Testimony of Christopher Coes, Vice President, Smart Growth America

to the

U.S. Senate Committee on Environment and Public Works

July 12, 2017

Hearing on the Use of TIFIA and Innovative Financing in Improving Infrastructure to Enhance Safety, Mobility, and Economic Opportunity

---

Chairman Barrasso, Ranking Member Carper and members of the EPW committee, thank you for the opportunity to testify today.

I am Christopher Coes, Vice President of Real Estate Policy and External Affairs at Smart Growth America and head a number of Smart Growth America's real estate programs, including LOCUS: Responsible Real Estate Developers and Investors, the National Brownfields Coalition and Transit-Oriented Development (TOD) Finance and Advisors, Inc., a for-profit subsidiary of Smart Growth America which provides TIFIA/RRIF consulting services to transit agencies and real estate companies.

Smart Growth America (SGA) is a national non-profit organization dedicated to researching, advocating and bringing better development strategies to urban, suburban and rural communities across the country.

Whether in urban, suburban or rural markets, there is pent-up demand for walkable communities with great amenties and a sense of place. According to a 2016 SGA report, in the country's 30 largest metro areas walkable development has a 74 percent premium over non-walkabe neighborhoods. While communities, developers and transit agencies understand the enormous economic and fiscal benefits of walkable development they face many barriers to meeting this demand including financing the upfront cost of public infrastructure and development, particularly near transit stations. If left unaddressed, this pent-up demand will drive prices higher still exacerbating the housing shortage and leading to displacement.

SGA and LOCUS, working with this Committee and Congress in a bipartisan manner ensured the Fixing America's Surface Transportation (FAST) Act made significant improvements to TIFIA and Railroad Rehabilitation Improvement and Financing (RRIF) to give local communities the financing tools to rebuild their infrastructure and accelerate the creation of walkable communities. One of the most significant improvements made by the FAST ACT was expanding the project eligibility under TIFIA to include transit-oriented development and local projects as well as lowering the project threshold from $50 million to $10 million. These changes ensure that federal transit investments get the maximum return and provide P3 opportunities to improve public infrastructure. From the developers' perspective, TIFIA financing, because of its flexible repayment terms, is a critical tool to facilitate private investment to build economically thriving, transit-oriented development (TOD) that is affordable to the average American.

We fully applaud the Committee's inclusion of TOD and local projects in TIFIA. TOD projects create many positive outcomes for both the private sector and the public sector – a clear "win-win."

Since the passage of the FAST Act, we have worked closely with the Build America Bureau (Bureau) towards the implementation of these reforms and I welcome the opportunity today to share with you our perspective on this work and ideas on how to ensure TIFIA continues to provide the financing tools needed to make the most of federal transit investments, meet the market demand for walkable development, and create public-private partnerships (P3s) opportunities to bring private money to the problem of public infrastructure.

Lack of a Clear TOD Policy Has Created Uncertainties for TOD Applicants

Immediately following the passage of the FAST Act, USDOT moved quickly to begin the implementation process of the FAST changes. In January 2016, USDOT held a roundtable with transit agencies and developers to discuss TOD and gather input on implementation. In March 2016, US DOT announced the notice of funding availability and request for comment to gather ideas on how to best implement the new FAST Act changes. In the last nine months, the LOCUS developer's coalition has arranged nearly a dozen meetings between prospective applicants (transit agencies, developers and localities) and the Build America Bureau. During those meetings, we have observed the Bureau staff's inability to provide answers or clarity on a range of applicant questions due to the lack of clear guidance from the previous or current US DOT leadership. For example, there is uncertainty on whether US DOT will maintain the broad interpretation of capital projects as described in the 49 U.S.C. 5302(3)(G)(v), particularly its ability to provide credit assistance for the construction of space for commercial uses. Or how US DOT intends to manage the TIFIA planning requirements given most TOD portions of a project not directly related to a transportation facility are not included in those plans and programs. Without clear guidance, the Bureau's staff is reluctant to move projects forward for fear that they may place the program at risk should a loan fail. As a result viable P3s sit there—ready to go on the private side—and in limbo on the public side. This type of uncertainty—uncertainty about timing—is deadly to P3s.

Recently, US DOT Deputy Secretary Jeffrey Rosen and his team met a number of prospective TOD applicants to hear their concerns regarding the overall process and made a commitment to provide guidance in the near future. While we are confident that US DOT will issue guidance very soon, this uncertainty raises the level of skepticism among potential applicants of TIFIA (or federal financing of TOD) as a viable option.

TIFIA Lender Risk

TIFIA has built a successful track record for approving loans with similar underwriting and traditional dedicated revenue streams like user fees and taxes. With the inclusion of TOD and local projects in TIFIA, these projects offer new revenue streams such as value capture and real estate generated revenues. It is crucial that US DOT and the Bureau have the best information and expertise as it performs its risk analysis and conducts underwriting process evaluations to improve eligibility standards.

For example, during the underwriting process for the redevelopment of Denver's Union Station project, federal officials at the TIFIA office were skeptical that the established Tax Increment Financing (TIF) district around the station would provide the needed funds to repay a TIFIA loan. According to the federal government's risk analysis, the Union Station project would only create 100,00 square feet of retail – a taxable revenue stream - by 2019. However, according to private analysis, over 400,000 square feet of retail development had already been built within the TIF district, with another 1,000,000 square feet of retail development in the pipeline.

The failure to adequately capture the development potential of TOD projects will result in increased delays for applicants or trigger an overly pessimistic risk forecast, resulting in a larger credit subsidy than necessary. The Committee should provide funding for the Build America Bureau to obtain additional training or acquire support from other federal agencies with experience TOD projects, such as Department of Housing and Urban Development, US Department of Agriculture or the Economic Development Agency.

In addition, the Committee should move the Build America Bureau towards a portfolio approach when evaluating projects. Today, TIFIA uses a more project-based risk analysis, and this level of analysis creates a default selection criterion that favors a more risk-averse approach that makes innovation projects like TOD and local infrastructure, challenging. While maintaining sound underwriting requirements, we believe TIFIA should use a portfolio approach to analyze and aggregate risks by project type and try to achieve an overall balance of risk and return. These steps taken together will maximize the volume of credit assistance TIFIA provides over the life of the authorization while ensuring greater accessibility for smaller projects.

Reducing TIFIA Transaction Cost

Another significant challenge with the TIFIA program for TOD and local projects is the enormous transaction cost associated with applying for small projects. For example, TIFIA requires projects to secure an investment grade rating to determine creditworthiness. This requirement is a requirement that has always existed in the TIFIA program and is appropriate for large projects. However, when Congress reduced the project threshold from $50 million to $10 million the same large project requirements were applied. This makes small projects unworkable. The cost of obtaining one letter can range from $300,000 to $400,000 and must be paid whether or not the loan is ultimately approved. This does not include the additional legal and financial consultants required to process a TIFIA loan.

Smaller projects like TOD when compared to a traditional TIFIA project put relatively little capital at risk. Unlike the RRIF program and traditional lenders, TIFIA does not allow applicants to demonstrate their creditworthiness using other more economically and market-tested methods. This creates a significant cost barrier for smaller projects like TOD and local infrastructure. We urge the Committee to allow TIFIA, like the RRIF program, to waive the requirement for a credit rating letter for projects under a certain threshold and instead allow applicants to demonstrate their creditworthiness by providing collateral; the applicant's audited financial data (if available), including balance sheet, income statement, and cash flow statements; or cash flow projections from a project. Frankly, credit rating letters are not the means used by the private sector to assess these projects anyway, rather it is these latter means (balance sheet etc.) and this would bring the TIFIA program in line with industry practice.

Additionally, the Committee should encourage US DOT to develop an application process that is more user-friendly and streamlined for smaller projects. Specifically, create a streamlined "pre-approval online application" similar to conventional lenders where the applicant is able to submit project description, credit, financial and information and documentation and receive a pre-approval determination.

<u>More Outreach to Small Towns and Rural Communities</u>

The Build America Bureau's staff supporting the TIFIA program is well respected across the country. Some of their staffers, like Roger Bohnert, Jodie Misiak and Duane Callender have gone above and beyond to meet with prospective applicants and to provide as much information possible. Yet, the Bureau is a Washington, DC-based office and lacks a robust outreach capacity for pipeline development, particularly from distressed, small town or rural communities. For example, in the last year Smart Growth America has provided technical assistance for dozens of small town and rural communities interested in rebuilding their infrastructure and revitalizing their downtowns. What we have learned from our work is that many communities particularly smaller towns and rural communities were either unaware of TIFIA, or did not have the capacity to travel to DC or afford the transaction cost to effectively apply for TIFIA loans.

This Committee should ensure that US DOT does more targeted outreach to small towns and rural communities that have not been successful in applying for TIFIA financing. This could be achieved by partnering with organizations like ours, the National Association of County of Officials or leveraging USDA Rural Development field staff to ensure these communities are aware of the opportunities available to them and ensure that they are educated on their eligibility and on how to successfully apply for TIFIA financing.

<u>Expand TIFIA Project Eligibility</u>

For the first time, the FAST Act made transit-supportive TOD projects eligible in TIFIA and RRIF. However, unlike the RRIF program, the TOD residential development is not eligible for TIFIA financing. Given that successful TOD projects contain a mix of uses that incorporate residential and commercial development into the same space, TIFIA has become a less attractive tool when compared to RRIF financing. We urge the Committee to allow TOD residential development (specifically attainable housing) to be eligible. New residential opportunities affordable to families with a range of incomes, coupled with expanded commercial and business development along a transit corridor, will increase transit ridership, allowing transit agencies to recover more of their costs from fare box revenue and rely less on taxpayer support.

In addition to including attainable housing as an eligible project, we believe TIFIA eligibility should be expanded to include the latest innovations in surface transportation and infrastructure such as broadband, autonomous vehicles, green infrastructure and infrastructure revolving funds. The inclusion of these projects will increase the volume of credit assistance and assist more communities to meet their unique infrastructure and financing needs.

Conclusion

In conclusion, I would like to thank the Committee for its leadership in making TIFIA more accessible to meet the needs of local communities by expanding project eligibility and lowering the cost threshold for TOD and local infrastructure projects. We believe that TIFIA can help communities harness the economic potential near transit stations while creating inclusive and safe neighborhoods. To fully take advantage of this opportunity it is crucial that the TIFIA program recognizes and accommodates the unique needs of TOD and local projects by providing clarity and certainty with the respect to the above-mentioned topics.

This Congress and this Administration has made infrastructure and rebuilding our American neighborhoods are major priority. Smart Growth America's real estate coalition, LOCUS, represent billions of dollars in real estate assets that stand willing and ready to invest in America's crumbling local infrastructure while creating economically vibrant and social inclusive communities near transit and passenger rail stations.

We hope to serve as a resource to he Committee and the Administration to ensure TIFIA achieves this shared goal.