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Financing America's Infrastructure Needs: Low-Cost Federal Loans Available Now from the Build America Bureau at USDOT

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There is a growing national awareness of the critical importance of rebuilding our nation's crumbling infrastructure.[1] Delay increases a project's costs and defers such economic benefits as new jobs, increased tax revenues, improved safety, and a cleaner environment.

The Biden Administration can help solve these infrastructure needs without waiting for new legislation by making available tens of billions of dollars in financing for transportation infrastructure across the US. No further Congressional action is required: the funding has already been appropriated. New leadership at the Department of Transportation (DOT) can make these funds available for qualified projects beginning January 20th, 2021.

Established in July 2016, pursuant to provisions in the FAST Act, the Build America Bureau (the Bureau) is the hub for the Department of Transportation's (DOT) financing programs, a place that operates as a one-stop shop and a center of finance excellence within the DOT.[2] Among other responsibilities, the Bureau manages DOT's primary loan programs: TIFIA and RRIF.[3] TIFIA currently has approximately $70 billion of unused loan capacity. Congress has already appropriated the necessary credit subsidy required to enable DOT to lend these funds.[4] RRIF currently has approximately $30 billion of unused loan capacity. Borrowers usually pay the credit subsidy required for RIFF loans. The Bureau can lend these funds, totaling $100 billion, to qualified projects tomorrow.

TIFIA and RRIF loans provide incredibly attractive financing rates and terms. The most recent loans closed were charged the very low annual interest rate of 1.6% per annum, fixed for thirty years.[5] The other loan terms are also usually more attractive than borrowing terms available to local governments or private project sponsors: there is no need to draw down the funds until needed, there is no prepayment penalty, principal amortization of the loans is often deferred until later years, and the reserves required are often less than needed in alternative financing. Under current DOT policy, TIFIA loans cannot exceed 33% of a project's cost.

TIFIA loans are available to local governments, state departments of transportation, transit agencies, special authorities, and private sponsors who agree to build, own, operate and finance projects in partnership with local governments using structures called P3s (public private partnerships). P3s are attractive to local governments because the private party contributes equity towards the project cost and assumes a variety of project risks, including the risk of completion on time and on budget, as well as risks associated with long-term operating and maintenance costs.

RRIF loans are available primarily for railroad infrastructure projects, including rail-related freight and intermodal facilities, rail equipment, rail yards, related buildings and positive train control systems. RRIF borrowers can include private owners of railroads, governments, governmental entities and joint ventures that can include a private-sector entity. Unlike TIFIA, RRIF loans are available for up to 100% of a project's cost.

After Congress authorized creation of the Bureau, the DOT engaged a management consulting firm to analyze issues that had created problems for the TIFIA and RRIF programs and to identify best in class private sector practices. Borrowers had long complained that the review process for loans was too cumbersome and protracted and that it took too long to achieve closing. Terms of loans often changed without notice. Guidelines for information necessary to apply for loans were unclear. The consultant made a series of recommendations to streamline and accelerate loan evaluation, processing and review, to improve coordination with other DOT departments (e.g., Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration) and to facilitate and standardize the formal approval process within the highest levels of the DOT. Most of these recommendations were adopted by the DOT and implemented by the Bureau in 2017.

At the start of 2017 there was a backlog of dozens of loan requests in various stages of the review and approval process. Many of these projects had been under development for years before they satisfied the Bureau's requirements for financing and the start of construction. These requirements include being deemed "qualifying projects" by DOT, obtaining all required permits, including federal environmental approvals, satisfying Davis-Bacon wage rate requirements, raising the necessary non-federal (local) share of the project's cost, and being deemed creditworthy. Although the Bureau at that time did not have the staff support recommended by the consultant, the existing team mounted an aggressive effort to implement the consultant's recommendations and to review and approve loans faster and more efficiently.

In 2017 the Bureau closed 11 loans totaling over $4 billion.[6] These loans supported projects in the queue long before the Trump Administration took office. Many support critical projects important to the national and regional economies. They include: $526 million for the new Moynihan Station in NYC to replace portions of Penn Station; almost $2 billion for toll roads in California, Colorado, and Virginia; and new light rail systems in Seattle and San Diego.

Unfortunately, over the next two calendar years the pace of lending slowed dramatically. In 2018 and 2019 only four loans closed with an average of $1.250 billion lent in each year.[7]

Additionally, the Trump Administration never fully utilized the existing provision of TIFIA that authorizes DOT to lend up to 49% of a project's cost, instead of the 33% of project cost that has been the traditional TIFIA loan limit.[8] A 49% loan provides a significant additional economic benefit to a borrower. The borrower need raise only 51% of the project's cost from other sources, rather than 67%. Moreover, each dollar borrowed under TIFIA reduces the project's interest cost as compared to standard municipal bond financing. According to the current Executive Director of the Build America Bureau, the economic benefit of a TIFIA loan can amount to 15% to 30% of the total loan amount.[9] In other words, a $1 billion loan could save the project sponsor (local government or private partner) $150-$300 million over the life of the loan as compared to alternative financing. These savings can enable local governments to proceed with projects that may otherwise be too costly.

The Trump Administration also has failed to take advantage of other provisions in law that would facilitate greater infrastructure investment. For example, the FAST Act permits the Bureau to make loans to projects that meet the definition of "transit-oriented development" (TOD), which include projects near and likely to increase use of transit facilities. There have been a number of loan applications for TOD projects, but no TOD loans have closed to date. The Bureau also has not made any loans for airport terminals or related facilities, although it is permitted to do so in certain circumstances.[10] Additionally, only in the past few months has the Bureau started to approve refinancing of existing loans for borrowers to take advantage of historically low interest costs, even though this authority has existed for some time.

What has happened? Why has the Bureau failed to deliver tens of billions of dollars of low-cost financing to communities that desperately need new roads, bridges, ports, and mass transit (train and bus) assets. While COVID-19 may have temporarily reduced road and train congestion, the long-term need to upgrade and modernize our nation's transportation network has not changed. In addition, the economic devastation of the pandemic has increased the urgency to provide adequate federal financial assistance.

The answer seems clear. There has been a lack of political will to utilize TIFIA and RRIF to the full extent authorized and appropriated by Congress.

TIFIA and RRIF were not designed as political programs. They were established to help finance any qualified transportation project, anywhere in the nation, that meets the program's guidelines. The processes and people are in place at the Bureau to greatly accelerate and expand these lending programs. DOT leadership can clearly communicate the message to prospective borrowers, including local governments and P3 sponsors, that the Bureau is open for all types of transportation projects— in both urban and rural areas, large loans and small loans— and will process loans swiftly, fairly, and effectively.

New DOT leadership can make this happen. DOT Secretary-Designate Buttigieg and those he appoints to lead the DOT can make it a priority to better utilize the TIFIA and RRIF loan programs. The Bureau has already developed faster and more efficient loan processing guidelines. It just needs the mandate to aggressively review and approve loans. Scores of local governments are in immediate need of funding for important transportation projects. These projects will create thousands of local jobs in 2021. They will enhance local and federal tax revenue, advance environmental and climate change goals, and otherwise stimulate the economy. They are a win-win towards creating a better America. Enhanced utilization of these loan programs should be an integral part of the incoming Administration's $2 trillion Build Back Better Plan.

Endnotes

1. During the last four years Congress has failed to enact any significant new infrastructure legislation. The Trump Administration proposed a $1.5 trillion infrastructure package in February 2018 that was treated as dead on arrival in Congress (see www.whitehouse.gov). The House of Representatives passed a sweeping infrastructure bill in 2020 that was not considered in the Senate (see H.R. 2, The Moving Forward Act, www.transportation.house.gov).

2. Fixing America Surface Transportation Act (FAST Act), Pub. L. No. 114-941: 29 US Stat 1600.

3. The Transportation Infrastructure Finance and Innovation Act, known as TIFIA, was originally enacted in 1998. 23 USC 601-609. The Railroad Rehabilitation and Improvement Financing Act, known as RRIF, also was originally enacted in 1998. 45 USC 821-823. See also www.transportation.gov/buildamerica.

4. The “credit subsidy” is generally defined as the amount of reserves required to protect each loan against a possible default. In the past it has averaged about 5% of the amount of TIFIA funds loaned each year. Congress has annually appropriated an amount for the TIFIA credit subsidy, but TIFIA has not made loans sufficient to utilize the amount appropriated. The unused credit subsidy carries forward from year to year. It is estimated that the unused TIFIA credit subsidy, under current guidelines, would support approximately $70 billion of loans. See November 2, 2018 and December 19, 2019 articles by Jeff Davis in the Eno Center Transportation Weekly, www.enotrans.org/article/tifia-loan-activity and www.enotrans.org/article/dot-makes-1b-in-new-tifia-loans. See also the panel discussion by Bureau Executive Director Morteza Farajian at the Federal P3C Conference December 11, 2020. RRIF has authority to lend approximately an additional $30 billion. Traditionally RRIF borrowers paid the credit subsidy to close a loan. In 2018, Congress approved $25 million to pay for RRIF credit subsidy, which would permit a limited amount of loans to proceed without the borrower bearing the credit subsidy cost. The Bureau subsequently announced, in December 2019, a new loan program called RRIF Express that would make loans using the appropriated credit subsidy. See “Notice of Funding Opportunity for Letters of Interest for the RRIF Express Pilot Program, December 13, 2019” (federalregister.gov).

5. Telephone conversation with Bureau Executive Director on December 22, 2020. See also San Bernardino County Transportation Authority press release dated October 13, 2020 (gosbcta.com) suggesting a TIFIA annual interest rate of 1.36% was available.

6. Selected by DOT Secretary Foxx and approved by President Obama, the author served as the Executive Director of the Bureau until November 2017. The Bureau was responsible for underwriting these loans and obtaining necessary approvals within DOT. Although often reluctantly provided, all such approvals were ultimately obtained. See November 2, 2018 and December 19, 2019 articles by Jeff Davis in the Eno Center Transportation Weekly, www.enotrans.org/article/tifia-loan-activity and www.enotrans.org/article/dot-makes-1b-in-new-tifia-loans.

7. See November 2, 2018 and December 19, 2019 articles by Jeff Davis in the Eno Center Transportation Weekly, www.enotrans.org/article/tifia-loan-activity and www.enotrans.org/

article/dot-makes-1b-in-new-tifia-loansThe results for 2020 are not yet finalized but activity has improved slightly with at least five principal loans and two very small rural loans totaling approximately $2.3 billion. See also www.transportation.gov/buildamerica.

8. See page 14, Build America Bureau Program Guide, https://www.transportation.gov/buildamerica/financing/program-guide.

9. See the panel discussion by Bureau Executive Director Morteza Farajian at the Federal P3C Conference December 11, 2020. See also Congressional Research Service Report on TIFIA, February 15, 2019.

10. TIFIA has authority to finance airport projects where there is related surface transportation, such as a subway or train stop at the airport. Congress is considering a bill recently introduced to expand TIFIA to a broader range of airport infrastructure facilities, including passenger terminals. See TIFIA for Airports Act (HR 7523). Other legislative enhancements that would expand TIFIA and make it more effective are beyond the scope of this perspective.

About the Author

Martin Klepper is a nationally recognized expert in financing infrastructure and P3s. He currently serves as Chairman of Fengate Capital Management (US), a private equity investor in infrastructure in the US and Canada. He previously served as the first Executive Director of the Build America Bureau at the Department of Transportation where he was responsible for USDOT loan programs, including TIFIA and RRIF.

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