



TESTIMONY OF

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ON

THE IMPLEMENTATION OF MAP-21'S TIFIA PROGRAM ENHANCEMENTS

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Thank you for this opportunity to testify before the Committee on the impact MAP-21 has had on the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. By way of introduction, I am a Managing Director at Macquarie Capital and head of our government advisory and affairs practice here in the U.S. Macquarie is the world's largest private sector investor in infrastructure, and has been particularly successful in developing and bidding on public-private partnership (P3) projects in the U.S. Since 2008, Macquarie has been successfully involved in two-thirds of all large P3 transactions, which had a total asset value of \$14.4 billion. Prior to joining Macquarie, I served as the Chief Counsel of the Federal Highway Administration (FHWA) and as the General Counsel to the United States Department of Transportation (USDOT). At FHWA, I worked on a number of TIFIA loans, and I served on the USDOT Credit Council when I was General Counsel for the Department. As a result, I have had the privilege of working on with TIFIA from both public policy and private transactional perspectives.

### **Benefits of TIFIA**

This Committee is very familiar with the beneficial impact TIFIA has had on infrastructure investment in the United States; so there is no need for me to go into detail on that front. Instead, let me focus on the benefits the TIFIA program when it comes to innovation in transportation infrastructure finance and delivery.

TIFIA has done more than just provide additional capital for transportation infrastructure. TIFIA encourages prioritization of project selection, innovation in project finance, and considerable creativity in project delivery. In short, the TIFIA success story goes far beyond the \$11 billion invested in \$43 billion worth of projects. TIFIA creates a number of positive externalities that generate value for infrastructure investment beyond just the funds lent to projects.

At its most basic, just the fact that borrowers have to repay funds, as opposed to traditional grant programs, encourages sponsors to select projects that will produce a return on investment. As a result, governments are encouraged to advance projects that are of higher utility than a traditional transportation program. Federal financial support that has to be repaid, especially projects repaid with tolls, brings significant discipline to the project selection process, avoiding the challenge of "bridges to nowhere."

TIFIA lending also helps encourage private investment in infrastructure by offering the market a patient lender with discounted lending rates. TIFIA, when combined with private activity bonds (PABs), opens the door to private investment in infrastructure, which in turn brings private sector discipline and innovation to project finance. With each passing year, competition among private investors is producing more efficient financial structures to the infrastructure market.

TIFIA also encourages the introduction of private capital into projects by helping level the playing field between taxable and tax-exempt debt. The U.S. is unique in our use of tax-exempt debt, essentially subsidizing state and local borrowing with federal taxpayer funds. This government-to-government subsidy can prevent private investment from being competitive absent significant savings found elsewhere in an infrastructure development. TIFIA helps level that playing field, which allows for increased private sector involvement, triggers more innovation, lowers project costs and stimulates more efficient procurement methods. TIFIA has stimulated increase use of a number of innovative project delivery methods including design-build-finance and design-build-finance-operate-maintain.

So allow me to take those three benefits of TIFIA – prioritization of project selection, innovation in project finance, and creativity in project delivery – and discuss how MAP-21 affected them.

### **TIFIA's Role in Transportation Finance**

Let me start by noting how beneficial MAP-21 changes have been generally. Increased funds for loans and the process streamlining are both very helpful to a program that was increasingly constrained by limited resources. I would encourage the Committee, however, to preserve the unique role TIFIA plays in terms of incentivizing better project prioritization and innovation and not have it morph into a broad grant-like program that just subsidizes every project. As noted above, TIFIA's impact on transportation goes far beyond just additional funding.

Simplifying TIFIA loan criteria removed some of the subjectivity of the process, but it also broadened the criteria such that every large potential project could qualify. In the Bush Administration, we used the TIFIA program to encourage governments to use pricing to finance their infrastructure and manage congestion. The Obama Administration used TIFIA to encourage livability. Both Administrations provided loans to high-priority projects that did not directly advance their policy goals, but TIFIA was a very useful tool to encourage new thinking around transportation projects. It would be a loss to the transportation community if TIFIA could not be used as an incentive to encourage new thinking.

As a funding tool for infrastructure, TIFIA should be considered in context. Public developers of infrastructure have access to a broad range of tools to help finance traditional infrastructure, including federal and state grants, GARVEE bonds, revenue bonds, general obligation bonds, special tax districts, tax increment financing, and sales taxes. From a policy perspective, the federal government has no involvement in project selection in the vast majority of projects. While states and localities should take the lead in establishing project priorities and determine

what they want to advance, there should be a small role for the federal government to encourage innovation and new thinking, and TIFIA has historically filled part of that role.

Expanding TIFIA to cover all potential projects over \$50 million (\$15 million for Intelligent Transportation Systems (ITS) or \$25 million for rural infrastructure) would just add it to the existing list of federal programs, including grants and GARVEES, under which there is no policy guidance or competition around the provision of federal project support.

Competition incentivizes innovation. Whether it is competition for State Infrastructure Bank funding, Urban Partnership Agreements, TIFIA or Transportation Investment Generating Economic Recovery (TIGER) grants, federal competitions have been very successful in generating new, innovative approaches to project delivery. And TIFIA is the only competitive program that requires the winner to pay back the federal government. Converting TIFIA into a first-come, first-serve program with minimal policy considerations would remove the only federal transportation program that encourages innovation and requires repayment.

### **Continuing Improvements to the TIFIA Application Process**

Now that Congress has increased funding for the TIFIA program, the most serious challenge facing the program is the time it takes to process and approve a loan application. The inability of TIFIA to make a lending decision in a reasonable period of time prevented Indiana's East End Crossing project from seriously considering TIFIA involvement. TIFIA's project approval timelines are far outside the market norm and make it difficult to develop and close projects in a timely manner. That said, the program has improved considerably since my time at FHWA, when the Florida Department of Transportation declared that they would never seek a TIFIA loan again since the timing delay outweighed the benefits of the lower interest rates.

The changes incorporated in MAP-21 and improvements made by the TIFIA office since the passage of MAP-21 have helped alleviate some of the concerns about timing, but there's much to be done. Most of the improvements to the program can be made administratively and do not require a change in statute. Administrative improvements I have recommended to USDOT include the following:

- Re-organize TIFIA so that it is part of the Office of the Secretary of Transportation (OST). Having loan decisions spread across the Office of Management and Budget (OMB), OST, the USDOT Credit Council, the Office of Innovative Program Delivery (OIPD), and FHWA is unwieldy and creates a series of execution challenges.

- Clearly identify which lending decisions need to be made at the Letter of Interest (LOI) stage, which at the first Credit Council meeting, and which at the second Credit Council meeting. This would allow borrowers and TIFIA staff to know what level of detail needs to be provided to decision makers at each stage of the process.
- Provide borrowers with a tentative schedule of events at the start of the process identifying key milestones.
- Provide borrowers with a loan amount, not a credit subsidy amount. USDOT should consider reserving some of the TIFIA budgetary authority to help set the quantum of the loan at a fixed dollar amount during the duration of the loan negotiations. Not setting the loan at a defined dollar amount creates considerable, unnecessary complexity as the final loan amount cannot be set until financial close.
- Offer a loan template that can receive expedited consideration. Borrowers should not be forced into a one-size-fits-all loan agreement, but if a borrower is willing to accept the terms offered a project of similar credit risk with similar issues that have been resolved, then that borrower should be afforded an expedited review.
- Establish any policy changes that will apply to a given project when the LOI is accepted and make no subsequent changes in policy for that project. Invariably policies will evolve with time, and the government should alter loan policies with changing circumstances and greater experience. OMB may change the calculation of credit subsidies, the Credit Council may adopt different credit standards for back-loading debt, or policies could be set regarding the lending of more than 33% of project costs. It would be helpful if policies for a certain loan are all established at the beginning as opposed to evolving as the loan is being negotiated. Moving policy targets create considerable delay in the loan process.
- Establish a deadline weeks prior to financial close by which a determination is made that all federal procurement requirements have been met. The mode responsible for the TIFIA loan should be asked to pass final judgment that all federal procurement regulations and guidelines have been met well in advance of financial close.

These changes could shave months off the loan approval process and provide an increased level of timing certainty to project developers and lenders.

### **TIFIA Lender Risk**

The TIFIA program has always had to carefully balance encouraging at-risk projects in need of subsidized, subordinate debt against the potential that a borrower may not be in a position to repay the loan. This tension was evidenced in the positions taken by a staff person who worked in the early days of the program who refused loans for projects that were risky because the

loan may not be repaid and refused loans for projects that were not risky because they were not truly in need of TIFIA credit support. It was a classic Catch-22. Fortunately, the TIFIA program found its way out of this Catch-22 and developed into the very potent and successful program that exists today.

As the TIFIA program matures, it would be helpful for this Committee to encourage the TIFIA program to take a portfolio approach. In any portfolio, some loans will underperform and others will do quite well. While the Credit Council should be very careful stewards of the taxpayer funds used in these loans, they should not be encouraged to pursue a minimal risk, or worse a zero-risk, strategy. Such a strategy would work against the policy foundation of the TIFIA program, which was to provide credit for projects that would otherwise be difficult to construct. There are indications that the TIFIA program is becoming increasingly risk adverse, adverse to the point that lending practices could become increasingly difficult to align with market requirements.

In sum, TIFIA fills a critical market gap by providing debt in circumstances that other lenders find difficult and with terms that cannot be found elsewhere. Focusing its lending on this gap will result in loans that may carry more risk; but at the end of the day, it is important to recognize that even the worst performing TIFIA loan is better than the best grant in terms of the return it provides taxpayers.

## **Conclusion**

In conclusion, I would like to thank this Committee for its leadership in championing the TIFIA program by providing additional funding and working to streamline the loan negotiation and approval process. I would encourage the Committee to continue its support of TIFIA and (1) leverage the unique benefits of TIFIA and not allow it devolve into just another form of infrastructure funding; (2) continue to partner with the Department to improve the TIFIA loan approval process and make the process one that is more practical in terms of project timing; and (3) encourage the Department to continue to take a portfolio approach to the program and expect that while some loans may underperform, the program as a whole will continue to be a significant driver of improved infrastructure, resulting in economic growth and job creation.