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Dr. Morteza Farajian
Executive Director
Build America Bureau
U.S. Department of Transportation
Docket Operations
M–30, West Building Ground Floor, Room W12–140
1200 New Jersey Avenue, SE
Washington, DC 205090

Subject: Docket No. DOT-OST–2024–0103

Dear Director Farajian,

The American Public Transportation Association (APTA) represents a $79 billion industry that directly employs 430,000 people and supports millions of private-sector jobs. We greatly appreciate the ongoing dialogue between APTA and the Department of Transportation (DOT) regarding implementation of the Infrastructure Investment and Jobs Act (IIJA), including changes to DOT's critical innovative finance programs. We also appreciate the opportunity to offer comments on the proposed guidance for public-private partnership (P3) projects seeking credit assistance through the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) programs published in the Federal Register on November 13, 2024, at 89 FR 89692.

P3's are a vital mechanism to align public and private interests and to deliver innovative and efficient projects. We greatly appreciate the Build America Bureau's (BAB) efforts to ensure P3's, including those related to transportation infrastructure projects, have access to innovative finance tools such as RRIF and TIFIA.

Having discussed the proposed guidance and the two additional matters on which BAB is seeking input with APTA's diverse membership, including members who have firsthand experience with the TIFIA and RRIF programs, P3's, and Value for Money (VfM) analyses, APTA submits the following comments, and looks forward to working with you as DOT and BAB make further revisions to its procedures on P3 projects.

Comments on the Guidance for Projects Using a P3 Delivery Method and Seeking Federal Credit Assistance

We appreciate efforts by BAB to ensure TIFIA and RRIF loans remain accessible for transportation projects. However, APTA is concerned that the proposed guidance on P3 project delivery including VfM analyses[1] would present an obstacle for public transportation-related P3's to apply for TIFIA and RRIF credit assistance due to such projects' unique timeline and life cycle.

The guidance proposes two times in the project's lifecycle when BAB requires a VfM.[2] The first occurs after project identification, where a VfM screening or Qualitative Analysis may be necessary based on the type of P3 arrangement. APTA members note that this analysis would occur before project sponsors know whether they will seek TIFIA or RRIF credit assistance. This timing of the analysis could have a detrimental effect on public transportation-related P3 projects due to the expected cost of a VfM, which can reach six figures for complicated projects. Project sponsors may not perform the early analysis because of uncertainty surrounding whether the analysis (and its cost) will be necessary, which would force the project to forego TIFIA or RRIF credit assistance in the future. Alternatively, project sponsors may not seek P3 arrangements to avoid paying for the early VfM while retaining the option of seeking TIFIA or RRIF loans at a later date. In these ways, the guidance could serve as an obstacle to P3 projects and successful applications for credit assistance.

The second analysis occurs after project procurement and before commercial close. Our members also expressed concern that the timing of the second VfM would be during sensitive negotiations between the public sponsor of a project and the private entity with which they are forming the P3 arrangement. If the internal information required by the VfM analysis is released to the public when submitted to DOT, it could negatively impact the negotiations.

Second, the timing of the second analysis would pose issues for projects seeking Capital Investment Grant (CIG) funding. By the time a P3 project sponsor is selecting a consortium, it is expected to have a Full-Funding Grant Agreement (FFGA). However, an FFGA for a New Starts and Core Capacity project or a Small Starts Grant Agreement (SSGA) requires commitments of at least 30 percent of non-New Starts funding, to achieve at Medium financial rating.[3] Under the new guidance, P3 projects may need to receive FFGA and SSGA prior to receiving TIFIA and RRIF commitments, which would serve as an impediment to projects in the CIG pipeline.

Due to these concerns, we encourage BAB to alter the current guidance such that public transportation-related P3 projects receive a different schedule for VfM analyses that better reflects such projects' unique timeline and life cycle.

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[1] *See* DOT, Evaluation of the Appropriateness of Public-Private Partnership Project Delivery Including Value for Money or Comparable Analyses: Bipartisan Infrastructure Law.
[2] *See* Id, at p. 89696.
[3] *See* FTA, Capital Investment Grants Policy Guidance, January 2023 at p. 39, 78, 106.

VfM Statutory Requirement for Projects with Costs Exceeding $750 Million that are Anticipated to Generate User Fees

The IIJA requires projects with costs exceeding $750 million that are "anticipated to generate user fees or other revenues that could support the capital and operating costs of such project," to complete a VfM regardless of the delivery method.[4] APTA appreciates the Bureau's recognition that applying this requirement to all projects, including those generating a single dollar of user fees or other revenues, would be unnecessarily burdensome. The burden would be especially apparent for public transportation projects which, while generating user fees, do not cover operating costs using those fees.

To resolve this issue, APTA proposes only requiring a VfM analysis for projects with costs exceeding $750 million if the user fees associated with the project result in net revenue generation. This policy reflects statutory intent by requiring large public projects to explore the potential for cost savings in a P3 arrangement, while removing the unnecessary burden from projects where P3's are not tenable.

"Other Information" The Secretary of Transportation Should Require in P3 VfM Evaluations

The IIJA lists required elements of VfM analyses and allows the Secretary of Transportation to require additional information that they determine to be appropriate.[5] APTA recognizes that in specific circumstances it could benefit both DOT and the project sponsor for a VfM to provide additional data not listed in the IIJA. However, APTA urges DOT to not place additional requirements on VfM analyses for all projects.

Summary

In summary, APTA appreciates this opportunity to provide comments on the proposed guidance for P3 projects seeking credit assistance through TIFIA and RRIF, as well as the two additional matters on which BAB is seeking input. We developed these comments by working with a diverse group of members who have firsthand experience working with the TIFIA and RRIF programs, P3s, and the completion of VfM analyses.

APTA is concerned that the proposed guidance would be harmful to public transportation-related P3 projects due to their unique timeline. We therefore urge BAB to alter the current guidance such that public transportation-related P3 projects receive a different schedule for VfM analyses that better reflects such projects' unique timeline and life cycles. Second, APTA proposes only requiring a VfM analysis for projects with costs exceeding $750 million if the user fees associated with the project result in net revenue generation. Finally, APTA recognizes that some projects could benefit from providing additional information beyond what is required in the IIJA for VfM analyses but urges DOT to not place additional requirements for all project sponsors completing VfM analyses.

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[4] *See* Infrastructure Investment and Jobs Act, P.L. 117-58, Division G, Title VII, § 70701 (b)(3)(B).
[5] *See* Infrastructure Investment and Jobs Act, P.L. 117-58, Division G, Title VII, § 70701 (a)(3).

Thank you for your consideration and we look forward to continuing to work with you on efforts to implement the IIJA, including changes to DOT's critical innovative finance programs.

If you have any questions regarding this letter, please contact Ward McCarragher, APTA Vice President, Government Affairs and Advocacy, at wmccarragher@apta.com.

Sincerely,

Paul P. Skoutelas

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President and CEO