely worded claims for relief, more lines of insurance can be triggered, resulting in higher defense costs as well as increased leverage for settlement and at greater amounts.**



## **Inflation (2)**

- **How will economic inflation rates impact a client's insurance rate;**
- **It can be argued that the economic inflation is embedded within the firm's revenues;**
- **Any increase in policy rates should be primarily based on increased risk, not general economic inflation;**
- **We believe guidance maybe issued by Lloyd's of London.**

# 3

## **CPPI vs. D&C**

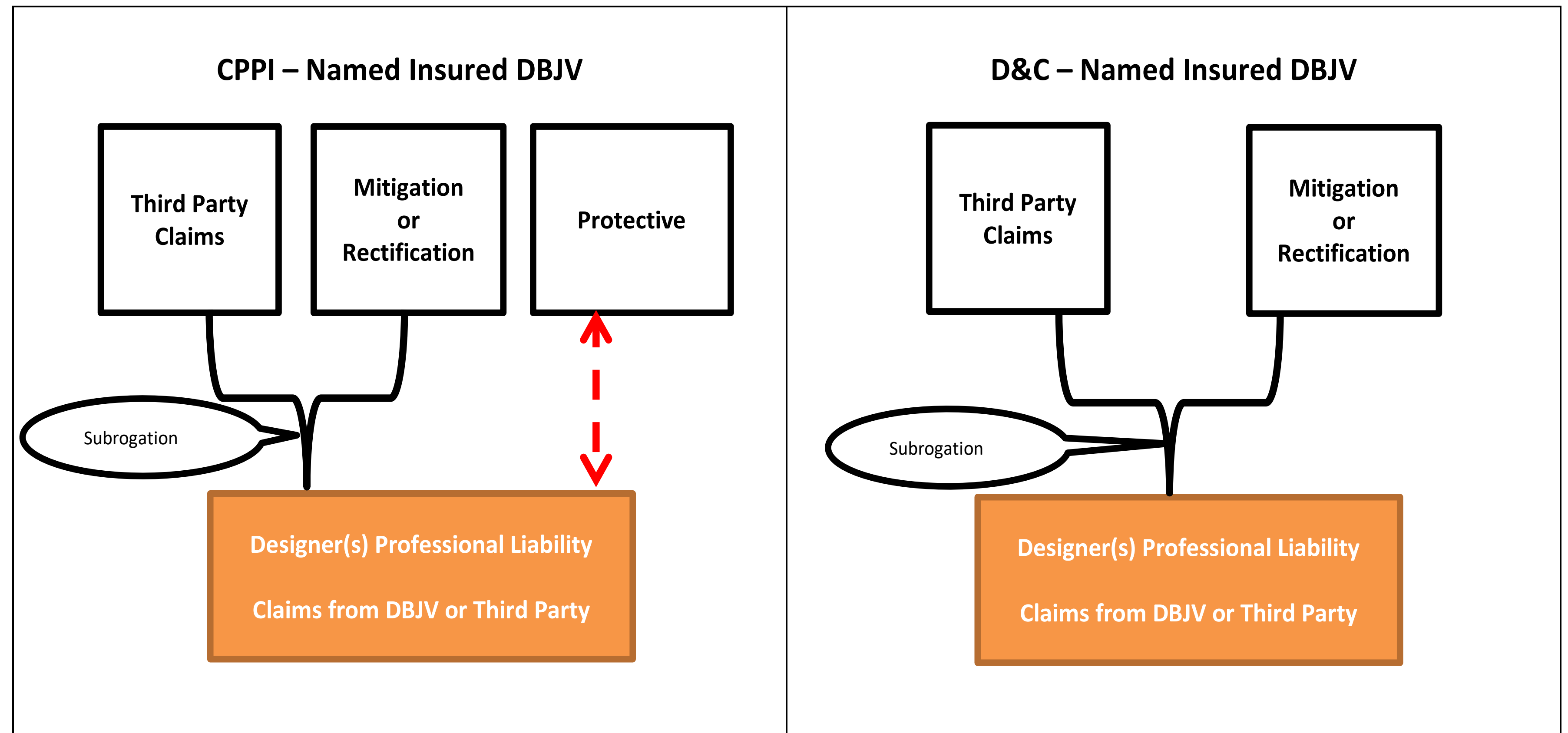
**Contractors Protective Professional Indemnity**

**versus**

**Design & Construct Professional Indemnity**



# Policy Structures



# Policy Coverage

## high-level comparison

	D&C	CPPI	Comments
Design-Builder as First Named Insured	YES	YES	
Will Indemnify the Design-Builder for claims made against them emanating from third parties	YES	YES	
Will include claims from the Concessionaire	YES	YES	Generally, yes, dependent upon structure of Concessionaire and policy language
Mitigation or Rectification Extension to indemnify direct costs of resolving issues arising out of a breach of professional services	YES	YES	
Vicarious Liability clause with subrogation - against the sub-contractors or design professionals after payment of the claim	YES	YES	
Protective cover for claims, over and above the direct costs (available under the Mitigation/Rectification Extension) brought by the Design-Builder against the sub-contractors or design professionals	NO	YES	Critical as the Insured vs Insured and Related Party exclusions are not waived under US policies
			Without Protective cover, the Design-Builder must rely upon the design professionals practice policy and/or balance sheet
Extension for the Protective cover to provide coverage above agreed Limitations of Liability agreed with the design professionals	NO	YES	Depends upon the amount of the Limitation of Liability and Insurance required of the design professional, and may be subject to prior insurer approval before the DB-AE contract is finalized
The amount of the design professional's coverage can lead to lower premiums	NO	YES	This depends upon the size and calibre of the design professional



4

Claims

# Claims (1)

**Designers**



# Claims (2)

**Contractors**





# Cause of the claims?

- Complexity of the delivery models?
- Rise of Design-Build in North America?
- Litigious Owners and Contractors?
- Poor estimating by the Design Builder?
- Unsophisticated Owners?
- Financially troubled governmental entities?
- Lack of skilled labour?



Poor  
Communications

# Claims

## The Clients Problem





# Claims

## The Clients Problem





# Claims

## Lessons Learned



# Claims

## Lessons Learned



"They presented us with an ironclad contract that we were able to totally reinterpret."

5

**Thoughts from afar**



## **Perceived risks in UK PI over last 45 years**

- **Concrete cancer / Sea dredged aggregates;**
- **Chinese Dry wall;**
- **Mould and Fungus;**
- **Y2K / Electronic Date Recognition;**
- **Collateral Warranties;**
- **Fitness for Purpose;**
- **Ombudsman Awards;**
- **Technology Services;**
- **Cladding and Fire Safety;**
- **Cyber.**

## **Actual risks in UK PI over last 45 years**

- **Costs & Expenses outside the limit;**
- **Costs & Expenses outside the SIR;**
- **Pricing of capacity / large line sizes;**
- **First Excess layers have become working layers because of claims inflation;**
- **SIR's are not linked to claims inflation;**
- **Insured vs. Insured (*mea culpa*).**

# Contact Us

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