GUIDE FOR INCREASING PRIVATE INVESTMENT IN U.S. INFRASTRUCTURE

The *Guide for Increasing Private Investment in U.S. Infrastructure* outlines steps to increase private capital investment in quality infrastructure projects which reflect the very best in American innovation, design excellence, ingenuity and hard work through Public Private Partnerships (P3s).

Recommendations

I. Streamline and Expedite Environmental Review Process

II. Provide Federal Incentives for States to Adopt the P3 Model

III. Reform Federal Budget Scoring Rules

IV. Remove Statutory Barriers on Private Activity Bond Financing Programs

V. Expand Support for Existing Federal Funding and Loan Programs

I. Streamline and Expedite Environmental Review Process

- Create a more efficient process for approval of infrastructure projects by instituting best practices, requiring coordination of Federal agency review of projects and shortening the period for challenges to final decisions for issuing project permits.
- Accommodate innovative approaches in the environmental review process, turning what is currently an obstacle into a tool to enable better projects and better outcomes.
- Direct Federal agencies to compile best practices and make recommendations for updating NEPA regulations to enable more efficient project development and delivery.
- Provide a process for incorporating technical assistance, early planning and risk assessment that is conducted by private entities before identifying necessary Federal permitting or funding.

II. Provide Federal Incentives for States to Adopt the P3 Model

- Make available Federal discretionary dollars for states, planning organizations and municipalities to help fund and perform project screenings and Value for Money analyses on projects that could be accelerated by utilizing private financing and investment.
- Any additional Federal discretionary dollars that may be made available through applicable programs should give priority to projects utilizing private financing and investment.
- Eligibility for Federal discretionary funding should, ideally, be related to non-Federal governmental entities having broad P3 enabling authority in place to ensure projects being considered can be procured and delivered.

III. Reform Federal Budget Scoring Rules

- Amend Federal scoring rules to reflect long-term commitment to investment in, and design and construction of public infrastructure assets through alternative project delivery procurement methods that incorporate private infrastructure financing.
- Enable capital investment protocols which allow for the exceptions of certain categories or classes of public infrastructure investment as operating leases, including investments in GSA facilities, VA hospitals and clinics, US Army Corps of Engineers facilities and Federal agency buildings, among others.
- Align with 97-13 ruling to support long-term management, operations and services contracts that support P3s for lifecycle procurement.

IV. Remove Statutory Barriers on Private Activity Bond Financing Programs

- Raise the volume cap on current surface transportation Private Activity Bonds
- Remove Alternative Minimum Tax penalty on Private Activity Bonds.
- Broaden eligibility for use of PABs to encourage private sector participation in public infrastructure investment beyond transportation and include environmental and public facilities projects.

V. Expand Support for Existing Federal Funding and Loan Programs

- Support stable and growing funding for TIFIA and WIFIA programs, to help further incentivize the use of P3s and private infrastructure financing.
- Revert to original requirement that linked the TIFIA program to involvement of private capital in infrastructure delivery.
- Stabilize current revenue streams and identify and implement new revenue sources to ensure the sustainable, long-term solvency of the Highway Trust Fund.

AIAI
Association for the Improvement of American Infrastructure

Together, we move P3s forward.

EXECUTIVE SUMMARY

AIAI is the leading education and advocacy group focused on rebuilding America's infrastructure through Public Private Partnerships or P3s. Our objective is to restore America's competitive spirit and economic advantage with renewed investment in public infrastructure projects of all types.

Using P3 procurements to deliver infrastructure brings value by providing cost and schedule certainty, introducing innovative approaches, integrating operations and maintenance concerns in design, and optimizing preventative maintenance and renewal.

While infrastructure is both a state and Federal responsibility, we believe that President Trump and the 115th Congress have a unique opportunity to encourage the use of private capital in the development of US infrastructure projects. This can be accomplished in part through P3s.

The ***"Guide for Increasing Private Investment in U.S. Infrastructure"*** presents specific policy proposals to help achieve the vision laid out by the President and his advisors, and outlines the steps to facilitate private capital investment, through P3s, in quality projects which reflect the very best in American innovation, design excellence, ingenuity and hard work. AIAI's recommendations include to:

I. Streamline and Expedite Environmental Review Process
II. Provide Federal Incentives for States to Adopt the P3 Model
III. Reform Federal Budget Scoring Rules
IV. Remove Statutory Barriers on Private Activity Bond Financing Programs
V. Expand Support for Existing Federal Funding and Loan Programs

We recommend that the Administration take specific actions to remove obstacles to infrastructure delivery and enable private investment through P3s. Eliminating penalties associated with financing tools, streamlining permitting based on the use of P3s, optimizing risk allocation, and private capital participation present opportunities to provide greater value for taxpayers and greater efficiencies in delivery.

In the context of supporting tax reform and the acceleration of much needed infrastructure delivery, we would recommend simplification of the tax code and a reduction of tax rates rather than the introduction of tax credits.

There are numerous examples of successful P3 projects in market sectors across the US and around the globe, including transportation, public facilities and environmental projects. Indeed, P3s have contributed in excess of $52 billion of economic activity over the past 10 years in the United States.

It is widely held that there is more than $300 billion in private capital ready to be deployed in US public infrastructure projects through P3s. This presents tremendous opportunities to restore and repair, and build new infrastructure through private capital investment to create direct, indirect and induced job growth, and promote regional economic expansion. The key to deploying this private capital, and in turn to accelerating project delivery, is to implement P3 incentive programs that enable states and regional authorities to consider P3s as a priority when evaluating procurement alternatives.

AIAI is comprised of the leading industry partners who design, develop, build, finance, operate and maintain public infrastructure projects. Our members are delivering roads, bridges and tunnels, as well as water works, airports, transit systems, municipal buildings, schools and community-use facilities through P3s. Since inception, the Association has compiled and promoted P3 best practices to support the growth of a robust project pipeline. We are pleased to have the opportunity to present these recommendations for helping renew America's infrastructure and grow our Nation's economy.

I

RECOMMENDATION: STREAMLINE AND EXPEDITE ENVIRONMENTAL REVIEW PROCESS

Build on FAST Act reforms that further streamline approval and permitting processes.

When Congress passed the National Environmental Policy Act (NEPA) and the Council on Environmental Quality issued the implementing regulations, policymakers had yet to fully consider the concept of private investment in public infrastructure. The application of NEPA and the prolonged review process it entails reflects this. We must create a more efficient process for Federal approval of major infrastructure projects by establishing best practices, requiring coordination of Federal agency review of projects, and by shortening the time period for challenges to final decisions for issuing project permits.

As many states have demonstrated, leveraging private investment, wherever possible, is vital to any comprehensive infrastructure investment package to enhance and extend the impact of public funds on critical infrastructure construction and repair. We must promote and pursue procurement strategies that reduce project cost, foster design and construction innovation and ultimately deliver project benefits sooner. To fully realize the potential of these strategies, it is critical to make it easier to accommodate these innovative approaches in the environmental review process, turning what is currently an obstacle into a tool to enable better projects and better outcomes.

We recommend creating a process by which private investment considerations on design, location, service frequency and life-cycle operations and maintenance issues are incorporated into environmental analyses at the beginning of the approval process to ensure that the project approved is compatible with the interests of those investing in its construction and operation.

Action Items

- Direct the US Department of Transportation (USDOT), including the Build America Bureau, Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) to compile best practices which will serve as a basis for making recommendations for updating NEPA regulations and other statutes, as necessary, to enable more efficient project development and delivery. Possible strategies could include encouraging outreach to potential investment partners during scoping to understand what project elements will deliver necessary return on investment attractive to investors.
- Update NEPA regulations to acknowledge private investment interests when developing alternatives considered in the Environmental Impact Statement. Similar to the Planning and Environmental Linkages authority established for Federal Highway and Federal Transit Administrations, provide a process for incorporating technical assistance, early planning and risk assessment that is conducted by private entities before identifying necessary Federal permitting requirements or prospective sources of funding.
- Facilitate design refinement suggestions by bidders for consideration during the NEPA process to accelerate re-examinations or supplemental analysis upon award.
- Ensure Federal agencies understand their existing authority to permit actions with limited design, allowing for flexibility to modify permits once design is finalized.

II

RECOMMENDATION: PROVIDE FEDERAL INCENTIVES FOR STATES TO ADOPT THE P3 MODEL

Enable project life-cycle analysis development funding for pre-screening and technical assistance to accelerate decision making for capital infrastructure projects.

We recommend that the Federal government support incentives to promote the use of P3s as an efficient and effective tool for infrastructure delivery. One such incentive would be to provide funding to encourage states to assess their capital plans by incorporating best practices in the P3 procurement model. This would enable states to identify appropriate projects that would benefit from the P3 model and have the resources necessary to properly evaluate projects to determine whether private financing could help to accelerate delivery. Utilizing existing grant programs would help encourage states and municipalities to identify project candidates and engage technical and financial expertise to determine the best course of action for the procurement of projects, taking into consideration life-cycle costs, including major maintenance and renewal works.

The P3 model offers the opportunity for states to make capital project planning decisions for both the design and construction, as well as the long-term maintenance and operational needs of their public infrastructure assets.

Action Items

- We recommend expanding grant programs to make funds available to states, municipalities and regional authorities to evaluate the applicability of the P3 model to specific infrastructure projects. This would create an opportunity to evaluate and properly screen a project to first determine whether P3 investment works as an alternative delivery method, and if private investment would facilitate projects being delivered in an accelerated timeframe.
- Prioritize funding from existing programs to states and municipalities with P3 delivery authority for revenue generating projects and/or projects that are likely to benefit from private investment, including availability payments. The sources of funds for this initiative could draw upon existing programs, which might be repurposed or prioritized and not require legislative action (i.e., the Surface Transportation Program, or STP, has some flexibilities to fund such technical assistance studies at the states level). Depending on the nature and complexity of a proposed project, grants to engage technical and financial expertise could be awarded based on a percentage of total -anticipated project costs.
- Incentivize states to pass authorizing legislation to enable Public Private Partnerships (P3s), Design + Build (D+B), and Construction Management At-Risk | Construction Manager, General Contractor (CMAR|CMGC) strategies by giving funding priority to jurisdictions that adopt P3 enabling statutes.
- Require early outreach and engagement from Transportation Infrastructure Finance and Innovation Act (TIFIA) and other Federal Credit Assistance programs to projects being screened using Federal funds to ensure those programs are properly utilized (i.e., require a Value for Money analysis for all projects greater than $200 million to determine the most beneficial delivery model).
- Create and expand opportunities for Federal funding to provide additional incentives for infrastructure projects targeting the improvement and/or development of underserved and rural communities across buildings, water and transportation sectors.

III

RECOMMENDATION: REFORM FEDERAL BUDGET SCORING RULES

Enable the renewal of the Federal real property portfolio through responsible updates to Office of Management and Budget Circular A-11, Appendix B.

Federal budget scoring rules or protocols, can and should be amended to reflect the Federal government's long-term commitment to investment in, and design and construction of public infrastructure assets through P3s.

Proposed reforms that support the use of the P3 model have the potential to increase private investment, enhance environmental stewardship and improve efficiencies in government operations and responsible asset management.

Action Items

- Enable capital investment protocols which allow for exceptions of certain categories or classes of public infrastructure investment, or categorization of these asset leases to reflect existing protocols as operating leases. This would apply to public infrastructure investments in facilities such as: General Services Administration (GSA) buildings, Veterans (VA) hospitals and clinics, museums, Federal agency buildings and US Army Corps of Engineers assets and facilities.
- Enable treatment of decades long infrastructure investments as a category of mandatory, discretionary spending. While these could be seen, on a budget year over budget year basis, as entitlements, they could be subjected to a periodic review. This would align with the recent 97-13 ruling related to services contracts to support long-term management and operations and provide the necessary rationale for treatment of these service contracts that support life-cycle phases of P3s for procurement of and services for Federal assets.
- Reform Federal budget scoring by applying generally accepted accounting principles to allocation of costs consistent with phases of actual and forecasted costs for the design, construction and operations phases of a physical asset. This would allow for treatment of the costs to design and build assets in the fiscal cycles in which these functions occur. This would also account for the operational and maintenance costs of the asset in the fiscal cycles in which those phases of the activities apply.
- Pay-Go solutions for the payment of Federal infrastructure funding initiatives and budgetary appropriations line items present opportunities to forge a long-term approach to financing infrastructure funding and financing for state-funding programs.
- Streamline efficiencies and accountability in accordance with budget score-keeping guidelines used by the House and Senate Budget Committees, the Congressional Budget Office, and the Office of Management and Budget in measuring compliance with the Congressional Budget Act of 1974 (CBA), as amended, and the Statutory Pay-As-You-Go Act of 2010.
- Facilitate a pilot program to demonstrate the efficiencies and structure for transforming Federal budget scoring.

IV

RECOMMENDATION: REMOVE STATUTORY BARRIERS ON PRIVATE ACTIVITY BOND FINANCING PROGRAMS

Raise the volume cap on current surface transportation Private Activity Bonds and broaden the eligibility for participation of other public infrastructure sectors.

Current statutory limits on Private Activity Bonds (PABs) create barriers that hinder the access of private capital in US infrastructure projects. We recommend that public sector agencies should be able to draw upon robust financing tools and resources to apply best practices to a range of infrastructure projects, including: transportation facilities, roads, bridges and tunnels; airports and seaports; public use facilities, courthouses and justice centers; municipal buildings and community-use facilities; and environmental facilities such as, water works and water treatment plants.

In taking this step, the Administration and Congress could leverage private sector innovation and efficiencies for the design, construction, financing, operations and maintenance of public infrastructure. This would reduce the overall cost to taxpayers over the whole life of these assets and transfer obligations for "state of good repair" renewal work to the private partner. Through the project agreement and associated contracts, outright ownership and control of the public assets remain in the hands of those stewards entrusted with their care, operation and availability to meet the needs of the public.

Action Items

- One critical step to facilitate continued success of the PABs program would be to remove the national cap amount for qualified highway or surface freight transfer facility bonds.
- To facilitate private investment utilizing existing financing programs, remove Alternative Minimum Tax penalties associated with the use of Private Activity Bonds (i.e., make the PABs not subject to the AMT).
- In addition to removing the volume cap, we recommend broadening the eligibility for use of or participation of other public infrastructure sectors. This would include the use of these financing mechanisms to encourage private sector participation in public infrastructure investment beyond transportation and include public facilities and environmental projects.

V

RECOMMENDATION: EXPAND SUPPORT FOR EXISTING FEDERAL FUNDING AND LOAN PROGRAMS

Raise the funding levels for current TIFIA and WIFIA programs and broaden eligibility for participation of other public infrastructure sectors.

Improve processes for RRIF as a means to facilitate access to available funds.

Current authorization limits on the Transportation Infrastructure Finance and Innovation Act (TIFIA) and the newly authorized funding level for the Water Infrastructure Finance and Innovation Act (WIFIA) programs create barriers that hamper access of private capital to US infrastructure projects. One critical step to facilitate the continued success of these programs would be to increase the funding authorization limitation amount for qualified projects of regional or national significance.

We also recommend broadening the eligibility of PABs to other sectors of infrastructure. This would include municipal facilities such as buildings. In total, this would enable access to best practices for financing investments in public infrastructure classes such as: roads, bridges and tunnels; airports and seaports; courthouses and justice centers; municipal buildings and community-use facilities; as well as water works and water treatment plants.

While the Railroad Rehabilitation & Improvement Financing (RRIF) funding is more than adequate, there has been a disconnect in providing access to those funds. We recommend a review of current processes and implementation of sound strategies to facilitate access to the funds, in order to provide the benefits the program intended when it was created.

Additionally, we recommend reinstatement of the requirement for private capital to access TIFIA, WIFIA and other new Federal credit programs to revert back to original intent: to promote the use of alternative project delivery methods such as P3s that would best serve taxpayers.

We strongly recommend that the Administration identify additional sustainable revenue sources to ensure the solvency of the Highway Trust Fund (HTF). In addressing the long-term sustainability of the HTF, states and counties, municipalities and regional authorities can rely on a predictable planning horizon to articulate long-range needs and create and manage plans to address the needs of the public they serve.

Action Items

- Expand TIFIA and WIFIA funding. This would result in more investment grade capital investing in America’s future, ensuring global competitiveness through sustainable, safe and vital infrastructure. The determination for the targeted amount or minimum project size could be stipulated, and should be readdressed by competent authority periodically, in the context of evaluating the vibrancy and effectiveness of these programs.
- Assess restrictions related to tolling on the interstate system, including reviewing options and opportunities for managing usage fee based assets which could prove to be revenue neutral and self-sufficient. Allowing for the tolling of the interstate system could empower states to develop much-needed revenue streams to help address the shortfall associated with the HTF.
- Expand PABs eligibility categories to include public buildings. This can be accomplished by amending the Internal Revenue Code to expand the definition of “exempt facility bond”. This will permit the tax-exempt financing of certain government-owned buildings.